

BILL ANALYSIS

C.S.S.B. 1876
By: Zaffirini
Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that state law relating to the use of rotating lists for court appointments of attorneys ad litem, guardians ad litem, guardians, and mediators does not include a statewide requirement to use a rotating list and that there are some judges who do not follow a systematic appointment system. These interested parties are concerned that the current situation has led to favoritism, cronyism, and nepotism in court appointments. C.S.S.B. 1876 seeks to address this concern.

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

C.S.S.B. 1876 amends the Government Code to require each court in Texas created by the Texas Constitution, by statute, or as authorized by statute to establish and maintain, in addition to a list required by other state law or rule, a list of all attorneys who are qualified to serve as an attorney ad litem and are registered with the court, a list of all attorneys and other persons who are qualified to serve as a guardian ad litem and registered with the court, a list of all persons registered with the court to serve as a mediator, and a list of all attorneys and private professional guardians who are qualified to serve as a guardian under the Estates Code and registered with the court. The bill authorizes a court to establish and maintain more than one of such a list that is categorized by the type of case and the person's qualifications. The bill requires a local administrative judge, at the request of one or more of the courts the judge serves, to establish and maintain the required lists for those courts. The bill authorizes the local administrative judge to establish and maintain one set of lists for all of the requesting courts and to maintain more than one list as provided by the bill.

C.S.S.B. 1876 requires a court using a rotation system to appoint the person whose name appears first on the applicable list maintained by the court in each case in which the appointment of an attorney ad litem, guardian ad litem, or guardian is necessary. The bill requires a court using a rotation system to appoint the person whose name appears first on the mediator list maintained by the court in each case in which the appointment of a mediator is necessary because the parties to the case are unable to agree on a mediator. The bill authorizes the court to appoint a person included on the applicable list whose name does not appear first on the list, or a person who meets statutory or other requirements to serve and who is not included on the list, if the appointment of that person as attorney ad litem, guardian ad litem, or guardian is agreed on by

the parties and approved by the court. The bill authorizes the court, on finding good cause, to appoint a person included on the applicable list whose name does not appear first on the list, or a person who meets statutory or other requirements to serve on the case and who is not included on the list, if the appointment of that person as attorney ad litem, guardian ad litem, mediator, or guardian is required on a complex matter because the person possesses relevant specialized education, training, certification, or skill. The bill requires a person who is not appointed in the order in which the person's name appears on the applicable list to remain next in order on the list. The bill requires the court to place the name of a person who has been appointed as an attorney ad litem, guardian ad litem, mediator, or guardian from the applicable list at the end of the list after such an appointment.

C.S.S.B. 1876 exempts from these appointment requirements a mediation conducted by an alternative dispute resolution system established by a county; a guardian ad litem or other person appointed as a volunteer advocate; an attorney ad litem, guardian ad litem, amicus attorney, or mediator appointed by a county office that serves families, county departments, and courts regarding the parent-child relationship; and a person other than an attorney or private professional guardian appointed to serve as a guardian as defined by the Estates Code. The bill requires a court annually to post each such list at the courthouse of the county in which the court is located and on any website of the court.

C.S.S.B. 1876 expands the requirements for the presiding judge of a statutory probate court, in regard to the administration of statutory probate courts, to require the presiding judge to require the local administrative judge for statutory probate courts in a county to ensure that all statutory probate courts in the county comply with the bill's provisions regarding appointments of attorneys ad litem, guardians ad litem, mediators, and guardians. The bill authorizes the local rules of administration adopted by district and statutory county court judges in each county to provide for the establishment and maintenance of the required lists, including the establishment and maintenance of more than one of a required list that is categorized by the type of case, such as family law or probate law, and the person's qualifications. The bill establishes that, to the extent of a conflict between the bill's provisions regarding appointments of attorneys ad litem, guardians ad litem, mediators, and guardians and a specific provision relating to a court, the bill's provisions control.

C.S.S.B. 1876 repeals Section 74.098, Government Code.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 1876 may differ from the engrossed in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the engrossed and committee substitute versions of the bill.

SENATE ENGROSSED

SECTION 1. Subtitle B, Title 2, Government Code, is amended by adding Chapter 37 to read as follows:

CHAPTER 37. APPOINTMENTS OF ATTORNEYS AD LITEM, GUARDIANS AD LITEM, MEDIATORS, AND GUARDIANS

Sec. 37.001. APPLICABILITY;

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Subtitle B, Title 2, Government Code, is amended by adding Chapter 37 to read as follows:

CHAPTER 37. APPOINTMENTS OF ATTORNEYS AD LITEM, GUARDIANS AD LITEM, MEDIATORS, AND GUARDIANS

Sec. 37.001. APPLICABILITY;

CONFLICT OF LAW. (a) This chapter applies to a court in this state created by the Texas Constitution, by statute, or as authorized by statute.

(b) To the extent of a conflict between this chapter and a specific provision relating to a court, this chapter controls.

Sec. 37.002. EXEMPTION. The appointment requirements of Section 37.004 do not apply to:

(1) a mediator appointed under Chapter 152, Civil Practice and Remedies Code;

(2) a guardian ad litem or other person appointed under Section 107.031, Family Code; or

(3) an attorney ad litem, guardian ad litem, or mediator appointed to represent a child as authorized under Chapter 203, Family Code.

Sec. 37.003. LISTS OF ATTORNEYS AD LITEM, GUARDIANS AD LITEM, MEDIATORS, AND GUARDIANS. (a) In addition to a list required by other state law or rule, each court in this state shall establish and maintain the following lists:

(1) a list of all attorneys who are qualified to serve as an attorney ad litem and are registered with the court;

(2) a list of all attorneys and other persons qualified to serve as a guardian ad litem and are registered with the court;

(3) a list of all persons who are registered with the court to serve as a mediator; and

(4) a list of all persons who are qualified to serve as a guardian as defined by Section 1002.012, Estates Code, and are registered with the court.

(b) A court may establish and maintain more than one of a list required under Subsection (a) that is categorized by the type of case and the person's qualifications.

(c) A local administrative judge, at the request of one or more of the courts the judge serves, shall establish and maintain the lists required under Subsection (a) for those courts. The local administrative judge may establish and maintain one set of lists for all of the requesting courts and may

CONFLICT OF LAW. (a) This chapter applies to a court in this state created by the Texas Constitution, by statute, or as authorized by statute.

(b) To the extent of a conflict between this chapter and a specific provision relating to a court, this chapter controls.

Sec. 37.002. EXEMPTION. The appointment requirements of Section 37.004 do not apply to:

(1) a mediation conducted by an alternative dispute resolution system established under Chapter 152, Civil Practice and Remedies Code;

(2) a guardian ad litem or other person appointed under a program authorized by Section 107.031, Family Code;

(3) an attorney ad litem, guardian ad litem, amicus attorney, or mediator appointed under a domestic relations office established under Chapter 203, Family Code; or

(4) a person other than an attorney or a private professional guardian appointed to serve as a guardian as defined by Section 1002.012, Estates Code.

Sec. 37.003. LISTS OF ATTORNEYS AD LITEM, GUARDIANS AD LITEM, MEDIATORS, AND GUARDIANS. (a) In addition to a list required by other state law or rule, each court in this state shall establish and maintain the following lists:

(1) a list of all attorneys who are qualified to serve as an attorney ad litem and are registered with the court;

(2) a list of all attorneys and other persons who are qualified to serve as a guardian ad litem and are registered with the court;

(3) a list of all persons who are registered with the court to serve as a mediator; and

(4) a list of all attorneys and private professional guardians who are qualified to serve as a guardian as defined by Section 1002.012, Estates Code, and are registered with the court.

(b) A court may establish and maintain more than one of a list required under Subsection (a) that is categorized by the type of case and the person's qualifications.

(c) A local administrative judge, at the request of one or more of the courts the judge serves, shall establish and maintain the lists required under Subsection (a) for those courts. The local administrative judge may establish and maintain one set of lists for all of the requesting courts and may

maintain for the courts more than one of a list as provided in Subsection (b).

Sec. 37.004. APPOINTMENT OF ATTORNEYS AD LITEM, GUARDIANS AD LITEM, MEDIATORS, AND GUARDIANS; MAINTENANCE OF LISTS.

Sec. 37.005. POSTING OF LISTS.

SECTION 2. Section 25.0022(d), Government Code, is amended.

SECTION 3. Section 74.092, Government Code, is amended.

SECTION 4. Section 74.093, Government Code, is amended by adding Subsection (c-1) to read as follows:

(c-1) The rules may provide for the establishment and maintenance of the lists required by Section 37.003, including the establishment and maintenance of more than one of a list required by that section that is categorized by the type of case, such as family law or probate law, and the persons' qualifications.

SECTION 5. Section 74.098, Government Code, is repealed.

SECTION 6. Chapter 37, Government Code, as added by this Act, and Section 74.092, Government Code, as amended by this Act, apply only to the appointment of an attorney ad litem, guardian ad litem, mediator, or guardian made on or after the effective date of this Act. An appointment made before the effective date of this Act is governed by the law in effect on the date the appointment was made, and the former law is continued in effect for that purpose.

SECTION 7. This Act takes effect September 1, 2015.

maintain for the courts more than one of a list as provided in Subsection (b).

Sec. 37.004. APPOINTMENT OF ATTORNEYS AD LITEM, GUARDIANS AD LITEM, MEDIATORS, AND GUARDIANS; MAINTENANCE OF LISTS.

Sec. 37.005. POSTING OF LISTS.

SECTION 2. Same as engrossed version.

SECTION 3. Same as engrossed version.

SECTION 4. Section 74.093, Government Code, is amended by adding Subsection (c-1) to read as follows:

(c-1) The rules may provide for the establishment and maintenance of the lists required by Section 37.003, including the establishment and maintenance of more than one of a list required by that section that is categorized by the type of case, such as family law or probate law, and the person's qualifications.

SECTION 5. Same as engrossed version.

SECTION 6. Same as engrossed version.

SECTION 7. Same as engrossed version.