

BILL ANALYSIS

Senate Research Center

H.B. 2530
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Jurisprudence
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Engrossed

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.

H.B. 2530 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.

H.B. 2530 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 delete existing text providing that an amicus attorney appointed to assist the court is required to take certain actions, be trained in child advocacy or have experience determined by the court to be equivalent to that training, and is entitled to certain information.

SECTION 4. Amends Section 107.007(a), Family Code, to delete existing text prohibiting an amicus attorney from taking certain actions, and to make nonsubstantive changes.

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, rather than a guardian at litem, an attorney ad litem, a child custody evaluator, or an amicus attorney, 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. Makes conforming and nonsubstantive changes.

(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 with conscious indifference or reckless disregard to the safety of another, in bad faith or with malice, or that is grossly negligent or wilfully wrongful. Makes nonsubstantive changes.

SECTION 6. 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, in determining whether to make an appointment under this section, the court is:

(1) required 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 an appointment by taking into consideration the cost of available alternatives for resolving issues without making an appointment;

(2) 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 the Family Code; and

(3) 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 certain information.

(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 who is licensed to practice law in this state 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 training in child advocacy;

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

(A) the dynamics of family violence;

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

(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 that continuing legal education described by Subsection (a)(2)(A) be developed in consultation with a statewide family violence advocacy organization.

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

(d) 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 a court, if the 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, after notice and hearing or on agreement of the parties, to 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 certain information to the court, each attorney for a party to the suit, and any party to the suit who does not have an 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 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; 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; the

person does not have a pecuniary relationship with an attorney in the suit or the court; and 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 certain information unless previously disclosed.

(d) Requires the court to remove a person as an 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, 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; 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; 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 an amicus attorney; or 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, except as provided by Title 5 (The Parent-Child Relationship and the Suit Affecting the Parent-Child Relationship), an amicus attorney 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 (Appointments in Suits by Governmental Entity).

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

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

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

(1) required to take certain actions;

(2) authorized to be required by the court to perform additional tasks; and

(3) entitled to certain information.

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

(e) Provides that the disclosure required by Subsections (c)(1)(J) (relating to requiring an amicus attorney to on the request of any party, disclose the name, address, and phone number of each person interviewed or consulted) and (K) (relating to requiring an amicus attorney to on the request of any party, make available documents obtained by the amicus attorney for copying) are prohibited from being construed to require disclosure of an amicus attorney's notes or attorney work product and 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 as authorized under Rule 3.08, 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.

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

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

- (1) authorized to remove an amicus attorney if the parties agree to the removal; and
- (2) required to remove an amicus attorney if, after notice and hearing, the court finds that the amicus attorney meets certain criteria.

SECTION 7. Repealer: Section 107.005 (Additional Duties of Amicus Attorney), Family Code.

SECTION 8. Makes application of this Act prospective.

SECTION 9. Effective date: September 1, 2025.