

1 STATE OF OKLAHOMA

2 1st Session of the 56th Legislature (2017)

3 SENATE BILL 50

By: Floyd

6 AS INTRODUCED

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

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

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

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

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

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

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

20 B. When property, separate maintenance, or custody is at issue,
21 the court:

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

1 halt or suspend professional mediation unless the court specifically
2 finds that:

3 a. the following three conditions are satisfied:

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

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

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

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

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

3 C. As used in this section:

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

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

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

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

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

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

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

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