

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1876
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State Affairs
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

For more than two decades there has been controversy regarding favoritism, cronyism, and nepotism in court appointments. The occurrence, possibility, or even the appearance of some attorneys and judges colluding to profit from these appointments simply is unacceptable and undermines the public's confidence in the entire judicial system and impedes the courts' ability to function efficiently.

Because current law requiring the use of rotating lists for court appointments contains an exception that essentially swallows the rule, it fails to ensure the use of a fair, efficient, and equitable appointment process, especially for the appointment of attorneys and guardians representing the interests of those less likely to identify and report abuse, namely minors, elderly persons, and persons with disabilities. Most judges in these exempted areas follow a rotation system, but since there is no statewide requirement to do so, there are some that do not follow a systematic appointment system, resulting in abuse and, many times, in the unintentional appearance of abuse of the appointment system.

C.S.S.B. 1876 requires the use of rotation lists for the appointment of most attorneys and guardians ad litem, guardians, and mediators, while maintaining judges' discretion to appoint a particular person to a case that requires specialized knowledge, and the ability of the parties to agree to a particular appointment.

These changes would bring much needed governance to the court appointment process and would ensure a more fair, efficient, and equitable system for the appointment of attorneys and guardians ad litem, guardians, and mediators.

C.S.S.B. 1876 amends current law relating to the appointment of attorneys ad litem, guardians ad litem, mediators, and guardians.

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 Subtitle B, Title 2, Government Code, by adding Chapter 37, as follows:

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

Sec. 37.001. **APPLICABILITY; CONFLICT OF LAW.** (a) Provides that this chapter applies to a court in this state created by the Texas Constitution, by statute, or as authorized by statute.

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

Sec. 37.002. EXEMPTION. Provides that the appointment requirements of Section 37.004 do not apply to:

- (1) a mediator appointed under Chapter 152 (Alternative Dispute Resolution System Established by Counties), Civil Practice and Remedies Code;
- (2) a guardian ad litem or other person appointed under Section 107.031 (Volunteer Advocates), Family Code; or
- (3) an attorney ad litem, guardian ad litem, or mediator appointed to represent a child as authorized under Chapter 203 (Domestic Relations Offices), Family Code.

Sec. 37.003. LISTS OF ATTORNEYS AD LITEM, GUARDIANS AD LITEM, MEDIATORS, AND GUARDIANS. (a) Requires each court in this state, in addition to a list required by other state law or rule, to 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; and
- (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 (Guardian), Estates Code, and are registered with the court.

(b) Authorizes a court to 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) Requires a local administrative judge, at the request of one or more of the courts the judge serves, to establish and maintain the lists required under Subsection (a) for those courts. Authorizes the local administrative judge to establish and maintain one set of lists for all of the requesting courts and to 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. (a) Requires a court using a rotation system, except as provided by Subsections (c) and (d), in each case in which the appointment of an attorney ad litem, guardian ad litem, or guardian is necessary, to appoint the person whose name appears first on the applicable list maintained by the court as required by Section 37.003.

(b) Requires a court using a rotation system, 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, to appoint the person whose name appears first on the mediator list maintained by the court as required under Section 37.003.

(c) 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.

(d) 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.

(e) 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.

(f) Requires the court, after a person has been appointed as an attorney ad litem, guardian ad litem, mediator, or guardian from the applicable list, to place that person's name at the end of the list.

Sec. 37.005. POSTING OF LISTS. Requires a court annually to post each list established under Section 37.003 at the courthouse of the county in which the court is located and on any Internet website of the court.

SECTION 2. Amends Section 25.0022(d), Government Code, 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 Chapter 37, and to make nonsubstantive changes.

SECTION 3. Amends Section 74.092, Government Code, as follows:

Sec. 74.092. DUTIES OF LOCAL ADMINISTRATIVE JUDGE. Requires a local administrative judge, for the courts for which the judge serves as local administrative judge, to:

(1)-(10) Makes no change to these subdivisions;

(11) if requested by the courts the judge serves, establish and maintain the lists required by Section 37.003 and ensure appointments are made from the lists in accordance with Section 37.004, rather than establish and maintain a list of all attorneys qualified to serve as an attorney ad litem; and

(12) Makes no change to this subdivision.

Deletes existing Subsection (a) designation and Subsection (b) requiring that a list of attorneys ad litem maintained under Subsection (a)(11) contain the names of all attorneys who meet any statutory or other requirements to serve as an attorney ad litem; and have registered to serve as attorney ad litem with a court for which the judge maintaining the list serves as local administrative judge.

SECTION 4. Amends Section 74.093, Government Code, by adding Subsection (c-1), to provide that 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. Repealer: Section 74.098 (Appointment of Attorneys Ad Litem; Maintenance of List), Government Code.

SECTION 6. Provides that 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. Provides that 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. Effective date: September 1, 2015.