BILL ANALYSIS

Senate Research Center

S.B. 349
By: Shapiro
Jurisprudence
7-1-97
Enrolled

DIGEST

Currently, in suits affecting the parent-child relationship, the court must appoint a guardian ad litem to represent the interests of the child if termination is sought, unless the court finds the child is the petitioner, an attorney ad litem has been appointed, or a party who does not have interests adverse to the child will adequately represent the interests of the child. Recent changes in federal law necessitate that a guardian ad litem be appointed to represent the best interests of the children in child abuse and neglect cases. This bill requires the court to appoint a guardian ad litem to represent a child in cases in which the Department of Protective and Regulatory Services is seeking to be appointed managing conservator or is seeking termination of parental rights. This bill also sets forth who may be appointed as a guardian ad litem, including the powers, duties, and immunity of an appointee.

PURPOSE

As enrolled, S.B. 349 allows for the appointment, powers, and duties of guardians ad litem and volunteer advocates in suits affecting the parent-child relationship.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the attorney general in SECTION 6 (Section 264.602(d), Family Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 107.001, Family Code, to require a court or an associate judge, in a suit filed by a government entity to terminate a parent-child relationship, to appoint a guardian ad litem to represent the best interests of the child, after a petition is filed, but before a full adversarial hearing. Sets forth the requirements of a guardian ad litem. Makes conforming changes.

SECTION 2. Amends Section 107.002, Family Code, as follows:

> Sec. 107.002. New heading: POWERS AND DUTIES OF GUARDIAN AD LITEM. Sets forth the powers and duties of a guardian ad litem, who is not a party to the suit. Prohibits an attorney, who is appointed as attorney ad litem and guardian ad litem for a child, from testifying under Subsection (c)(6). Sets forth actions to be taken by an attorney who is appointed attorney ad litem and guardian ad litem for a child under this section. Requires an attorney who is appointed as attorney ad litem and guardian ad litem for a child and who determines that a conflict exists by performing both roles to take certain actions. Deletes a provision that a court is not required to appoint a guardian ad litem in certain proceedings. Makes a conforming change.

SECTION 3. Amends Chapter 107A, Family Code, by adding Section 107.003, as follows:

> Sec. 107.003 IMMUNITY. Provides that an appointed guardian ad litem under this subchapter is not liable for civil damages arising from a recommendation or an opinion given in the capacity as the guardian ad litem. Provides cases to which immunity does not apply.

SECTION 4. Amends Sections 107.006(a) and (c), Family Code, to provide that eligibility for a

pool established under this subsection includes completing a training course approved by the State Bar of Texas. Authorizes a party to object under this subsection to appointment of a guardian or attorney ad litem by filing a written motion stating grounds and facts. Requires the court to rule on a justifiable objection.

SECTION 5. Amends Chapter 107B, Family Code, by adding Section 107.0135, as follows:

> Sec. 107.0135. APPOINTMENT OF ATTORNEY AD LITEM NOT REQUIRED; CERTAIN CASES. Sets forth certain cases in which the court is not required to appoint a guardian ad litem.

SECTION 6. Amends Section 107.031, Family Code, by adding Subsection (d), to provide that this section does not prohibit a court from appointing a court-certified volunteer advocate as a guardian ad litem.

SECTION 7. Amends Section 264.602, Family Code, by adding Subsection (d), to require the attorney general, by rule, to adopt standards for a local volunteer advocate program. Requires the statewide organization to assist the attorney general in developing the standards.

SECTION 8. Amends Section 264.604(a), Family Code, to provide that a person is eligible for a contract under Section 264.602, Family Code, if the person is a certain entity which operates a program that uses guardians ad litem.

SECTION 9. Amends Section 264.607(a), Family Code, to require the attorney general to require a volunteer advocate program to comply with certain standards.

SECTION 10. Effective date: September 1, 1997.
Makes application of this Act prospective.

SECTION 11. Emergency clause.