

By: Cook

H.B. No. 852

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the powers, duties, and qualifications of an amicus
3 attorney in a suit affecting the parent-child relationship.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. The heading to Section 107.003, Family Code, is
6 amended to read as follows:

7 Sec. 107.003. POWERS AND DUTIES OF ATTORNEY AD LITEM FOR
8 CHILD [~~AND AMICUS ATTORNEY~~].

9 SECTION 2. Section 107.003(a), Family Code, is amended to
10 read as follows:

11 (a) An attorney ad litem appointed to represent a child [~~or~~
12 ~~an amicus attorney appointed to assist the court~~]:

13 (1) shall:

14 (A) subject to Rules 4.02, 4.03, and 4.04, Texas
15 Disciplinary Rules of Professional Conduct, and within a reasonable
16 time after the appointment, interview:

17 (i) the child in a developmentally
18 appropriate manner, if the child is four years of age or older;

19 (ii) each person who has significant
20 knowledge of the child's history and condition, including any
21 foster parent of the child; and

22 (iii) the parties to the suit;

23 (B) seek to elicit in a developmentally
24 appropriate manner the child's expressed objectives of

1 representation;

2 (C) consider the impact on the child in
3 formulating the attorney's presentation of the child's expressed
4 objectives of representation to the court;

5 (D) investigate the facts of the case to the
6 extent the attorney considers appropriate;

7 (E) obtain and review copies of relevant records
8 relating to the child as provided by Section [107.006](#);

9 (F) participate in the conduct of the litigation
10 to the same extent as an attorney for a party;

11 (G) take any action consistent with the child's
12 interests that the attorney considers necessary to expedite the
13 proceedings;

14 (H) encourage settlement and the use of
15 alternative forms of dispute resolution; and

16 (I) review and sign, or decline to sign, a
17 proposed or agreed order affecting the child;

18 (2) must be trained in child advocacy or have
19 experience determined by the court to be equivalent to that
20 training; and

21 (3) is entitled to:

22 (A) request clarification from the court if the
23 role of the attorney is ambiguous;

24 (B) request a hearing or trial on the merits;

25 (C) consent or refuse to consent to an interview
26 of the child by another attorney;

27 (D) receive a copy of each pleading or other

1 paper filed with the court;

2 (E) receive notice of each hearing in the suit;

3 (F) participate in any case staffing concerning
4 the child conducted by the Department of Family and Protective
5 Services; and

6 (G) attend all legal proceedings in the suit.

7 SECTION 3. Section 107.005, Family Code, is amended to read
8 as follows:

9 Sec. 107.005. POWERS AND [ADDITIONAL] DUTIES OF AMICUS
10 ATTORNEY. (a) An attorney appointed as an amicus attorney:

11 (1) shall:

12 (A) perform the duties described by Sections
13 107.003(a)(1)(A) and (D)-(I);

14 (B) conduct a home visit of:

15 (i) any person who has the right of
16 possession of or access to the child; and

17 (ii) any party who is seeking possession of
18 or access to the child;

19 (C) on request by a party or the court:

20 (i) provide a copy of the amicus attorney's
21 entire case file to each party not later than the fifth business day
22 after the date of the request; and

23 (ii) prepare and file a written report
24 certifying the amicus attorney's compliance with the order
25 appointing the amicus attorney and this chapter not later than the
26 fifth business day after the date of the request;

27 (2) must certify to the court that the attorney:

1 (A) has completed at least four hours of
2 continuing legal education in the previous year specifically
3 related to domestic violence, developmentally appropriate
4 techniques to interview a child, and alternative dispute
5 resolution; or

6 (B) is certified in family law by the Texas Board
7 of Legal Specialization; and

8 (3) is entitled to perform the actions described by
9 Sections 107.003(a)(3)(B)-(G).

10 (a-1) Subject to any specific limitation in the order of
11 appointment, an amicus attorney shall advocate the best interests
12 of the child after reviewing the facts and circumstances of the
13 case. Notwithstanding Subsection (b), in determining the best
14 interests of the child, an amicus attorney is not bound by the
15 child's expressed objectives of representation.

16 (b) An amicus attorney shall, in a developmentally
17 appropriate manner:

18 (1) with the consent of the child, ensure that the
19 child's expressed objectives of representation are made known to
20 the court;

21 (2) explain the role of the amicus attorney to the
22 child; and

23 (3) inform the child that the amicus attorney may use
24 information that the child provides in providing assistance to the
25 court[~~, and~~

26 ~~[(4) become familiar with the American Bar~~
27 ~~Association's standards of practice for attorneys who represent~~

1 ~~children in custody cases~~].

2 (c) The order appointing an [An] amicus attorney must
3 include:

4 (1) a list of any additional duties, other than the
5 duties under this chapter, required by the court to be completed by
6 the amicus attorney; and

7 (2) specific orders regarding the payment of the fees
8 and expenses of the amicus attorney.

9 (d) An amicus attorney may not at any hearing or trial
10 express an opinion or relate a recommendation to the court or to a
11 jury regarding the conservatorship of or the possession of or
12 access to the child who is the subject of the suit, or any issue
13 regarding a geographic restriction applicable to the child.

14 (e) Except as otherwise provided by Subsection (f), an
15 amicus attorney is subject to discovery in accordance with the
16 Texas Rules of Civil Procedure.

17 (f) The provision of services by an amicus attorney under
18 this chapter does not create an attorney-client relationship
19 between the attorney and any other party, and the amicus attorney
20 may be required to [not] disclose [confidential] communications
21 between the amicus attorney and the child and any work product
22 related to the case [unless the amicus attorney determines that
23 disclosure is necessary to assist the court regarding the best
24 interests of the child].

25 SECTION 4. Subchapter A, Chapter 107, Family Code, is
26 amended by adding Section 107.0051 to read as follows:

27 Sec. 107.0051. AMICUS ATTORNEY: CONFLICTS OF INTEREST AND

1 BIAS. (a) Before a person accepts appointment as an amicus
2 attorney in a suit, the person must disclose to the court, each
3 attorney for a party to the suit, and any party to the suit who does
4 not have an attorney:

5 (1) any conflict of interest that the person believes
6 the person has with the court, any party to the suit, or a child who
7 is the subject of the suit;

8 (2) any previous knowledge that the person has of a
9 party to the suit or a child who is the subject of the suit, other
10 than knowledge obtained in a court-ordered evaluation;

11 (3) any pecuniary relationship that the person
12 believes the person has with an attorney in the suit or the court;

13 (4) any fiduciary relationship that the person
14 believes the person has with an attorney in the suit or the court;
15 and

16 (5) any other information relating to the person's
17 relationship with an attorney in the suit or the court that a
18 reasonable, prudent person would believe would affect the ability
19 of the person to act impartially as an amicus attorney.

20 (b) The court may not appoint a person as an amicus attorney
21 in a suit if the person makes any of the disclosures in Subsection
22 (a) unless:

23 (1) the court finds that:

24 (A) the person has no conflict of interest with a
25 party to the suit, the court, or a child who is the subject of the
26 suit;

27 (B) the person's previous knowledge of a party to

1 the suit, the court, or a child who is the subject of the suit is not
2 relevant;

3 (C) the person does not have a pecuniary
4 relationship with an attorney in the suit or the court; and

5 (D) the person does not have a fiduciary
6 relationship with an attorney in the suit or the court; or

7 (2) the parties agree in writing to the person's
8 appointment as an amicus attorney.

9 (c) After being appointed as an amicus attorney in a suit, a
10 person shall immediately disclose to the court, each attorney for a
11 party to the suit, and any party to the suit who does not have an
12 attorney any discovery of the following unless previously
13 disclosed:

14 (1) a conflict of interest that the person believes
15 the person has with a party to the suit, the court, or a child who is
16 the subject of the suit;

17 (2) previous knowledge the person has of a party to the
18 suit, the court, or a child who is the subject of the suit, other
19 than knowledge obtained in a court-ordered evaluation; and

20 (3) a relationship that the person has with an
21 attorney in the suit who was hired or appointed after the person's
22 appointment as amicus attorney that would have been subject to
23 disclosure under Subsection (a).

24 (d) The court shall remove a person as amicus attorney in a
25 suit if the person makes any of the disclosures in Subsection (c)
26 unless:

27 (1) the court finds that:

1 (A) the person has no conflict of interest with a
2 party to the suit, the court, or a child who is the subject of the
3 suit;

4 (B) the person's previous knowledge of a party to
5 the suit, the court, or a child who is the subject of the suit is not
6 relevant; and

7 (C) the person has no pecuniary or fiduciary
8 relationship with an attorney in the suit who was hired or appointed
9 after the person's appointment as amicus attorney; or

10 (2) the parties agree in writing to the person's
11 continued appointment as an amicus attorney.

12 (e) A person who has a preexisting relationship with an
13 attorney of a party to the suit is not disqualified from being an
14 amicus attorney if the relationship was formed in a professional
15 setting such as service to the community or a bar association,
16 unless the relationship is prohibited under the Texas Rules of
17 Professional Conduct.

18 SECTION 5. Section 107.007(a), Family Code, is amended to
19 read as follows:

20 (a) An attorney ad litem or~~[7]~~ an attorney serving in the
21 dual role~~[7, or an amicus attorney]~~ may not:

22 (1) be compelled to produce attorney work product
23 developed during the appointment as an attorney;

24 (2) be required to disclose the source of any
25 information;

26 (3) submit a report into evidence; or

27 (4) testify in court except as authorized by Rule

1 3.08, Texas Disciplinary Rules of Professional Conduct.

2 SECTION 6. The changes in law made by this Act apply only to
3 an amicus attorney appointed in a suit that is filed on or after the
4 effective date of this Act. An amicus attorney appointed in a suit
5 filed before the effective date of this Act is governed by the law
6 in effect on the date the suit was filed, and the former law is
7 continued in effect for that purpose.

8 SECTION 7. This Act takes effect September 1, 2021.