

BILL ANALYSIS

Senate Research Center

S.B. 2277
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Jurisprudence
6/28/2023
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Current law does not require an amicus attorney to meet any minimum qualification criteria prior to being appointed. What's more, there is minimal guidance regarding when the appointment of an amicus attorney is appropriate, and under what procedure an amicus attorney should be appointed. Accordingly, judges often appoint an amicus attorney, without a hearing, and when the parties cannot afford or do not need an amicus attorney. What's more, even with agreement of the parties regarding the appointment of a specific amicus attorney, judges often disregard the agreement of the parties and appoint an amicus attorney who may not be qualified for the appointment.

S.B. 2277 would establish that a court may appoint an amicus attorney only after notice and hearing or by agreement of the parties. What's more, the bill would provide clear guidance as to what must be included in an order appointing an amicus attorney. The bill also would set minimum qualifications and specialized training amicus attorneys must complete before being considered for the appointment. In counties with a population of fewer than 500,000 persons, if a court finds that an attorney who meets the qualifications and specialized training is not available to serve as an amicus attorney, the bill would allow the judge, after notice and hearing or on agreement of the parties, to appoint an amicus attorney who is otherwise qualified to serve.

S.B. 2277 amends current law relating to special appointments in suits affecting the parent-child relationship.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 107.001(1), Family Code, to redefine "amicus attorney."

SECTION 2. Amends the heading to Section 107.003, Family Code, to read as follows:

Sec. 107.003. POWERS AND DUTIES OF ATTORNEY AD LITEM FOR CHILD.

SECTION 3. Amends Section 107.003(a), Family Code, to require an attorney ad litem appointed to represent a child, rather than an attorney ad litem appointed to represent a child or an amicus attorney appointed to assist the court, to take certain actions.

SECTION 4. Amends Section 107.007(a), Family Code, to prohibit an attorney ad litem or an attorney serving in the dual role, rather than an attorney ad litem, an attorney serving in the dual role, or an amicus attorney, from taking certain actions.

SECTION 5. Amends Section 107.009, Family Code, as follows:

Sec. 107.009. IMMUNITY. (a) Provides that a guardian ad litem, a child custody evaluator, or an adoption evaluator appointed under Chapter 107 (Special Appointments, Child Custody Evaluations, and Adoption Evaluations) is not liable for civil damages

arising from an action taken, a recommendation made, or an opinion given in the capacity of guardian ad litem, child custody evaluator, or adoption evaluator. Deletes existing text providing that an attorney ad litem or an amicus attorney appointed under this chapter is not liable for civil damages arising from an action taken, a recommendation made, or an opinion given in the capacity of attorney ad litem or amicus attorney.

(a-1) Provides that an attorney ad litem or amicus attorney appointed under this chapter is not liable for civil damages arising from an action taken in the capacity of attorney ad litem or amicus attorney.

(b) Provides that Subsections (a) and (a-1) do not apply to an action taken, a recommendation made, or an opinion given that meets certain criteria. Makes nonsubstantive changes.

SECTION 6. Amends Sections 107.021(a) and (a-1), Family Code, as follows:

(a) Deletes existing text authorizing the court, in a suit in which the best interests of a child are at issue, other than a suit filed by a governmental entity requesting termination of the parent-child relationship or appointment of the entity as conservator of the child, to appoint an amicus attorney. Makes nonsubstantive changes.

(a-1) Deletes existing text requiring the court, in a suit requesting termination of the parent-child relationship that is not filed by a governmental entity, unless the court finds that the interests of the child will be represented adequately by a party to the suit whose interests are not in conflict with the child's interests, to appoint an amicus attorney. Makes nonsubstantive changes.

SECTION 7. Amends Part 2, Subchapter B, Chapter 107, Family Code, by adding Sections 107.024, 107.0245, 107.025, 107.0255, 107.026, 107.0265, 107.027, and 107.0275, as follows:

Sec. 107.024. APPOINTMENT OF AMICUS ATTORNEY. (a) Authorizes the court, after notice and hearing or on agreement of the parties, to appoint an amicus attorney in a suit.

(b) Provides that the court, in determining whether to make an appointment under this section:

(1) is required to:

(A) give due consideration to the ability of the parties to pay reasonable fees to the amicus attorney; and

(B) balance the child's interests against the cost to the parties that would result from an appointment by taking into consideration the cost of available alternatives for resolving issues without making an appointment;

(2) is authorized to make an appointment only if the court finds that the appointment is necessary to ensure the determination of the best interests of the child, unless the appointment is otherwise required by this code; and

(3) is prohibited from requiring an amicus attorney appointed under this section to serve without reasonable compensation for the services rendered by the amicus attorney.

(c) Requires an amicus attorney appointed under this section to be qualified under Section 107.0245 or 107.025.

(d) Requires that an order appointing an amicus attorney under this section include:

(1) the name, bar number, address, telephone number, and e-mail address of the appointed amicus attorney;

(2) the scope of the amicus attorney's role;

(3) a list of the duties of an amicus attorney, including duties under Section 107.0265(c)(1);

(4) any other specific tasks requested by the court; and

(5) specific provisions for payment of the amicus attorney, including a retainer or cost deposit.

(e) Requires the court, if a party to or child subject to a suit does not speak English as the party's or child's primary language, to ensure that the amicus attorney:

(1) is able to effectively communicate in the party's or child's primary language; or

(2) will be assisted by a licensed or certified interpreter.

(f) Authorizes a licensed or certified interpreter assisting an amicus attorney under Subsection (e)(2) to accompany the amicus attorney in person or assist through use of audio or video conferencing technology.

(g) Authorizes the court to require the parties to pay any costs associated with obtaining assistance from a licensed or certified interpreter under Subsection (e)(2).

Sec. 107.0245. AMICUS ATTORNEY; MINIMUM QUALIFICATIONS. (a) Requires an individual, to be qualified to serve as an amicus attorney, to:

(1) be an attorney:

(A) who:

(i) is licensed to practice law in this state and in good standing with the State Bar of Texas;

(ii) has practiced law for at least two years; and

(iii) is trained in child advocacy or found by the court to have experience equivalent to training in child advocacy; or

(B) who is certified by the Texas Board of Legal Specialization in family law or child welfare law;

(2) in the four years preceding the appointment, have completed not less than a total of four hours of continuing legal education from one or more of the following subject areas:

(A) domestic violence;

(B) techniques for interviewing a child in a developmentally appropriate manner; or

(C) alternative dispute resolution; and

(3) if appropriate due to the nature of the appointment, be familiar with the American Bar Association's standards of practice for attorneys who represent children in custody cases.

(b) Requires the court to determine whether a prospective amicus attorney meets the qualifications of this section.

(c) Requires a prospective amicus attorney, on the request of the court, to demonstrate appropriate knowledge and competence consistent with professional models, standards, and guidelines.

Sec. 107.025. EXCEPTION TO QUALIFICATIONS REQUIRED TO SERVE AS AMICUS ATTORNEY IN CERTAIN COUNTIES. (a) Provides that this section applies only to a county with a population of less than 500,000.

(b) Authorizes the court, if a court finds that an individual qualified to serve as an amicus attorney under Section 107.0245 is not available in the county to serve as an amicus attorney, to, after notice and hearing or on agreement of the parties, appoint an amicus attorney the court determines to be otherwise qualified to serve.

Sec. 107.0255. AMICUS ATTORNEY; CONFLICTS OF INTEREST AND BIAS. (a) Requires a person, before the person accepts appointment as an amicus attorney in a suit, to disclose to the court, each attorney for a party to the suit, and any party to the suit who does not have an attorney:

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

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

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

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

(5) any conflict of interest that the person believes the person has with another person participating or expected to participate in the suit in a professional capacity; and

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

(b) Prohibits the court from appointing a person as an amicus attorney in a suit if the person makes any of the disclosures in Subsection (a) unless:

(1) the court finds, after notice and a hearing, that:

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

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

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

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

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

(c) Requires a person, after being appointed as an amicus attorney in a suit, to immediately disclose to the court, each attorney for a party to the suit, and any party to the suit who does not have an attorney any discovery of the following unless previously disclosed:

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

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

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

(4) any conflict of interest that the person believes the person has with another person who participates in the suit in a professional capacity.

(d) Requires the court to remove a person as amicus attorney in a suit if the person makes any of the disclosures in Subsection (c) unless:

(1) the court finds, after notice and a hearing, that, as applicable:

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

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

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

(D) the person has no conflict of interest with another person who participates in the suit in a professional capacity; or

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

(e) Provides that a person who has a preexisting relationship with an attorney for a party to the suit or a professional participating in the suit is not disqualified from being an amicus attorney if the relationship was formed in a professional setting such as service to the community or a bar association.

Sec. 107.026. AMICUS ATTORNEY STANDARD OF CARE. (a) Provides that an amicus attorney, except as provided by Title 5 (The Parent-Child Relationship and the Suit Affecting the Parent-Child Relationship), is subject to the professional standards of care and ethical standards necessary to remain in good standing with the State Bar of Texas.

(b) Authorizes a court to impose requirements or adopt local rules applicable to an amicus attorney that do not conflict with Subchapter B (Appointment in Certain Suits).

Sec. 107.0265. POWERS AND DUTIES OF AMICUS ATTORNEY. (a) Provides that an amicus attorney's primary duty, subject to specific limitations given in an order of appointment under Section 107.024, is to:

(1) review the facts and circumstances of the case; and

(2) advocate the best interests of a child who is the subject of the suit.

(b) Provides that an amicus attorney is not bound by the expressed objectives of a child who is the subject of the suit in performing the duties under Subsection (a).

(c) Provides that an amicus attorney appointed to assist the court:

(1) is required to:

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

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

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

(iii) the parties to the suit;

(B) seek to elicit and assess the child's view in a developmentally appropriate manner;

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

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

(E) obtain and review copies of relevant records relating to the child as provided by Section 107.006 (Access to Child and Information Relating to Child);

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

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

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

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

(J) on the request of any party, disclose the name, address, and phone number of each person interviewed or consulted; and

(K) on the request of any party, make available documents obtained by the amicus attorney for copying;

(2) is authorized to be required by the court to perform additional tasks, including:

(A) conducting additional interviews with each child who is the subject of the suit to:

(i) ensure balanced and impartial representation by the amicus attorney; and

(ii) observe each child while in the care of each party to the suit;

(B) interviewing other individuals, including, at the discretion of the amicus attorney, a child who:

(i) is not less than four years of age; and

(ii) resides part-time or full-time in a residence where a child who is the subject of the suit resides part-time or full-time;

(C) visiting the residence of each party seeking conservatorship or possession of or access to a child who is the subject of the suit; or

(D) reviewing any information the court determines is relevant; and

(3) is entitled to:

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

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

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

(D) receive a copy of each pleading or other paper filed with the court;

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

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

(G) attend all legal proceedings in the suit; and

(H) make arguments during legal proceedings, including:

(i) summarizing evidence; and

(ii) suggesting reasonable inferences and deductions drawn from the evidence.

(d) Requires an amicus attorney, in preparing for and conducting an interview with a child, to:

(1) explain the role of an amicus attorney to the child in a developmentally appropriate manner;

(2) inform the child in a developmentally appropriate manner that the amicus attorney is authorized to use information the child provides in assisting the court; and

(3) become familiar with the American Bar Association's standards of practice for attorneys who represent children in custody cases.

(e) Provides that the disclosure required by Subsections (c)(1)(J) and (K):

(1) is prohibited from being construed to require disclosure of an amicus attorney's notes or attorney work product; and

(2) is subject to supplementation under Rule 193.5, Texas Rules of Civil Procedure.

Sec. 107.027. LIMITATIONS ON AMICUS ATTORNEY POWERS. (a) Prohibits an amicus attorney from:

(1) offering an opinion regarding conservatorship or possession of or access to a child subject to a suit;

(2) engaging in ex parte communications with the court;

(3) being compelled to produce attorney work product developed during the appointment as an amicus attorney;

(4) except as required under Section 107.0265(c)(1)(J) or (K), being required to disclose the source of any information;

(5) submitting a report into evidence; or

(6) testifying in court, except:

(A) as authorized under Rule 3.08, Texas Disciplinary Rules of Professional Conduct; or

(B) as necessary for the court to make a determination relating to the qualifications, conflicts of interest, bias, or removal of the amicus attorney.

(b) Provides that Subsection (a) does not apply to the duty of an attorney to report child abuse or neglect under Section 261.101 (Persons Required to Report; Time to Report).

Sec. 107.0275. REMOVAL OF AMICUS ATTORNEY. Provides that the court:

(1) is authorized to remove an amicus attorney if the parties agree to the removal; and

(2) is required to remove an amicus attorney if, after notice and hearing, the court finds that the amicus attorney:

(A) does not have the minimum qualifications to serve as an amicus attorney under Section 107.0245 or 107.025;

(B) has a conflict of interest or bias under Section 107.0255(a) that is not exempted under that section;

(C) fails to perform duties under Section 107.0265 or ordered by the court;

(D) violates a standard of care under Section 107.026; or

(E) requests to be removed because a party to the suit has prevented the amicus attorney from fulfilling the duties of the amicus attorney.

SECTION 8. Repealer: Section 107.005 (Additional Duties of Amicus Attorney), Family Code.

SECTION 9. Makes application of this Act prospective.

SECTION 10. Effective date: September 1, 2023.