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February 14, 2017

By: Floyd

An Act relating to guardians ad litem; amending 43 O.S. 2011, Section 107.3, which relates to appointment of guardian ad litem; modifying certain responsibility of guardian ad litem; clarifying party to make certain determination; updating statutory reference; 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:

- 1 a. review documents, reports, records and other
2 information relevant to the case, meet with and
3 observe the child in appropriate settings, and
4 interview parents, caregivers and health care
5 providers and any other person with knowledge relevant
6 to the case including, but not limited to, teachers,
7 counselors and child care providers,
- 8 b. advocate for the best interests of the child by
9 participating in the case, attending any hearings in
10 the matter and advocating for appropriate services for
11 the child when necessary,
- 12 c. monitor the best interests of the child throughout any
13 judicial proceeding,
- 14 d. present written factual reports to the parties and
15 court prior to trial or at any other time as specified
16 by the court on the best interests of the child ~~that~~
17 ~~include conclusions and recommendations and the facts~~
18 ~~upon which they are based,~~ which determination is
19 solely the decision of the court, and
- 20 e. the guardian ad litem shall, as much as possible,
21 maintain confidentiality of information related to the
22 case and is not subject to discovery pursuant to the
23 Oklahoma Discovery Code.
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1 3. Expenses, costs, and attorney fees for the guardian ad litem
2 may be allocated among the parties as determined by the court.

3 4. 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 B. When property, separate maintenance, or custody is at issue,
19 the court:

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

1 a. the following three conditions are satisfied:

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

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

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

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

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

24 C. As used in this section:

1 1. "Child abuse or neglect" shall have the same meaning as such
2 term is defined by ~~the Oklahoma Child Abuse Reporting and Prevention~~
3 ~~Act~~ Section 1-1-105 of Title 10A of the Oklahoma Statutes or shall
4 mean the child has been adjudicated deprived as a result of the
5 actions or omission of either parent pursuant to the Oklahoma
6 Children's Code; and

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

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

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

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

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

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

21 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
22 February 14, 2017 - DO PASS
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