

## **BILL ANALYSIS**

Senate Research Center  
82R6739 KSD-F

S.B. 1026  
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Jurisprudence  
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As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Sections 107.003 (Powers and Duties of Attorney Ad Litem for Child and Amicus Attorney) and 107.004 (Additional Duties of Attorney Ad Litem for Child), Family Code, provide powers and duties of an attorney ad litem appointed for a child in suits affecting the parent-child relationship. Those powers and duties also relate to cases in which a child is removed from his or her home because of allegations of abuse or neglect. In those cases, an attorney may be appointed to represent an indigent parent of the child. However, there are no provisions regarding the powers and duties of an attorney representing a parent.

S.B. 1026 provides powers and duties of an attorney appointed to represent a parent. This bill provides attorneys with specific acts that must be performed and provides judges with a guideline to help ensure that attorneys are properly representing clients in these cases.

As proposed, S.B. 1026 amends current law relating to the powers and duties of an attorney ad litem appointed for a parent in certain 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 Subchapter B, Chapter 107, Family Code, by adding Sections 107.0131 and 107.0132, as follows:

Sec. 107.0131. POWERS AND DUTIES OF ATTORNEY AD LITEM FOR PARENT.

(a) Requires an attorney ad litem appointed under Section 107.013 (Mandatory Appointment of Attorney Ad Litem for Parent) to represent the interests of a parent, including an alleged father:

(1) to:

(A) subject to Rules 4.02 (Communications with One Represented by Counsel), 4.03 (Dealing with Unrepresented Persons), and 4.04 (Respect with Rights of Third Persons), Texas Disciplinary Rules of Professional Conduct, and within a reasonable time after the appointment, interview the parent, unless the parent's location is unknown, each person who has significant knowledge of the case, and the parties to the suit;

(B) investigate the facts of the case;

(C) obtain and review copies of relevant records;

(D) take any action consistent with the parent's interests that the attorney ad litem considers necessary to expedite the proceedings;

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

(F) review and sign, or decline to sign, a proposed or agreed order affecting the parent;

(G) meet before each court hearing with the parent, unless the court finds at that hearing that the attorney ad litem has shown good cause why the attorney ad litem's compliance is not feasible or in the best interest of the parent, or on a showing of good cause, authorizes the attorney ad litem to comply by conferring with the parent, as appropriate, by telephone or video conference;

(H) become familiar with the American Bar Association's standards of practice for attorneys who represent parents in abuse and neglect cases; and

(I) complete at least three hours of continuing legal education relating to child protection law as described by Subsection (b) as soon as practicable after the attorney ad litem is appointed, unless the court finds that the attorney ad litem has experience equivalent to that education;

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

(3) be entitled to:

(A) request clarification from the court if the role of the attorney ad litem is ambiguous;

(B) request a hearing or trial on the merits;

(C) consent or refuse to consent to an interview of the parent by another attorney;

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

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

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

(G) attend all legal proceedings in the suit.

(b) Requires the continuing legal education required by Subsection (a)(1)(I) to:

(1) be low-cost and available to persons throughout this state, including on the Internet provided through the State Bar of Texas; and

(2) focus on the duties of an attorney ad litem in, and the procedures of and best practices for, a proceeding under Chapter 262 (Procedures in Suit by Governmental Entity to Protect Health and Safety of Child) or 263 (Review of Placement of Children under Care of Department of Protective and Regulatory Services).

Sec. 107.0132. DISCIPLINE OF ATTORNEY AD LITEM FOR PARENT. Provides that an attorney ad litem appointed for a parent, including an alleged father, who fails to

perform the duties required by Section 107.0131 is subject to disciplinary action under Subchapter E (Discipline), Chapter 81 (State Bar), Government Code.

SECTION 2. Makes application of Sections 107.0131 and 107.132, Family Code, as added by this Act, prospective.

SECTION 3. Effective date: September 1, 2011.