

TITLE 5

The Parent–Child Relationship and the Suit Affecting the Parent–Child Relationship

As amended through the 78th Legislature, Regular Session (2003)

Subtitle A. General Provisions

CHAPTER 107. SPECIAL APPOINTMENTS AND SOCIAL STUDIES.

Note: The new statutory text enacted in this chapter will be shown in bold typeface. However, because the amendments are so extensive, most of the struck-through text will not be shown to make for easier reading than would be the case for a reader of H.B. 1815, as signed by Governor Perry.

All of the amendments to Chapter 107 were made as follows:

History: Amended by 78th Legis., Reg. Sess. (2003), H.B. 1815, eff. Sept. 1, 2003. The changes in law made by this Act apply only to a suit affecting the parent-child relationship filed on or after the effective date of this Act. A suit filed before the effective date of this Act 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.

Subchapter A. Court-Ordered [~~Guardian ad Litem~~] Representation in Suits Affecting the Parent-Child Relationship

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§ 107.006. **Access to Child and Information Relating to Child.** [~~Guardian Ad Litem and Attorney Ad Litem Pool; Qualifications.~~] [new]

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§ 107.015. Attorney [~~Ad Litem~~] Fees.

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PART 2. APPOINTMENTS IN SUITS OTHER THAN SUITS

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§ 107.031. Volunteer Advocates.

Subchapter A. Court-Ordered Representation in Suits Affecting the Parent-Child Relationship

§ 107.001. Definitions.

In this chapter:

(1) "Amicus attorney" means an attorney appointed by the court in a suit, other than a suit filed by a governmental entity, whose role is to provide legal services necessary to assist the court in protecting a child's best interests rather than to provide legal services to the child.

(2) "Attorney ad litem" means an attorney who provides legal services to a person, including a child, and who owes to the person the duties of undivided loyalty, confidentiality, and competent representation.

(3) "Developmentally appropriate" means structured to account for a child's age, level of education, cultural background, and degree of language acquisition.

(4) "Dual role" means the role of an attorney who is appointed under Section 107.0125 to act as both guardian ad litem and attorney ad litem for a child in a suit filed by a governmental entity.

(5) "Guardian ad litem" means a person appointed to represent the best interests of a child. The term includes:

(A) a volunteer advocate appointed under Subchapter C;

(B) a professional, other than an attorney, who holds a relevant professional license and whose training relates to the determination of a child's best interests;

(C) an adult having the competence, training, and expertise determined by the court to be sufficient to represent the best interests of the child; or

(D) an attorney ad litem appointed to serve in the dual role.

§ 107.002. Powers and Duties of Guardian Ad Litem For Child.

(a) A guardian ad litem appointed **for a child** under this **chapter** [~~subchapter~~] is not a party to the suit but may:

(1) conduct an investigation to the extent that the guardian ad litem considers necessary to determine the best **interests** [~~interest~~] of the child [~~for whom the guardian is appointed~~]; and

(2) obtain and review copies of the child's relevant medical, psychological, and school records **as provided by Section 107.006.**

(b) A guardian ad litem appointed **for the child** under this **chapter** [~~subchapter~~] shall:

(1) [~~;~~] within a reasonable time after the appointment, interview:

(A) [~~(1)~~] the child **in a developmentally appropriate manner**, if the child is four years of age or older; [~~and~~]

(B) [~~(2)~~] each **person who has** [~~individual that the guardian ad litem considers likely to have~~] significant knowledge of the child's history and condition, **including any foster parent of the child; and**

(C) **the parties to the suit;**

(2) **seek to elicit in a developmentally appropriate manner the child's expressed objectives of representation;**

(3) **consider the child's expressed objectives of representation without being bound by those objectives;**

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

(5) **perform any specific task directed by the court.**

(c) A guardian ad litem appointed **for the child** under this **chapter** [~~subchapter~~] is not a party to the suit but is entitled to:

(1) receive a copy of each pleading or other paper filed with the court in the case in which the guardian ad litem is appointed;

(2) receive notice of each hearing in the case;

(3) participate in case staffings by an authorized agency concerning the child;

(4) attend all legal proceedings in the case but may not call or question a witness **or otherwise provide legal services** unless the **guardian ad litem** is a licensed attorney **who has been appointed in the dual role;**

(5) review and sign, or decline to sign, **an** [~~any~~] agreed order affecting the child; and

(6) **explain the basis** [~~testify in court, except as provided by Subsection (d), regarding the recommendations concerning the actions that the guardian ad litem considers to be in the best interest of the child, including giving reasons~~] for the guardian ad litem's opposition **to the agreed order** if the guardian ad litem does not agree to the terms of a proposed order.

(d) **The court may compel the guardian ad litem to attend a trial or hearing and to testify as necessary for the proper disposition of the suit.** [~~An attorney who is appointed as attorney ad litem and guardian ad litem for a child may not testify under Subsection (c)(6).]~~

(e) Unless the guardian ad litem is an attorney who has been appointed in the dual role and subject to the Texas Rules of Evidence, the court shall ensure in a hearing or in a trial on the merits that a guardian ad litem has an opportunity to testify or submit a report regarding the guardian ad litem's recommendations regarding:

(1) the best interests of the child; and

(2) the bases for the guardian ad litem's recommendations. ~~[An attorney who is appointed as attorney ad litem and guardian ad litem for a child shall:~~

~~[(1) become familiar with the American Bar Association's standards of practice for lawyers who represent children in abuse and neglect cases; and~~

~~[(2) comply with the requirements of the Texas Disciplinary Rules of Professional Conduct.]~~

(f) In a nonjury trial, a party may call the guardian ad litem as a witness for the purpose of cross-examination regarding the guardian's report without the guardian ad litem being listed as a witness by a party. If the guardian ad litem is not called as a witness, the court shall permit the guardian ad litem to testify in the narrative

(g) In a contested case, the guardian ad litem shall provide copies of the guardian ad litem's report, if any, to the attorneys for the parties as directed by the court, but not later than the earlier of:

(1) the date required by the scheduling order; or

(2) the 10th day before the date of the commencement of the trial.

(h) Disclosure to the jury of the contents of a guardian ad litem's report to the court is subject to the Texas Rules of Evidence.

§ 107.003. Powers and Duties of Attorney Ad Litem For Child and Amicus Attorney.

An attorney ad litem appointed to represent a child or an amicus attorney appointed to assist the court:

(1) shall:

(A) subject to Rule 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) investigate the facts of the case to the extent the attorney considers appropriate;

(C) obtain and review copies of relevant records relating to the child as provided by Section 107.006;

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

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

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

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

(3) is entitled to:

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

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

(C) participate in any case staffing concerning the child conducted by an authorized agency; and

(D) attend all legal proceedings in the suit ~~[IMMUNITY]~~.

§ 107.004. Additional Duties of Attorney Ad Litem For Child.

Except as otherwise provided by this chapter, the attorney ad litem appointed for a child shall:

(1) seek to elicit in a developmentally appropriate manner the child's expressed objectives of representation;

(2) advise the child;

(3) provide guidance to the child;

(4) represent the child's expressed objectives of representation and follow the child's expressed objectives of representation during the course of litigation if the attorney ad litem determines that the child is competent to understand the nature of an attorney-client relationship and has formed that relationship with the attorney ad litem;

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

(6) become familiar with:

(A) the American Bar Association's standards of practice for attorneys who represent children in abuse and neglect cases; and

(B) the suggested amendments to those standards adopted by the National Association of Counsel for Children.

§ 107.005. Additional Duties of Amicus Attorney.

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

(b) An amicus attorney shall:

(1) seek to elicit in a developmentally appropriate manner the child's expressed objectives of representation;

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

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

(4) review and sign, or decline to sign, an agreed order affecting the child;

(5) explain the basis for the amicus attorney's opposition to the agreed order if the amicus attorney does not agree to the terms of a proposed order;

(6) explain the role of the amicus attorney to the child; and

(7) inform the child that the amicus attorney may use information that the child provides in providing assistance to the court.

(c) An amicus attorney may not disclose confidential communications between the amicus attorney and the child unless the amicus attorney determines that disclosure is necessary to assist the court regarding the best interests of the child.

§ 107.006. Access to Child and Information Relating to Child. [~~Guardian Ad Litem and Attorney Ad Litem Pool; Qualifications.~~]

(a) Except as provided by Subsection (c), in conjunction with an appointment under this chapter, other than an appointment of an attorney ad litem for an adult or a parent, the court shall issue an order authorizing the attorney ad litem, guardian ad litem for the child, or amicus attorney to have immediate access to:

(1) the child; and

(2) any otherwise privileged or confidential information relating to the child.

(b) Without requiring a further order or release, the custodian of any relevant records relating to the child, including records regarding social services, drug and alcohol treatment, or

medical or mental health evaluation or treatment of the child, law enforcement records, school records, records of a probate or court proceeding, and records of a trust or account for which the child is a beneficiary, shall provide access to a person authorized to access the records under Subsection (a).

(c) A mental health record of a child at least 12 years of age that is privileged or confidential under other law may be released to a person appointed under Subsection (a) only in accordance with the other law.

§ 107.007. Attorney Work Product and Testimony.

(a) An attorney ad litem, an attorney serving in the dual role, or an amicus attorney may not:

- (1) be compelled to produce attorney work product developed during the appointment as an attorney;
- (2) be required to disclose the source of any information;
- (3) submit a report into evidence; or
- (4) testify in court except as authorized by Rule 3.08, Texas Disciplinary Rules of Professional Conduct.

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

§ 107.008. Substituted Judgment of Attorney For Child.

(a) An attorney ad litem appointed to represent a child or an attorney appointed in the dual role may determine that the child cannot meaningfully formulate the child's objectives of representation in a case because the child:

- (1) lacks sufficient maturity to understand and form an attorney-client relationship with the attorney;
- (2) despite appropriate legal counseling, continues to express objectives of representation that would be seriously injurious to the child; or
- (3) for any other reason is incapable of making reasonable judgments and engaging in meaningful communication.

(b) Except as provided by Subsection (c), an attorney ad litem or an attorney appointed in the dual role who determines that the child cannot meaningfully formulate the child's expressed objectives of representation under Subsection (a) may present to the court a position that the attorney determines will serve the best interests of the child.

(c) An attorney ad litem or attorney appointed in the dual role who determines that the child cannot meaningfully formulate the child's expressed objectives of representation under Subsection (a) shall, if a guardian ad litem has been appointed for the child:

- (1) consult with the guardian ad litem; and
- (2) present the child's objectives of representation to the court based on the guardian ad litem's opinion regarding the best interests of the child.

§ 107.009. Immunity.

(a) A guardian ad litem, an attorney ad litem, or an amicus attorney appointed under this chapter is not liable for civil damages arising from a recommendation made or an opinion given in the capacity of guardian ad litem, attorney ad litem, or amicus attorney.

(b) Subsection (a) does not apply to an action taken or a recommendation or opinion given:

- (1) with conscious indifference or reckless disregard to the safety of another;
- (2) in bad faith or with malice; or
- (3) that is grossly negligent or wilfully wrongful.

§ 107.010. Discretionary Appointment of Attorney Ad Litem For Incapacitated Person.

The court may appoint an attorney to serve as an attorney ad litem for a person entitled to service of citation in a suit if the court finds that the person is incapacitated. The attorney ad litem shall follow the person's expressed objectives of representation and, if appropriate, refer the proceeding to the proper court for guardianship proceedings.

Subchapter B. Appointments in Certain Suits

Part 1. Appointments in Suits by Governmental Entity

§ 107.011. Mandatory [~~Discretionary~~] Appointment of Guardian [~~Attorney~~] Ad Litem.

(a) Except as otherwise provided by this subchapter, in a suit filed by a governmental entity seeking termination of the parent-child relationship or the appointment of a conservator for a child, the court shall appoint a guardian ad litem to represent the best interests of the child immediately after the filing of the petition but before the full adversary hearing.

(b) The guardian ad litem appointed for a child under this section may be:

- (1) a charitable organization composed of volunteer advocates or an individual volunteer advocate appointed under Subchapter C;
- (2) an adult having the competence, training, and expertise determined by the court to be sufficient to represent the best interests of the child; or
- (3) an attorney appointed in the dual role.

(c) The court may not appoint a guardian ad litem in a suit filed by a governmental entity if an attorney is appointed in the dual role unless the court appoints another person to serve as guardian ad litem for the child and restricts the role of the attorney to acting as an attorney ad litem for the child.

(d) The court may appoint an attorney to serve as guardian ad litem for a child without appointing the attorney to serve in the dual role only if the attorney is specifically appointed to serve only in the role of guardian ad litem. An attorney appointed solely as a guardian ad litem:

(1) may take only those actions that may be taken by a nonattorney guardian ad litem; and

(2) may not:

(A) perform legal services in the case; or

(B) take any action that is restricted to a licensed attorney, including engaging in discovery other than as a witness, making opening and closing statements, or examining witnesses.

§ 107.012. Mandatory Appointment of Attorney Ad Litem For Child.

In a suit filed by a governmental entity requesting termination of the parent-child relationship or to be named conservator of a child, the court shall appoint an attorney ad litem to represent the interests of the child immediately after the filing, but before the full adversary hearing, to ensure adequate representation of the child.

§ 107.0125. Appointment of Attorney in Dual Role.

(a) In order to comply with the mandatory appointment of a guardian ad litem under Section 107.011 and the mandatory appointment of an attorney ad litem under Section 107.012, the court may appoint an attorney to serve in the dual role.

(b) If the court appoints an attorney to serve in the dual role under this section, the court may at any time during the pendency of the suit appoint another person to serve as guardian ad litem for the child and restrict the attorney to acting as an attorney ad litem for the child.

(c) An attorney appointed to serve in the dual role may request the court to appoint another person to serve as guardian ad litem for the child. If the court grants the attorney's request, the attorney shall serve only as the attorney ad litem for the child.

(d) Unless the court appoints another person as guardian ad litem in a suit filed by a governmental entity, an appointment of an attorney to serve as an attorney ad litem in a suit filed by a governmental entity is an appointment to serve in the dual role regardless of the terminology used in the appointing order.

§ 107.013. Mandatory Appointment of Attorney Ad Litem For Parent.

(a) In a suit **filed by a governmental entity** in which termination of the parent-child relationship is requested, the court shall appoint an attorney ad litem to represent the interests of:

- (1) an indigent parent of the child who responds in opposition to the termination;
- (2) a parent served by citation by publication;
- (3) an alleged father who failed to register with the registry under Chapter 160 and whose identity or location is unknown; and
- (4) an alleged father who registered with the paternity registry under Chapter 160, but the petitioner's attempt to personally serve citation at the address provided to the registry and at any other address for the alleged father known by the petitioner has been unsuccessful.

(b) If both parents of the child are entitled to the appointment of an attorney ad litem under this section and the court finds that the interests of the parents are not in conflict, the court may appoint **an** [a single] attorney ad litem to represent the interests of both parents.

§ 107.014. [omitted]

§ 107.015. Attorney [Ad Litem] Fees.

(a) An attorney appointed **under this chapter to serve as an attorney ad litem for a child, an attorney in the dual role,** [to represent a child] or **an attorney ad litem for a parent** [as authorized by this subchapter] is entitled to reasonable fees and expenses in the amount set by the court to be paid by the parents of the child unless the parents are indigent.

(b) If the court [or associate judge] determines that one or more of the parties are able to defray the [costs of an attorney ad litem's] fees and expenses **of an attorney ad litem or guardian ad litem for the child** as determined by the reasonable and customary fees for similar services in the county of jurisdiction, the fees and expenses may be ordered paid by one or more of those parties, or the court [or associate judge] may order one or more of those parties, prior to final hearing, to pay the sums into the registry of the court or into an account authorized by the court for the use and benefit of the **payee** [attorney ad litem] on order of the court. The sums may be taxed as costs to be assessed against one or more of the parties.

(c) If indigency of the parents is shown, an attorney **ad litem** appointed to represent a child or parent in a suit **filed by a governmental entity in which termination of** [to terminate] the parent-child relationship **is requested** shall be paid from the general funds of the county according to the fee schedule that applies to an attorney appointed to represent a child in a suit under Title 3 as provided by Chapter 51. The court may not award attorney ad litem fees under this chapter against the state, a state agency, or a political subdivision of the state except as provided by this subsection.

(d) A person appointed as a guardian ad litem or attorney ad litem shall complete and submit to the court a voucher or claim for payment that lists the fees charged and hours worked by the guardian ad litem or attorney ad litem. Information submitted under this section is subject to disclosure under Chapter 552, Government Code.

§ 107.016. Continued Representation.

In a suit ~~filed~~ [brought] by a governmental entity **in which** [seeking] termination of the parent-child relationship or appointment of the entity as conservator of the child **is requested**, an order appointing the Department of as the child's managing conservator may provide for the continuation of the **appointment of the guardian ad litem or attorney ad litem** [appointment] for the child for any period set by the court.

§ 107.017. Appointment of Amicus Attorney Prohibited.

The court may not appoint a person to serve as an amicus attorney in a suit filed by a governmental entity under this chapter.

**Part 2. Appointments in Suits Other than
Suits by Governmental Entity**

§ 107.021. Discretionary Appointments.

(a) In a suit in which the best interests of a child are at issue, other than a suit filed by a governmental entity, the court may appoint:

- (1) an amicus attorney;
- (2) an attorney ad litem; or
- (3) a guardian ad litem.

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

(1) shall:

(A) give due consideration to the ability of the parties to pay reasonable fees to the appointee; 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) may make an appointment only if the court finds that the appointment is necessary to ensure the determination of the best interests of the child; and

(3) may not require a person appointed under this section to serve without reasonable compensation for the services rendered by the person.

§ 107.022. Certain Prohibited Appointments.

In a suit other than a suit filed by a governmental entity, the court may not appoint:

- (1) an attorney to serve in the dual role; or
- (2) a volunteer advocate to serve as guardian ad litem for a child unless the training of the volunteer advocate is designed for participation in suits other than suits filed by a governmental entity.

§ 107.023. Fees in Suits Other Than Suits By Governmental Entity.

(a) In a suit other than a suit filed by a governmental entity, in addition to the attorney's fees that may be awarded under Chapter 106, the following persons are entitled to reasonable fees and expenses in an amount set by the court and ordered to be paid by one or more parties to the suit:

- (1) an attorney appointed as an amicus attorney or as an attorney ad litem for the child; and
- (2) a professional who holds a relevant professional license and who is appointed as guardian ad litem for the child, other than a volunteer advocate.

(b) The court shall:

- (1) determine the fees and expenses of an amicus attorney, an attorney ad litem, or a guardian ad litem by reference to the reasonable and customary fees for similar services in the county of jurisdiction;
- (2) order a reasonable cost deposit to be made at the time the court makes the appointment; and
- (3) before the final hearing, order an additional amount to be paid to the credit of a trust account for the use and benefit of the amicus attorney, attorney ad litem, or guardian ad litem.

(c) A court may not award costs, fees, or expenses to an amicus attorney, attorney ad litem, or guardian ad litem against the state, a state agency, or a political subdivision of the state under this part.

Subchapter C. Appointment of Volunteer Advocates [~~Other Court Appointments~~]

§ 107.031. Volunteer Advocates.

(a) In a suit filed by a governmental entity, the court may appoint a **charitable organization** composed of volunteer advocates whose charter mandates the provision of services to allegedly

abused and neglected children or an individual [person] who has received the court's approved training regarding abused and neglected children and who has been certified by the court to appear at court hearings as a guardian ad litem for the child or as a volunteer advocate for [on behalf of] the child. (b) In a suit other than a suit filed by a governmental entity, the court may appoint a charitable organization composed of volunteer advocates whose training provides for the provision of services in private custody disputes or a person who has received the court's approved training regarding the subject matter of the suit and who has been certified by the court to appear at court hearings as a guardian ad litem for the child or as a volunteer advocate for the child. A person appointed under this subsection is not entitled to fees under Section 107.023.

~~[addition, the court may appoint a group of court-certified volunteers to serve as an administrative review board to advise the court as to the conservatorship appointment and the placement of the child by the Department of or authorized agency in substitute care].~~

~~[(c) A court-appointed volunteer, a board member or employee of a volunteer advocate charitable organization, or a member of an administrative review board is not liable for civil damages for a recommendation made or opinion rendered while serving or having served as a court-appointed volunteer, board member or employee of a volunteer advocate charitable organization, or member of an administrative review board under this section unless the act or failure to act is wilfully wrongful, committed with conscious indifference or reckless disregard for the safety of another, committed in bad faith or with malice, or is grossly negligent.~~

~~[(d) This section does not prohibit the court from appointing as a guardian ad litem for a child under Section 107.001 a court-certified volunteer advocate appointed for the child under this section.~~

~~[(e) A court-certified volunteer advocate appointed under this section for a child with a disability may be assigned to act as a surrogate parent for the child, as provided by 20 U.S.C. Section 1415(b) and its subsequent amendments, if:~~

~~[(1) the child is in the conservatorship of the Department of Protective and Regulatory Services;~~

~~[(2) the volunteer advocate is serving as guardian ad litem for the child; and~~

~~[(3) a foster parent of the child is not acting as the child's parent under Section 29.015, Education Code.]~~