

1 **SENATE FLOOR VERSION**

2 February 28, 2012

3 SENATE BILL NO. 1300

By: Crain of the Senate

4 and

5 Stiles of the House

6  
7  
8 An Act relating to guardian ad litem; amending 43  
9 O.S. 2011, Section 107.3, which relates to  
10 appointment of guardian ad litem; creating the  
11 Guardian Ad Litem Training Task Force; stating  
12 purpose of task force; specifying membership of task  
13 force; establishing procedures for conducting  
14 business of task force; requiring preparation of  
15 certain operating manual; requiring development of  
16 certain forms and procedures; requiring electronic  
17 availability of certain manual and forms; and  
18 providing an effective date.

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

20 SECTION 1. AMENDATORY 43 O.S. 2011, Section 107.3, is  
21 amended to read as follows:

22 Section 107.3. A. 1. In any proceeding when the custody or  
23 visitation of a minor child or children is contested by any party,  
24 the court may appoint an attorney at law as guardian ad litem upon  
motion of the court or upon application of any party to appear for  
and represent the minor children.

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

- 7           a. review documents, reports, records and other  
8 information relevant to the case, meet with and  
9 observe the child in appropriate settings, and  
10 interview parents, caregivers and health care  
11 providers and any other person with knowledge relevant  
12 to the case including, but not limited to, teachers,  
13 counselors and child care providers,
- 14           b. advocate for the best interests of the child by  
15 participating in the case, attending any hearings in  
16 the matter and advocating for appropriate services for  
17 the child when necessary,
- 18           c. monitor the best interests of the child throughout any  
19 judicial proceeding,
- 20           d. present written reports to the parties and court prior  
21 to trial or at any other time as specified by the  
22 court on the best interests of the child that include  
23 conclusions and recommendations and the facts upon  
24 which they are based, and

1 e. the guardian ad litem shall, as much as possible,  
2 maintain confidentiality of information related to the  
3 case and is not subject to discovery pursuant to the  
4 Oklahoma Discovery Code.

5 3. Expenses, costs, and attorney fees for the guardian ad litem  
6 may be allocated among the parties as determined by the court.

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

22 B. On or before December 31, 2012, a Guardian Ad Litem Training  
23 Task Force shall be formed to create a Guardian Ad Litem Operating  
24 Manual of best practices to promote uniformity and guidance in

1 Guardian Ad Litem representation in domestic relations cases. The  
2 task force shall be composed of sixteen (16) members, or their  
3 designees, as follows:

4 1. The President Pro Tempore of the Senate and the Senate  
5 Minority Leader shall each appoint one member;

6 2. The Speaker of the House of Representatives and the Minority  
7 Leader of the House shall each appoint one member;

8 3. The Governor shall appoint two child development  
9 psychologists, one from a rural community and one from an urban  
10 community;

11 4. The Administrative Director of the Courts shall appoint five  
12 judges with domestic docket responsibilities, one from Oklahoma  
13 County, one from Tulsa County, one from another urban district and  
14 two from rural districts;

15 5. The Executive Director of the Oklahoma Bar Association shall  
16 appoint two attorneys whose practice consists of a minimum of  
17 seventy-five percent (75%) domestic relations cases, one from a  
18 rural county and one from an urban county; and

19 6. The current President of the Oklahoma Bar Association, the  
20 current Family Law Section Chair and the Continuing Legal Education  
21 Committee Chair shall also serve on the task force.

22 C. Members of the task force shall serve at the pleasure of  
23 their appointing authorities. A vacancy on the task force shall be  
24 filled by the original appointing authority. Appointments to the

1 task force shall be made upon the effective date of this act. A  
2 majority of the members of the task force shall constitute a quorum.  
3 The President of the Oklahoma Bar Association shall appoint a  
4 cochair from among the attorney members of the task force, and the  
5 Administrative Director of the Courts shall appoint a cochair from  
6 among the judicial members of the task force. The cochairs shall  
7 convene meetings of the task force and shall determine a schedule of  
8 meetings each year. The task force shall meet at least quarterly.  
9 Proceedings of all meetings of the task force shall comply with the  
10 provisions of the Oklahoma Open Meeting Act.

11 D. The task force shall prepare a Standard Operating Manual by  
12 June 1, 2013, for electronic distribution to the district courts  
13 pursuant to this section. The manual shall be written in clear,  
14 simple language and shall include information about the laws and  
15 procedures which apply to guardian ad litem representation pursuant  
16 to this section. In addition, the task force shall develop the  
17 forms and procedures necessary to implement this section. The  
18 Office of the Administrative Director of the Courts shall make the  
19 manual and forms available electronically to the public through the  
20 offices of the clerks of the district courts and such other  
21 locations deemed necessary by the Administrator.

22 E. When property, separate maintenance, or custody is at issue,  
23 the court:

1           1. May refer the issue or issues to mediation if feasible  
2 unless a party asserts or it appears to the court that domestic  
3 violence or child abuse has occurred, in which event the court shall  
4 halt or suspend professional mediation unless the court specifically  
5 finds that:

6           a. the following three conditions are satisfied:

7                   (1) the professional mediator has substantial  
8                   training concerning the effects of domestic  
9                   violence or child abuse on victims,

10                   (2) a party who is or alleges to be the victim of  
11                   domestic violence is capable of negotiating with  
12                   the other party in mediation, either alone or  
13                   with assistance, without suffering an imbalance  
14                   of power as a result of the alleged domestic  
15                   violence, and

16                   (3) the mediation process contains appropriate  
17                   provisions and conditions to protect against an  
18                   imbalance of power between parties resulting from  
19                   the alleged domestic violence or child abuse, or

20           b. in the case of domestic violence involving parents,  
21           the parent who is or alleges to be the victim requests  
22           mediation and the mediator is informed of the alleged  
23           domestic violence; and

24

1           2. When custody is at issue, the court may order, in addition  
2 to or in lieu of the provisions of paragraph 1 of this subsection,  
3 that each of the parties undergo individual counseling in a manner  
4 that the court deems appropriate, if the court finds that the  
5 parties can afford the counseling.

6           ~~C.~~ F. As used in this section:

7           1. "Child abuse or neglect" shall have the same meaning as such  
8 term is defined by the Oklahoma Child Abuse Reporting and Prevention  
9 Act or shall mean the child has been adjudicated deprived as a  
10 result of the actions or omission of either parent pursuant to the  
11 Oklahoma Children's Code; and

12           2. "Domestic violence" shall have the same meaning as such term  
13 is defined by the Protection from Domestic Abuse Act.

14           ~~D.~~ G. During any proceeding concerning child custody, should it  
15 be determined by the court that a party has intentionally made a  
16 false or frivolous accusation to the court of child abuse or neglect  
17 against the other party, the court shall proceed with any or all of  
18 the following:

19           1. Find the accusing party in contempt for perjury and refer  
20 for prosecution;

21           2. Consider the false allegations in determining custody; and

22           3. Award the obligation to pay all court costs and legal  
23 expenses encumbered by both parties arising from the allegations to  
24 the accusing party.

1 SECTION 2. This act shall become effective November 1, 2012.

2 COMMITTEE REPORT BY: COMMITTEE ON HEALTH & HUMAN SERVICES, dated  
3 2-27-12 - DO PASS, As Coauthored.

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