STATE OF OKLAHOMA

1st Session of the 54th Legislature (2013)

SENATE BILL 239 By: Crain

AS INTRODUCED

An Act relating to guardians ad litem; amending 43 O.S. 2011, Section 107.3, which relates to appointment of guardian ad litem; creating the Guardian Ad Litem Training Task Force; stating purpose of task force; specifying membership of task force; establishing procedures for conducting business of task force; requiring preparation of certain operating manual; requiring development of certain forms and procedures; requiring electronic availability of certain manual and forms; and providing an effective date.

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

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

Section 107.3. A. 1. In any proceeding when the custody or visitation of a minor child or children is contested by any party, 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.

2. The guardian ad litem may be appointed to objectively advocate on behalf of the child and act as an officer of the court

to investigate all matters concerning the best interests of the child. In addition to other duties required by the court and as specified by the court, a guardian ad litem shall have the following responsibilities:

a. review documents, reports, records and other information relevant to the case, meet with and observe the child in appropriate settings, and interview parents, caregivers and health care providers and any other person with knowledge relevant to the case including, but not limited to, teachers, counselors and child care providers,

b. advocate for the best interests of the child by participating in the case, attending any hearings in the matter and advocating for appropriate services for the child when necessary,

c. monitor the best interests of the child throughout any judicial proceeding,

d. present written reports to the parties and court prior to trial or at any other time as specified by the court on the best interests of the child that include conclusions and recommendations and the facts upon which they are based, and

e. the guardian ad litem shall, as much as possible, maintain confidentiality of information related to the

case and is not subject to discovery pursuant to the Oklahoma Discovery Code.

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

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

B. On or before December 31, 2013, a Guardian Ad Litem Training Task Force shall be formed to create a Guardian Ad Litem Operating Manual of best practices to promote uniformity and guidance in Guardian Ad Litem representation in domestic relations cases. The

task force shall be composed of sixteen (16) members, or their designees, as follows:

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

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

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

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

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

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

C. Members of the task force shall serve at the pleasure of their appointing authorities. A vacancy on the task force shall be filled by the original appointing authority. Appointments to the task force shall be made upon the effective date of this act. A

majority of the members of the task force shall constitute a quorum. The President of the Oklahoma Bar Association shall appoint a cochair from among the attorney members of the task force, and the Administrative Director of the Courts shall appoint a cochair from among the judicial members of the task force. The cochairs shall convene meetings of the task force and shall determine a schedule of meetings each year. The task force shall meet at least quarterly. Proceedings of all meetings of the task force shall comply with the provisions of the Oklahoma Open Meeting Act.

D. The task force shall prepare a Standard Operating Manual by June 1, 2014, for electronic distribution to the district courts pursuant to this section. The manual shall be written in clear, simple language and shall include information about the laws and procedures which apply to guardian ad litem representation pursuant to this section. In addition, the task force shall develop the forms and procedures necessary to implement this section. The Office of the Administrative Director of the Courts shall make the manual and forms available electronically to the public through the offices of the clerks of the district courts and such other locations deemed necessary by the Administrator.

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

1. May refer the issue or issues to mediation if feasible unless a party asserts or it appears to the court that domestic

violence or child abuse has occurred, in which event the court shall halt or suspend professional mediation unless the court specifically finds that:

a. the following three conditions are satisfied:

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

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

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

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

2. When custody is at issue, the court may order, in addition to or in lieu of the provisions of paragraph 1 of this subsection, that each of the parties undergo individual counseling in a manner

that the court deems appropriate, if the court finds that the parties can afford the counseling.

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

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

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

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

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

2. Consider the false allegations in determining custody; and

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

SECTION 2. This act shall become effective November 1, 2013.

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