

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 56th Legislature (2017)

4 ENGROSSED SENATE
5 BILL NO. 50

 By: Floyd and Pittman of the
 Senate

6 and

7 Nollan of the House

8
9 An Act relating to guardians ad litem; amending 43
10 O.S. 2011, Section 107.3, which relates to
11 appointment of guardian ad litem; modifying certain
12 responsibility of guardian ad litem; clarifying party
13 to make certain determination; updating statutory
14 reference; and providing an effective date.

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

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

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

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

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

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

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. When property, separate maintenance, or custody is at issue,
23 the court:
24

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. 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~~ Section 1-1-105 of Title 10A of the Oklahoma Statutes or shall
10 mean the child has been adjudicated deprived as a result of the
11 actions or omission of either parent pursuant to the Oklahoma
12 Children's Code; and

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

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

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

22 2. Consider the false allegations in determining custody; and
23
24

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

4 SECTION 2. This act shall become effective November 1, 2017.
5

6 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY - CIVIL AND
7 ENVIRONMENTAL, dated 03/28/2017 - DO PASS, As Coauthored.
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24