

- SUBJECT:** Requiring courts to maintain lists of certain court appointees
- COMMITTEE:** Judiciary and Civil Jurisprudence — committee substitute recommended
- VOTE:** 8 ayes — Smithee, Farrar, Clardy, Hernandez, Laubenberg, Raymond, Schofield, S. Thompson
- 0 nays
- 1 absent — Sheets
- SENATE VOTE:** On final passage, May 4 — 31-0
- WITNESSES:** For — Kelley Smoot Garrett, Americans Against Abusive Probate Guardianship; Debby Valdez, GRADE; Guy Herman, Travis County Probate Court; Kristi Hood; Sherry Johnston; (*Registered, but did not testify*: Tanya Lavelle, Easter Seals Central Texas; Linda Litzinger; Jolene Sanders)
- Against — Rory Olsen
- On — David Slayton, Office of Court Administration, Texas Judicial Council; Tina Amberboy, Supreme Court Children’s Commission
- BACKGROUND:** Government Code, sec. 74.092 requires administrative judges in statutory county courts to establish and maintain a list of all attorneys qualified to serve as an attorney ad litem. Judges are required to appoint attorneys ad litem on a rotating basis from these lists. There is a broad exception to the appointment requirement for attorneys ad litem appointed under the Family Code, Health and Safety Code, Human Resources Code, Property Code, and Texas Probate Code.
- DIGEST:** CSSB 1876 would require each court in the state to establish and maintain lists of:
- all attorneys who are qualified to serve as an attorney ad litem and

- are registered with the court;
- all attorneys and other persons who are qualified to serve as a guardian ad litem and are registered with the court;
 - all persons who are registered to serve as a mediator; and
 - all attorneys and private professional guardians who are qualified to serve as a guardian.

The bill would require local administrative judges, at the request of a court, to establish and maintain these lists for the courts. Multiple lists could be established that are categorized by the type of case and the person's qualifications. The lists would be posted at the courthouse and on any Internet website of the court.

The bill would require courts to appoint attorneys ad litem, guardians ad litem, guardians and mediators off the lists on a rotating basis, unless the parties agree to the appointment of a different person or the court found good cause, based on specialized education, training, certification, or skill, to appoint a different person.

The bill would establish that the appointment requirements did not apply to:

- mediations conducted by an alternative dispute resolution system;
- appointments of charitable organization composed of volunteer advocates as guardians ad litem;
- appointments of attorneys ad litem, guardians ad litem, amicus attorneys, or mediators from a domestic relations office; or
- a person other than an attorney or professional guardian appointed to serve as a guardian.

Presiding judges of statutory probate courts would require local administrative judges to ensure that all statutory probate courts in a county complied with the appointment requirements.

The bill also would allow judges of statutory county courts to adopt rules related to the establishment and maintenance of these lists.

This bill would take effect September 1, 2015, and would apply only to appointments of attorneys ad litem, guardians ad litem, mediators, or guardians made on or after that date.

**SUPPORTERS
SAY:**

CSSB 1876 is necessary to ensure that judges follow a rotation system when appointing attorneys ad litem, guardians ad litem, mediators, and guardians. The rotation system would make it difficult for judges to practice favoritism or nepotism in their appointments. The requirement that the lists be publicly posted would increase transparency and ensure that the public saw judicial appointments as fairly distributed.

The bill would not take away judges' discretion, as it still would provide for judges to deviate from the rotational system if the court found good cause.

**OPPONENTS
SAY:**

CSSB 1876 would reduce the discretion of judges in an essential judicial function. Appointments of attorneys ad litem, guardians ad litem, mediators, and guardians requires more than simply a rotational order, and judges should have the authority to consider all relevant factors when making appointments.