

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 HOUSE BILL 1531

By: Buck

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5
6 AS INTRODUCED

7 An Act relating to children; amending 10 O.S. 2001,
8 Section 7003-3.7, as last amended by Section 1,
9 Chapter 268, O.S.L. 2007 (10 O.S. Supp. 2008, Section
10 7003-3.7), which relates to the appointment of
11 attorneys and guardians ad litem in certain cases;
12 providing that certain attorneys may serve as
13 guardian ad litem in certain circumstance; modifying
14 who cannot serve as guardian ad litem; and providing
15 an effective date.

16 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

17 SECTION 1. AMENDATORY 10 O.S. 2001, Section 7003-3.7, as
18 last amended by Section 1, Chapter 268, O.S.L. 2007 (10 O.S. Supp.
19 2008, Section 7003-3.7), is amended to read as follows:

20 Section 7003-3.7

21 A. 1. a. If the parents, legal guardian or custodian of the
22 child requests an attorney and is found to be without
23 sufficient financial means, counsel shall be appointed
24 by the court if a petition has been filed alleging
that the child is a deprived child or if termination
of parental rights is a possible remedy; provided that

1 the court may appoint counsel without such request, if
2 it deems representation by counsel necessary to
3 protect the interest of the parents, legal guardian or
4 custodian.

5 b. The court shall not be required to appoint an attorney
6 for any person other than for the parents, legal
7 guardian or custodian of the child pursuant to the
8 provisions of this paragraph.

9 2. a. Whenever a petition is filed pursuant to the
10 provisions of this part, the court shall appoint a
11 separate attorney, who shall not be a district
12 attorney, regardless of any attempted waiver by the
13 parent, legal guardian or custodian of the child of
14 the right of the child to be represented by ~~counsel~~ an
15 attorney. If a meaningful attorney-client
16 relationship between the child and the attorney is not
17 possible due to age or disability of the child, the
18 court may order the attorney to serve as the guardian
19 ad litem of the child until such time that a
20 meaningful attorney-client relationship is possible.

21 The parent, legal guardian or custodian shall not
22 select the child's attorney. If financially capable,
23 the parent, legal guardian or custodian shall

1 reimburse the Court Fund for the services of a court-
2 appointed attorney for the child.

3 b. The attorney appointed for the child shall make
4 arrangements to meet with the child as soon as
5 possible after receiving notification of the
6 appointment. Except for good cause shown, the
7 attorney shall meet with the child not less than
8 twenty-four (24) hours prior to any hearing in such
9 proceeding. The attorney may speak with the child
10 over the telephone if a personal visit is not possible
11 due to exigent circumstances. If a meaningful
12 attorney-client relationship between the child and the
13 attorney is prohibited due to age or disability of the
14 child, the attorney shall contact the custodian or
15 caretaker of the child prior to the hearing.

16 c. The attorney shall be given access to all reports,
17 records and other information relevant to the case and
18 to any reports of examination of the child's parents,
19 legal guardian or custodian made pursuant to this
20 section. The attorney shall represent the child and
21 any expressed interests of the child. The attorney
22 shall make such further inquiry as the attorney deems
23 necessary to ascertain the facts, to interview
24 witnesses, examine and cross-examine witnesses, make

1 recommendations to the court and participate further
2 in the proceedings to the degree appropriate for
3 adequately representing the interests of the child.

4 3. The attorney shall be allowed a reasonable fee for such
5 services as determined by the court, as authorized by law.

6 B. 1. Whenever a petition is filed alleging that a child is a
7 deprived child, the court may appoint a guardian ad litem for the
8 child at any time subsequent to the filing of the petition or for
9 any other action related to the child.

10 2. The court shall appoint a guardian ad litem upon the request
11 of the child, the attorney of the child, the Department of Human
12 Services, a licensed child-placing agency, or any other party to the
13 action.

14 3. A guardian ad litem shall not be a district attorney, an
15 employee of the office of the district attorney, the child's
16 attorney except as provided in paragraph 2 of subsection A of this
17 section, an employee of the court, an employee of a juvenile bureau,
18 or an employee of any public agency having duties or
19 responsibilities towards the child.

20 4. The guardian ad litem shall be appointed to objectively
21 advocate on behalf of the child and act as an officer of the court
22 to investigate all matters concerning the best interests of the
23 child. In addition to other duties required by the court and as
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1 specified by the court, a guardian ad litem shall have the following
2 responsibilities:

- 3 a. review documents, reports, records and other
4 information relevant to the case, meet with and
5 observe the child in appropriate settings, and
6 interview parents, foster parents, health care
7 providers, child protective services workers and any
8 other person with knowledge relevant to the case,
- 9 b. advocate for the child's best interests by
10 participating in the case, attending any hearings in
11 the matter and advocating for appropriate services for
12 the child when necessary,
- 13 c. maintain the confidentiality of information related to
14 a case as required by Article 7 5 of the Oklahoma
15 Children's Code,
- 16 d. monitor the child's best interests throughout any
17 judicial proceeding, and
- 18 e. present written reports on the child's best interests
19 that include conclusions and recommendations and the
20 facts upon which they are based.

21 5. The guardian ad litem shall be given access to the court
22 files and agency files and access to all documents, reports, records
23 and other information relevant to the case and to any records and
24 reports of examination of the child's parent or other custodian,

1 made pursuant to the laws relating to child abuse and neglect
2 including reports generated by service providers.

3 6. On or before December 31, 2007, the Administrative Director
4 of the Courts shall develop a standard operating manual for
5 guardians ad litem which shall include, but not be limited to, legal
6 obligations and responsibilities, information concerning child
7 abuse, child development, domestic abuse, sexual abuse, and parent
8 and child behavioral health and management including best practices.
9 After publication of the manual, all guardians ad litem shall
10 certify to the court in which he or she is appointed as a guardian
11 ad litem that the manual has been read and all provisions contained
12 therein are understood. The guardian ad litem shall also certify
13 that he or she agrees to follow the best practices described within
14 the standard operating manual. The Administrative Director of the
15 Courts shall provide public access to the standard operating manual
16 and shall periodically review and revise the manual as deemed
17 necessary.

18 C. 1. Whenever a court-appointed special advocate program is
19 available to the court to serve as a guardian ad litem, priority
20 shall be given to appointment of the court-appointed special
21 advocate to serve as guardian ad litem for the child regardless of
22 whether a guardian ad litem has been requested pursuant to the
23 provisions of this subsection.

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1 2. A court-appointed special advocate program shall be made
2 available to each judicial district.

3 3. For purposes of the Oklahoma Children's Code, the terms
4 "court-appointed special advocate" and "guardian ad litem" shall
5 have the same function. In like manner, a court-appointed special
6 advocate, except as specifically otherwise provided by law or by the
7 court, shall have the same power, duties and responsibilities as
8 assigned to a guardian ad litem by law and shall have such other
9 qualifications, duties and responsibilities as may be prescribed by
10 rule by the Supreme Court.

11 4. A court-appointed special advocate shall serve without
12 compensation.

13 5. No court-appointed special advocate shall be assigned a case
14 before:

- 15 a. completing a training program in compliance with
16 nationally documented Court-Appointed Special Advocate
17 standards. Documentation of training shall be
18 submitted annually by local court-appointed special
19 advocate programs to the Oklahoma Court-Appointed
20 Special Advocate Association, and
- 21 b. being approved by the local court-appointed special
22 advocate program, which will include appropriate
23 criminal background checks as provided in paragraph 6
24 of this subsection.

1 6. a. Each local court-appointed special advocate program
2 shall require a criminal history records search
3 conducted by the Oklahoma State Bureau of
4 Investigation, and any other background check
5 requirements as set forth in Oklahoma Court-Appointed
6 Special Advocate Association state standards for local
7 programs, for any person making application to become
8 a court-appointed special advocate volunteer or to be
9 employed by the local court-appointed special advocate
10 program.

11 b. If the prospective court-appointed special advocate
12 volunteer or employee of the local court-appointed
13 special advocate program has lived in Oklahoma for
14 less than one (1) year, a criminal history records
15 search shall also be obtained from the criminal
16 history state repository of the previous state of
17 residence.

18 c. The Oklahoma Court-Appointed Special Advocate
19 Association shall pay the fee for the criminal history
20 records search provided in this paragraph.

21 D. 1. Any person participating in a judicial proceeding as a
22 court-appointed special advocate shall be presumed prima facie to be
23 acting in good faith and in so doing shall be immune from any civil
24 liability that otherwise might be incurred or imposed.

1 2. Any person serving in a management position of a court-
2 appointed special advocate organization, including a member of the
3 Board of Directors acting in good faith, shall be immune from any
4 civil liability or any vicarious liability for the negligence of any
5 court-appointed special advocate organization advocates, managers,
6 or directors.

7 E. The provisions of this section shall not apply to adoption
8 proceedings and actions to terminate parental rights which do not
9 involve a petition for deprived status of the child. Such
10 proceedings and actions shall be governed by the Oklahoma Adoption
11 Code.

12 SECTION 2. This act shall become effective November 1, 2009.

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