

## **BILL ANALYSIS**

S.B. 2277  
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Juvenile Justice & Family Issues  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

The Family Code provides for the appointment of three unique court-ordered representatives in family law cases: the amicus attorney, the attorney ad litem, and the guardian ad litem. These individuals often have overlapping roles, which has caused confusion regarding the required qualifications and expectations for each role, and specifically for the qualifications and role of an amicus attorney. Current law does not require an amicus attorney to meet any minimum qualifications prior to being appointed, nor does it provide guidance regarding when the appointment of an amicus attorney is appropriate. Currently, judges often appoint an amicus attorney without a hearing, when parties cannot afford one or do not need one. Furthermore, even if the parties agree on the appointment of an amicus attorney, judges have the discretion to disregard the agreement and appoint an amicus attorney of their own choosing.

S.B. 2277 seeks to address these issues by providing that a court may appoint an amicus attorney only after notice and hearing or by agreement of the parties. Additionally, the bill provides guidance regarding what must be included in an order appointing an amicus attorney and establishes minimum qualifications that an amicus attorney must meet before appointment.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

S.B. 2277 amends the Family Code to revise certain provisions relating to the appointment of an amicus attorney by a court in a suit affecting the parent-child relationship, establish the powers and duties of an amicus attorney in such a suit by a nongovernmental entity, and set out provisions relating to the required disclosure of conflicts of interest by such an attorney and to the qualifications and removal of such an attorney.

#### **Appointment of Amicus Attorney**

S.B. 2277 limits the circumstances under which a court may appoint an amicus attorney to after the applicable notice and hearing, or on agreement of the parties, and to a suit affecting the parent-child relationship by a nongovernmental entity. With regard to the court determining whether to make an appointment, the bill does the following:

- requires the court to give due consideration to the ability of the parties to pay reasonable fees to the amicus attorney and balance the child's interests against the cost to the parties

that would result from the appointment by taking into consideration the cost of available alternatives for resolving issues without making the appointment;

- authorizes the court to make the appointment only if the court finds that the appointment is necessary to ensure the determination of the child's best interests, unless the appointment is otherwise statutorily required; and
- prohibits a court from requiring the appointed attorney to serve without reasonable compensation for the services rendered by the attorney.

The bill sets out the information required to be included in an order appointing an amicus attorney, including personal and contact information, the scope of the attorney's role, a list of the attorney's duties, any other specific tasks requested by the court, and specific provisions for payment of the amicus attorney.

S.B. 2277, if a child subject or party to a suit does not speak English as the party's or child's primary language, requires the court to ensure that the amicus attorney is able to effectively communicate in the party's or child's primary language or will be assisted by a licensed or certified interpreter. The bill authorizes a licensed or certified interpreter assisting the amicus attorney to accompany the attorney in person or assist through use of audio or video conferencing technology. The bill authorizes the court to require the parties to pay any costs associated with obtaining assistance from the interpreter.

### **Qualifications of Amicus Attorney**

S.B. 2277 requires an appointed amicus attorney, in order to qualify to serve as such an attorney, to meet the following criteria:

- be an attorney who is certified by the Texas Board of Legal Specialization in family law or child welfare law or who is licensed to practice law in Texas and in good standing with the State Bar of Texas, has practiced law for at least two years, and is trained in child advocacy or found by the court to have experience equivalent to such training;
- 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:
  - domestic violence;
  - techniques for interviewing a child in a developmentally appropriate manner; or
  - alternative dispute resolution; and
- 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.

The bill requires the court to determine whether a prospective amicus attorney meets such qualifications. On the request of the court, a prospective amicus attorney must demonstrate appropriate knowledge and competence consistent with professional models, standards, and guidelines. The bill authorizes a court that finds an individual qualified to serve as an amicus attorney is not available in a county with a population of less than 500,000 to appoint, after notice and hearing or on agreement of the parties, an amicus attorney the court determines to be otherwise qualified to serve. The bill subjects an amicus attorney to the professional standards of care and ethical standards necessary to remain in good standing with the State Bar of Texas. The bill authorizes a court to impose requirements or adopt local rules applicable to an amicus attorney that do not conflict with the bill's provisions.

### **Conflicts of Interest or Bias**

S.B. 2277 requires a person, before accepting an 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:

- 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;
- 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;
- any pecuniary relationship that the person believes the person has with an attorney in the

suit or the court;

- any fiduciary relationship that the person believes the person has with an attorney in the suit or the court;
- 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
- 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.

The bill prohibits a court from appointing a person as an amicus attorney in a suit if the person makes any such disclosures unless:

- the parties agree in writing to the person's appointment or continued appointment; or
- the court finds, after notice and a hearing, that no such conflict or relationship exists or the person's previous knowledge is not relevant.

S.B. 2277 requires a person, after being appointed as an amicus attorney, 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:

- 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;
- 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;
- 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 as a conflict of interest; and
- any conflict of interest that the person believes the person has with another person who participates in the suit in a professional capacity.

The bill requires a court to remove a person as an amicus attorney in a suit if the person makes any such disclosures unless:

- the parties agree in writing to the person's appointment or continued appointment; or
- the court finds, after notice and a hearing, that no such conflict or relationship exists or the person's previous knowledge is not relevant.

S.B. 2277 establishes 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.

### **Powers and Duties of Amicus Attorney**

S.B. 2277 specifies that an amicus attorney's primary duty, subject to limitations given in an order of appointment, is to review the facts and circumstances of the case and advocate the best interests of a child who is the subject of the suit. For purposes of statutory provisions relating to special appointments, child custody evaluations, and adoption evaluations, the bill specifies that the role of an amicus attorney includes acting as a witness or making recommendations to the court.

S.B. 2277 provides for the required duties of an amicus attorney in a similar manner to the duties of an attorney ad litem appointed to represent a child under provisions relating to court-ordered representation in suits affecting the parent-child relationship. In addition to those duties, the bill requires an appointed amicus attorney, on the request of any party, to disclose the name, address, and phone number of each person interviewed or consulted and to make available documents obtained by the amicus attorney for copying. The bill prohibits required disclosures on the request of any party by the amicus attorney from being construed as to require disclosure of an amicus attorney's notes or attorney work product. The bill subjects such required disclosures to supplementation under applicable Texas Rules of Civil Procedure.

S.B. 2277 establishes that an amicus attorney appointed to assist the court is entitled to the same powers as an amicus attorney under provisions relating to court-ordered representation in suits affecting the parent-child relationship. The bill additionally entitles the attorney to make arguments during legal proceedings, including summarizing evidence and suggesting reasonable inferences and deductions drawn from the evidence. The bill requires an amicus attorney, in preparing for and conducting an interview with a child, to do the following:

- explain the role of an amicus attorney to the child in a developmentally appropriate manner;
- inform the child in a developmentally appropriate manner that the amicus attorney may use information the child provides in assisting the court; and
- become familiar with the American Bar Association's standards of practice for attorneys who represent children in custody cases.

S.B. 2277 repeals provisions relating to the additional duties of an amicus attorney serving as court-ordered representation in a suit affecting the parent-child relationship, including the requirement for an amicus attorney, in a developmentally appropriate manner and with the consent of the child, to ensure that the child's expressed objectives of representation are made known to the court and the prohibition against the attorney disclosing confidential communications with the child unless the attorney determines disclosure is necessary to assist the court regarding the best interests of the child. The bill establishes that an amicus attorney appointed to assist the court may be required by the court to perform additional tasks, including the following actions:

- conducting additional interviews with each child who is the subject of the suit to ensure balanced and impartial representation by the amicus attorney and observe each child while in the care of each party to the suit;
- interviewing other individuals, including, at the discretion of the amicus attorney, a child who is not less than four years of age and 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;
- visiting the residence of each party seeking conservatorship or possession of or access to a child who is the subject of the suit; and
- reviewing any information the court determines is relevant.

S.B. 2277 prohibits an amicus attorney from doing the following:

- offering an opinion regarding conservatorship or possession of or access to a child subject to a suit;
- engaging in ex parte communications with the court;
- being compelled to produce attorney work product developed during the appointment as an amicus attorney;
- being required to disclose the source of any information, except as provided by the bill;
- submitting a report into evidence; or
- testifying in court, except as authorized under Texas Disciplinary Rules of Professional Conduct or as necessary for the court to make a determination relating to the qualifications, conflicts of interest, bias, or removal of the amicus attorney.

These prohibitions do not apply to the duty of an attorney to report child abuse or neglect.

### **Removal of Amicus Attorney**

S.B. 2277 authorizes the court to remove an amicus attorney if the parties in the suit agree to the removal and provides for the conditions that would require the court to remove the attorney after notice and hearing, including requests to be removed because a party has prevented the attorney from fulfilling their duties and conditions established by the bill relating to qualifications, conflict of interest or bias, performance of duties, and standards of care.

## **Related Provisions**

S.B. 2277 grants an adoption evaluator immunity from liability for civil damages arising from an action taken, a recommendation made, or an opinion given in the capacity of adoption evaluator for purposes of court-ordered representation in a suit affecting the parent-child relationship. The bill clarifies that an attorney ad litem or amicus attorney is not liable for civil damages arising from an action taken in the capacity of attorney ad litem or amicus attorney.

S.B. 2277 repeals Section 107.005, Family Code.

S.B. 2277 applies only to a suit affecting the parent-child relationship that is filed on or after the bill's effective date. A suit affecting the parent-child relationship filed before the bill's effective date is governed by the law in effect on the date the suit was filed, and the former law is continued in effect for that purpose.

## **EFFECTIVE DATE**

September 1, 2023.