

By:

\_\_\_\_.B. No.\_\_\_\_

A BILL TO BE ENTITLED

1 AN ACT

2 relating to amicus attorneys and attorney ad litem.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

4 SECTION 1. Section 107.003(a), Family Code, is amended to  
5 read as follows:

6 Sec. 107.003. POWERS AND DUTIES OF AN ATTORNEY AD LITEM FOR  
7 CHILD[~~AND AMICUS ATTORNEY~~]. (a) An attorney ad litem appointed  
8 to represent a child [~~or an amicus attorney appointed to assist the~~  
9 ~~court~~]:

10 (1) shall:

11 (A) subject to Rules 4.02, 4.03, and 4.04, Texas  
12 Disciplinary Rules of Professional Conduct, and within a reasonable  
13 time after the appointment, interview:

14 (i) the child in a developmentally appropriate  
15 manner, if the child is four years of age or older;

16 (ii) each person who has significant knowledge  
17 of the child's history and condition, including any foster parent  
18 of the child; and

19 (iii) the parties to the suit;

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

22 (C) consider the impact on the child in formulating

1 the attorney's presentation of the child's expressed objectives of  
2 representation to the court;

3 (D) investigate the facts of the case to the extent  
4 the attorney considers appropriate;

5 (E) obtain and review copies of relevant records  
6 relating to the child as provided by Section [107.006](#);

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

9 (G) take any action consistent with the child's  
10 interests that the attorney considers necessary to expedite the  
11 proceedings;

12 (H) encourage settlement and the use of alternative  
13 forms of dispute resolution; and

14 (I) review and sign, or decline to sign, a proposed  
15 or agreed order affecting the child;

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

18 (3) is entitled to:

19 (A) request clarification from the court if the  
20 role of the attorney is ambiguous;

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

22 (C) consent or refuse to consent to an interview of  
23 the child by another attorney;

24 (D) receive a copy of each pleading or other paper

1 filed with the court;

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

3 (F) participate in any case staffing concerning the  
4 child conducted by the Department of Family and Protective  
5 Services; and

6 (G) attend all legal proceedings in the suit.

7 SECTION 2. Section 107.005(a)and (b), Family Code, are  
8 amended and Sections (d) - (g) are added to read as follows:

9 Sec. 107.005. POWERS AND [ADDITIONAL] DUTIES OF AMICUS  
10 ATTORNEY. (a) An attorney appointed as an amicus attorney:

11 (1) shall:

12 (A) subject to rule 4.02, 4.03, and 4.04, Texas  
13 Disciplinary Rules of Professional Conduct, and within a reasonable  
14 time after the appointment, interview:

15 (i) the child in a developmentally appropriate  
16 manner, if the child is four years of age or older;

17 (ii) each person who has significant knowledge  
18 of the child's expressed objectives of representation;

19 (iii) the parties to the suit;

20 (B) investigate the facts of the case to the extent  
21 the attorney considers appropriate;

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

24 (D) participate in the conduct of the litigation to

1 the same extent as an attorney for a party;

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

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

7 (G) review and sign, or decline to sign, a proposed  
8 or agreed order affecting the child.

9 (2) certify to the court that they have received  
10 continuing legal education of at least four hours in the previous  
11 year specifically related to domestic violence, age appropriate  
12 techniques to interview a child and alternate dispute resolution or  
13 be board certified in family law;

14 (3) is entitled to:

15 (A) request a hearing or trial on the merits;

16 (B) consent or refuse to consent to an interview of  
17 the child by another attorney;

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

20 (D) receive notice of each hearing in the suit;

21 (E) participate in any case staffing concerning the  
22 child conducted by the Department of Family and Protective  
23 Services; and

24 (F) attend all legal proceedings in the suit,; and

1           (4) ~~[§]~~subject to any specific limitation in the order  
2 of appointment, an amicus attorney shall advocate the best  
3 interests of the child after reviewing the facts and circumstances  
4 of the case. Notwithstanding Subsection (b), in determining the  
5 best interests of the child, an amicus attorney is not bound by the  
6 child's expressed objectives of representation.

7           (b) An amicus attorney shall, in a developmentally  
8 appropriate manner:

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

12           (2) explain the role of the amicus attorney to the  
13 child; and

14           (3) inform the child that the amicus attorney may use  
15 information that the child provides in providing assistance to  
16 the court[; ~~and~~

17           ~~(4) become familiar with the American Bar~~  
18 ~~Association's standards of practice for attorneys who represent~~  
19 ~~children in custody cases].~~

20           (c) The order appointing an amicus attorney shall contain  
21 a list of any additional duties required by the court to be  
22 completed not contained in this statute and shall contain  
23 specific orders regarding the payment of the fees and expenses of  
24 the amicus attorney [~~An amicus attorney may not disclose~~

1 ~~confidential communications between the amicus attorney and the~~  
2 ~~child unless the amicus attorney determines that disclosure is~~  
3 ~~necessary to assist the court regarding the best interests of the~~  
4 ~~child].~~

5 (d) In addition to the duties required by subsections (a), (b)  
6 and (c), an amicus attorney shall:

7 (1) conduct a home visit of any person who has the right  
8 of possession of or access to the child;

9 (2) conduct a home visit of any party who is seeking  
10 possession of or access to the child;

11 (3) upon request provide, within a reasonable time not  
12 to exceed five business days from the request, their entire  
13 case file to each party; and

14 (4) upon request prepare and file, within a reasonable  
15 time not to exceed five business days from the request, a written  
16 report certifying their compliance with the order appointing the  
17 amicus attorney and this statute.

18 (e) An amicus attorney shall be subject to the discovery  
19 rules contained in the Rules of Civil Procedure in this state.

20 (f) An amicus attorney shall not be permitted to express an  
21 opinion or relate a recommendation to the court ex parte, at any  
22 hearing or trial, or a jury, regarding conservatorship, possession  
23 of or access to the child subject of the suit, or any issues  
24 regarding the child's geographic restriction.

1       (g) An amicus attorney does not have an attorney/client  
2 privilege or a work product privilege.

3       SECTION 3. Section 107.0051, Family Code is added to read as  
4 follows:

5       Sec. 107.0051 AMICUS ATTORNEY: CONFLICTS OF INTEREST AND BIAS

6       (a) Before accepting appointment as an amicus attorney  
7 in a suit, a person must disclose to the court, each attorney for a  
8 party to the suit, and any party to the suit who does not have an  
9 attorney:

10       (1) any conflict of interest that the person believes  
11 the person has with the court, any party to the suit, or a child  
12 who is the subject of the suit;

13       (2) any previous knowledge that the person has of a  
14 party to the suit or a child who is the subject of the suit, other  
15 than knowledge obtained in a court-ordered evaluation;

16       (3) any pecuniary relationship that the person believes  
17 the person has with an attorney in the suit or the court;

18       (4) any fiduciary relationship that the person believes  
19 the person has with an attorney in the suit or the court; and

20       (5) any other information relating to the person's  
21 relationship with an attorney in the suit or the court that a  
22 reasonable, prudent person would believe would affect the ability  
23 of the person to act impartially as an amicus attorney.

24       (b) The court may not appoint a person as an amicus

1 attorney in a suit if the person makes any of the disclosures in  
2 Subsection (a) unless:

3 (1) the court finds that:

4 (A) the person has no conflict of interest with a party  
5 to the suit, the court, or a child who is the subject of the suit;

6 (B) the person's previous knowledge of a party to the  
7 suit, the court, or a child who is the subject of the suit is not  
8 relevant;

9 (C) the person does not have a pecuniary relationship  
10 with an attorney in the suit or the court; and

11 (D) the person does not have a fiduciary relationship  
12 with an attorney in the suit or the court; or

13 (2) the parties agree in writing to the person's  
14 appointment as an amicus attorney.

15 (c) After being appointed as an amicus attorney in a  
16 suit, a person shall immediately disclose to the court, each  
17 attorney for a party to the suit, and any party to the suit who  
18 does not have an attorney any discovery of the following unless  
19 previously disclosed:

20 (1) a conflict of interest that the person believes the  
21 person has with a party to the suit, the court, or a child who is  
22 the subject of the suit;

23 (2) a conflict of interest that the person has with an  
24 attorney or other professional who was hired or appointed after



1 being appointed as an amicus attorney as required by section (a),  
2 paragraphs 1-5; and

3 (3) previous knowledge that the person has of a party to the  
4 suit, the court, or a child who is the subject of the suit, other  
5 than knowledge obtained in a court-ordered evaluation.

6 (d) The court shall remove an amicus attorney in a suit if  
7 the person makes any of the disclosures in Subsection (c) unless:

8 (1) the court finds that:

9 (A) the person has no conflict of interest with a party  
10 to the suit, the court, or a child who is the subject of the suit;  
11 and

12 (B) the person's previous knowledge of a party to the  
13 suit, the court, or a child who is the subject of the suit is not  
14 relevant; or

15 (2) the parties agree in writing to the person's  
16 continued appointment as an amicus attorney.

17 (e) Persons who have relationships with attorneys of  
18 parties to the suit are not disqualified from being an amicus  
19 attorney if those relationships were formed in a professional  
20 setting such as service to the community or various bar  
21 associations.

22 SECTION 4. Section 107.007(a), Family Code, is amended to  
23 read as follows:

24 (a) An attorney ad litem[7] or an attorney serving in the

1 dual role[, ~~or an amicus attorney~~] may not:

2 (1) be compelled to produce attorney work product developed  
3 during the appointment as an attorney;

4 (2) be required to disclose the source of any information;

5 (3) submit a report into evidence; or

6 (4) testify in court except as authorized by Rule 3.08, Texas  
7 Disciplinary Rules of Professional Conduct.

8 SECTION 5. (a) The changes in law made by this Act apply  
9 only to a suit that is filed on or after the effective date of this  
10 Act. A suit filed before the effective date of this Act is  
11 governed by the law in effect on the date the application is filed,  
12 and the former law is continued in effect for that purpose.

13 SECTION 6. This Act takes effect September 1, 2021

14