

FAMILY CODE

TITLE 5. THE PARENT-CHILD RELATIONSHIP AND THE SUIT AFFECTING
THE PARENT-CHILD RELATIONSHIP

SUBTITLE A. GENERAL PROVISIONS

CHAPTER 107. SPECIAL APPOINTMENTS AND SOCIAL STUDIES

SUBCHAPTER A. COURT-ORDERED REPRESENTATION IN SUITS AFFECTING
THE PARENT-CHILD RELATIONSHIP

Sec. 107.001. DEFINITIONS. In this chapter:

(1) "Amicus attorney" means an attorney appointed by the court in a suit, other than a suit filed by a governmental entity, whose role is to provide legal services necessary to assist the court in protecting a child's best interests rather than to provide legal services to the child.

(2) "Attorney ad litem" means an attorney who provides legal services to a person, including a child, and who owes to the person the duties of undivided loyalty, confidentiality, and competent representation.

(3) "Developmentally appropriate" means structured to account for a child's age, level of education, cultural background, and degree of language acquisition.

(4) "Dual role" means the role of an attorney who is appointed under Section 107.0125 to act as both guardian ad litem and attorney ad litem for a child in a suit filed by a governmental entity.

(5) "Guardian ad litem" means a person appointed to represent the best interests of a child. The term includes:

(A) a volunteer advocate appointed under Subchapter C;

(B) a professional, other than an attorney, who holds a relevant professional license and whose training relates to the determination of a child's best interests;

(C) an adult having the competence, training, and expertise determined by the court to be sufficient to represent the best interests of the child; or

(D) an attorney ad litem appointed to serve in the dual role.

Amended by Acts 1995, 74th Leg., ch. 751, Sec. 15, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1294, Sec. 1, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 262, Sec. 1, eff. Sept. 1, 2003.

Sec. 107.002. POWERS AND DUTIES OF GUARDIAN AD LITEM FOR CHILD. (a) A guardian ad litem appointed for a child under this chapter is not a party to the suit but may:

(1) conduct an investigation to the extent that the guardian ad litem considers necessary to determine the best interests of the child; and

(2) obtain and review copies of the child's relevant medical, psychological, and school records as provided by Section 107.006.

(b) A guardian ad litem appointed for the child under this chapter shall:

(1) within a reasonable time after the appointment, interview:

(A) the child in a developmentally appropriate manner, if the child is four years of age or older;

(B) each person who has significant knowledge of the child's history and condition, including any foster parent of the child; and

(C) the parties to the suit;

(2) seek to elicit in a developmentally appropriate manner the child's expressed objectives;

(3) consider the child's expressed objectives without being bound by those objectives;

(4) encourage settlement and the use of alternative forms of dispute resolution; and

(5) perform any specific task directed by the court.

(c) A guardian ad litem appointed for the child under this chapter is entitled to:

(1) receive a copy of each pleading or other paper filed with the court in the case in which the guardian ad litem is appointed;

(2) receive notice of each hearing in the case;

(3) participate in case staffings by an authorized agency concerning the child;

(4) attend all legal proceedings in the case but may not call or question a witness or otherwise provide legal services unless the guardian ad litem is a licensed attorney who has been appointed in the dual role;

(5) review and sign, or decline to sign, an agreed order affecting the child; and

(6) explain the basis for the guardian ad litem's opposition to the agreed order if the guardian ad litem does not agree to the terms of a proposed order.

(d) The court may compel the guardian ad litem to attend a trial or hearing and to testify as necessary for the proper disposition of the suit.

(e) Unless the guardian ad litem is an attorney who has been appointed in the dual role and subject to the Texas Rules of Evidence, the court shall ensure in a hearing or in a trial on the merits that a guardian ad litem has an opportunity to testify regarding, and is permitted to submit a report regarding, the guardian ad litem's recommendations relating to:

(1) the best interests of the child; and

(2) the bases for the guardian ad litem's recommendations.

(f) In a nonjury trial, a party may call the guardian ad litem as a witness for the purpose of cross-examination regarding the guardian's report without the guardian ad litem being listed as a witness by a party. If the guardian ad litem is not called as a witness, the court shall permit the guardian ad litem to testify in the narrative.

(g) In a contested case, the guardian ad litem shall provide copies of the guardian ad litem's report, if any, to the

attorneys for the parties as directed by the court, but not later than the earlier of:

- (1) the date required by the scheduling order; or
- (2) the 10th day before the date of the commencement of the trial.

(h) Disclosure to the jury of the contents of a guardian ad litem's report to the court is subject to the Texas Rules of Evidence.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1995, 74th Leg., ch. 943, Sec. 10, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1294, Sec. 2, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 262, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. [172](#), Sec. 1, eff. September 1, 2005.

Sec. 107.003. POWERS AND DUTIES OF ATTORNEY AD LITEM FOR CHILD AND AMICUS ATTORNEY. An attorney ad litem appointed to represent a child or an amicus attorney appointed to assist the court:

- (1) shall:
 - (A) subject to Rules 4.02, 4.03, and 4.04, Texas Disciplinary Rules of Professional Conduct, and within a reasonable time after the appointment, interview:
 - (i) the child in a developmentally appropriate manner, if the child is four years of age or older;
 - (ii) each person who has significant knowledge of the child's history and condition, including any foster parent of the child; and
 - (iii) the parties to the suit;
 - (B) seek to elicit in a developmentally appropriate manner the child's expressed objectives of representation;

(C) consider the impact on the child in formulating the attorney's presentation of the child's expressed objectives of representation to the court;

(D) investigate the facts of the case to the extent the attorney considers appropriate;

(E) obtain and review copies of relevant records relating to the child as provided by Section 107.006;

(F) participate in the conduct of the litigation to the same extent as an attorney for a party;

(G) take any action consistent with the child's interests that the attorney considers necessary to expedite the proceedings;

(H) encourage settlement and the use of alternative forms of dispute resolution; and

(I) review and sign, or decline to sign, a proposed or agreed order affecting the child;

(2) must be trained in child advocacy or have experience determined by the court to be equivalent to that training; and

(3) is entitled to:

(A) request clarification from the court if the role of the attorney is ambiguous;

(B) request a hearing or trial on the merits;

(C) consent or refuse to consent to an interview of the child by another attorney;

(D) receive a copy of each pleading or other paper filed with the court;

(E) receive notice of each hearing in the suit;

(F) participate in any case staffing concerning the child conducted by an authorized agency; and

(G) attend all legal proceedings in the suit.

Added by Acts 1997, 75th Leg., ch. 1294, Sec. 3, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 262, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. [172](#), Sec. 2, eff. September 1, 2005.

Sec. 107.004. ADDITIONAL DUTIES OF ATTORNEY AD LITEM FOR CHILD. (a) Except as otherwise provided by this chapter, the attorney ad litem appointed for a child shall, in a developmentally appropriate manner:

(1) advise the child;

(2) represent the child's expressed objectives of representation and follow the child's expressed objectives of representation during the course of litigation if the attorney ad litem determines that the child is competent to understand the nature of an attorney-client relationship and has formed that relationship with the attorney ad litem; and

(3) as appropriate, considering the nature of the appointment, become familiar with the American Bar Association's standards of practice for attorneys who represent children in abuse and neglect cases, the suggested amendments to those standards adopted by the National Association of Counsel for Children, and the American Bar Association's standards of practice for attorneys who represent children in custody cases.

(b) An attorney ad litem appointed for a child in a proceeding under Chapter 262 or 263 shall complete at least three hours of continuing legal education relating to child advocacy as described by Subsection (c) as soon as practicable after the attorney ad litem's appointment. An attorney ad litem is not required to comply with this subsection if the court finds that the attorney ad litem has experience equivalent to the required education.

(c) The continuing legal education required by Subsection (b) must:

(1) be low-cost and available to persons throughout this state, including on the Internet provided through the State Bar of Texas; and

(2) focus on the duties of an attorney ad litem in, and the procedures of and best practices for, a proceeding under Chapter 262 or 263.

(d) Except as provided by Subsection (e), an attorney ad litem appointed for a child in a proceeding under Chapter 262 or 263 shall meet before each court hearing with:

(1) the child, if the child is at least four years of age; or

(2) the individual with whom the child ordinarily resides, including the child's parent, conservator, guardian, caretaker, or custodian, if the child is younger than four years of age.

(e) An attorney ad litem appointed for a child in a proceeding under Chapter 262 or 263 is not required to comply with Subsection (d) before a hearing if the court finds at that hearing that the attorney ad litem has shown good cause why the attorney ad litem's compliance with that subsection is not feasible or in the best interest of the child. Additionally, a court may, on a showing of good cause, authorize an attorney ad litem to comply with Subsection (d) by conferring with the child or other individual, as appropriate, by telephone or video conference.

Added by Acts 2003, 78th Leg., ch. 262, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. [172](#), Sec. 3, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. [268](#), Sec. 1.04(a), eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. [310](#), Sec. 1, eff. June 15, 2007.

Sec. 107.0045. DISCIPLINE OF ATTORNEY AD LITEM. An attorney ad litem who fails to perform the duties required by

Sections 107.003 and 107.004 is subject to disciplinary action under Subchapter E, Chapter 81, Government Code.

Added by Acts 2005, 79th Leg., Ch. [268](#), Sec. 1.05, eff. September 1, 2005.

Sec. 107.005. ADDITIONAL DUTIES OF AMICUS ATTORNEY. (a) Subject to any specific limitation in the order of appointment, an amicus attorney shall advocate the best interests of the child after reviewing the facts and circumstances of the case. Notwithstanding Subsection (b), in determining the best interests of the child, an amicus attorney is not bound by the child's expressed objectives of representation.

(b) An amicus attorney shall, in a developmentally appropriate manner:

(1) with the consent of the child, ensure that the child's expressed objectives of representation are made known to the court;

(2) explain the role of the amicus attorney to the child;

(3) inform the child that the amicus attorney may use information that the child provides in providing assistance to the court; and

(4) become familiar with the American Bar Association's standards of practice for attorneys who represent children in custody cases.

(c) An amicus attorney may not disclose confidential communications between the amicus attorney and the child unless the amicus attorney determines that disclosure is necessary to assist the court regarding the best interests of the child.

Added by Acts 2003, 78th Leg., ch. 262, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. [172](#), Sec. 4, eff. September 1, 2005.

Sec. 107.006. ACCESS TO CHILD AND INFORMATION RELATING TO CHILD. (a) Except as provided by Subsection (c), in conjunction with an appointment under this chapter, other than an appointment of an attorney ad litem for an adult or a parent, the court shall issue an order authorizing the attorney ad litem, guardian ad litem for the child, or amicus attorney to have immediate access to the child and any information relating to the child.

(b) Without requiring a further order or release, the custodian of any relevant records relating to the child, including records regarding social services, law enforcement records, school records, records of a probate or court proceeding, and records of a trust or account for which the child is a beneficiary, shall provide access to a person authorized to access the records under Subsection (a).

(c) A medical, mental health, or drug or alcohol treatment record of a child that is privileged or confidential under other law may be released to a person appointed under Subsection (a) only in accordance with the other law.

Added by Acts 1995, 74th Leg., ch. 943, Sec. 11, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1294, Sec. 4, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 262, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. [172](#), Sec. 5, eff. September 1, 2005.

Sec. 107.007. ATTORNEY WORK PRODUCT AND TESTIMONY. (a) An attorney ad litem, an attorney serving in the dual role, or an amicus attorney may not:

(1) be compelled to produce attorney work product developed during the appointment as an attorney;

(2) be required to disclose the source of any information;

(3) submit a report into evidence; or

(4) testify in court except as authorized by Rule 3.08, Texas Disciplinary Rules of Professional Conduct.

(b) Subsection (a) does not apply to the duty of an attorney to report child abuse or neglect under Section 261.101.

Added by Acts 2003, 78th Leg., ch. 262, Sec. 1, eff. Sept. 1, 2003.

Sec. 107.008. SUBSTITUTED JUDGMENT OF ATTORNEY FOR CHILD. (a) An attorney ad litem appointed to represent a child or an attorney appointed in the dual role may determine that the child cannot meaningfully formulate the child's objectives of representation in a case because the child:

(1) lacks sufficient maturity to understand and form an attorney-client relationship with the attorney;

(2) despite appropriate legal counseling, continues to express objectives of representation that would be seriously injurious to the child; or

(3) for any other reason is incapable of making reasonable judgments and engaging in meaningful communication.

(b) An attorney ad litem or an attorney appointed in the dual role who determines that the child cannot meaningfully formulate the child's expressed objectives of representation may present to the court a position that the attorney determines will serve the best interests of the child.

(c) If a guardian ad litem has been appointed for the child in a suit filed by a governmental entity requesting termination of the parent-child relationship or appointment of the entity as conservator of the child, an attorney ad litem who determines that the child cannot meaningfully formulate the child's expressed objectives of representation:

(1) shall consult with the guardian ad litem and, without being bound by the guardian ad litem's opinion or recommendation, ensure that the guardian ad litem's opinion and basis for any recommendation regarding the best interests of the child are presented to the court; and

(2) may present to the court a position that the attorney determines will serve the best interests of the child.

Added by Acts 2003, 78th Leg., ch. 262, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. [172](#), Sec. 6, eff. September 1, 2005.

Sec. 107.009. IMMUNITY. (a) A guardian ad litem, an attorney ad litem, or an amicus attorney appointed under this chapter is not liable for civil damages arising from an action taken, a recommendation made, or an opinion given in the capacity of guardian ad litem, attorney ad litem, or amicus attorney.

(b) Subsection (a) does not apply to an action taken, a recommendation made, or an opinion given:

- (1) with conscious indifference or reckless disregard to the safety of another;
- (2) in bad faith or with malice; or
- (3) that is grossly negligent or wilfully wrongful.

Added by Acts 2003, 78th Leg., ch. 262, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. [172](#), Sec. 7, eff. September 1, 2005.

Sec. 107.010. DISCRETIONARY APPOINTMENT OF ATTORNEY AD LITEM FOR INCAPACITATED PERSON. The court may appoint an

attorney to serve as an attorney ad litem for a person entitled to service of citation in a suit if the court finds that the person is incapacitated. The attorney ad litem shall follow the person's expressed objectives of representation and, if appropriate, refer the proceeding to the proper court for guardianship proceedings.

Added by Acts 2003, 78th Leg., ch. 262, Sec. 1, eff. Sept. 1, 2003.

SUBCHAPTER B. APPOINTMENTS IN CERTAIN SUITS

PART 1. APPOINTMENTS IN SUITS BY GOVERNMENTAL ENTITY

Sec. 107.011. MANDATORY APPOINTMENT OF GUARDIAN AD LITEM. (a) Except as otherwise provided by this subchapter, in a suit filed by a governmental entity seeking termination of the parent-child relationship or the appointment of a conservator for a child, the court shall appoint a guardian ad litem to represent the best interests of the child immediately after the filing of the petition but before the full adversary hearing.

(b) The guardian ad litem appointed for a child under this section may be:

(1) a charitable organization composed of volunteer advocates or an individual volunteer advocate appointed under Subchapter C;

(2) an adult having the competence, training, and expertise determined by the court to be sufficient to represent the best interests of the child; or

(3) an attorney appointed in the dual role.

(c) The court may not appoint a guardian ad litem in a suit filed by a governmental entity if an attorney is appointed in the dual role unless the court appoints another person to serve as guardian ad litem for the child and restricts the role of the attorney to acting as an attorney ad litem for the child.

(d) The court may appoint an attorney to serve as guardian ad litem for a child without appointing the attorney to serve in the dual role only if the attorney is specifically appointed to serve only in the role of guardian ad litem. An attorney appointed solely as a guardian ad litem:

(1) may take only those actions that may be taken by a nonattorney guardian ad litem; and

(2) may not:

(A) perform legal services in the case; or

(B) take any action that is restricted to a licensed attorney, including engaging in discovery other than as a witness, making opening and closing statements, or examining witnesses.

Added by Acts 1995, 74th Leg., ch. 751, Sec. 15, eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 262, Sec. 1, eff. Sept. 1, 2003.

Sec. 107.012. MANDATORY APPOINTMENT OF ATTORNEY AD LITEM FOR CHILD. In a suit filed by a governmental entity requesting termination of the parent-child relationship or to be named conservator of a child, the court shall appoint an attorney ad litem to represent the interests of the child immediately after the filing, but before the full adversary hearing, to ensure adequate representation of the child.

Added by Acts 1995, 74th Leg., ch. 751, Sec. 15, eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 262, Sec. 1, eff. Sept. 1, 2003.

Sec. 107.0125. APPOINTMENT OF ATTORNEY IN DUAL ROLE. (a) In order to comply with the mandatory appointment of a guardian ad litem under Section 107.011 and the mandatory appointment of an attorney ad litem under Section 107.012, the court may appoint an attorney to serve in the dual role.

(b) If the court appoints an attorney to serve in the dual role under this section, the court may at any time during the pendency of the suit appoint another person to serve as guardian ad litem for the child and restrict the attorney to acting as an attorney ad litem for the child.

(c) An attorney appointed to serve in the dual role may request the court to appoint another person to serve as guardian ad litem for the child. If the court grants the attorney's request, the attorney shall serve only as the attorney ad litem for the child.

(d) Unless the court appoints another person as guardian ad litem in a suit filed by a governmental entity, an appointment of an attorney to serve as an attorney ad litem in a suit filed by a governmental entity is an appointment to serve in the dual role regardless of the terminology used in the appointing order.

Added by Acts 2003, 78th Leg., ch. 262, Sec. 1, eff. Sept. 1, 2003.

Sec. 107.013. MANDATORY APPOINTMENT OF ATTORNEY AD LITEM FOR PARENT. (a) In a suit filed by a governmental entity in which termination of the parent-child relationship is requested, the court shall appoint an attorney ad litem to represent the interests of:

(1) an indigent parent of the child who responds in opposition to the termination;

(2) a parent served by citation by publication;

(3) an alleged father who failed to register with the registry under Chapter 160 and whose identity or location is unknown; and

(4) an alleged father who registered with the paternity registry under Chapter 160, but the petitioner's attempt to personally serve citation at the address provided to the registry and at any other address for the alleged father known by the petitioner has been unsuccessful.

(b) If both parents of the child are entitled to the appointment of an attorney ad litem under this section and the court finds that the interests of the parents are not in conflict, the court may appoint an attorney ad litem to represent the interests of both parents.

(c) In a suit filed by a governmental entity requesting temporary managing conservatorship of a child, the court shall appoint an attorney ad litem to represent the interests of an indigent parent of the child who responds in opposition to the suit.

(d) A parent who claims indigence under Subsection (a) must file an affidavit of indigence in accordance with Rule 145(b) of the Texas Rules of Civil Procedure before the court can conduct a hearing to determine the parent's indigence under this section.

Added by Acts 1995, 74th Leg., ch. 751, Sec. 15, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 561, Sec. 3, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 821, Sec. 2.11, eff. June 14, 2001; Acts 2003, 78th Leg., ch. 262, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. [268](#), Sec. 1.06, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. [526](#), Sec. 1, eff. June 16, 2007.

Sec. 107.015. ATTORNEY FEES. (a) An attorney appointed under this chapter to serve as an attorney ad litem for a child, an attorney in the dual role, or an attorney ad litem for a parent is entitled to reasonable fees and expenses in the amount set by the court to be paid by the parents of the child unless the parents are indigent.

(b) If the court determines that one or more of the parties are able to defray the fees and expenses of an attorney ad litem or guardian ad litem for the child as determined by the

reasonable and customary fees for similar services in the county of jurisdiction, the fees and expenses may be ordered paid by one or more of those parties, or the court may order one or more of those parties, prior to final hearing, to pay the sums into the registry of the court or into an account authorized by the court for the use and benefit of the payee on order of the court. The sums may be taxed as costs to be assessed against one or more of the parties.

(c) If indigency of the parents is shown, an attorney ad litem appointed to represent a child or parent in a suit filed by a governmental entity shall be paid from the general funds of the county according to the fee schedule that applies to an attorney appointed to represent a child in a suit under Title 3 as provided by Chapter 51. The court may not award attorney ad litem fees under this chapter against the state, a state agency, or a political subdivision of the state except as provided by this subsection.

(d) A person appointed as a guardian ad litem or attorney ad litem shall complete and submit to the court a voucher or claim for payment that lists the fees charged and hours worked by the guardian ad litem or attorney ad litem. Information submitted under this section is subject to disclosure under Chapter 552, Government Code.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Redesignated from Family Code Sec. 107.003 by Acts 1995, 74th Leg., ch. 751, Sec. 15, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 1390, Sec. 6, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 262, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. [268](#), Sec. 1.07, eff. September 1, 2005.

Sec. 107.016. CONTINUED REPRESENTATION. In a suit filed by a governmental entity in which termination of the parent-child relationship or appointment of the entity as conservator

of the child is requested, an order appointing the Department of Protective and Regulatory Services as the child's managing conservator may provide for the continuation of the appointment of the guardian ad litem or attorney ad litem for the child for any period set by the court.

Added by Acts 1995, 74th Leg., ch. 751, Sec. 15, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 575, Sec. 6, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 262, Sec. 1, eff. Sept. 1, 2003.

Sec. 107.0161. AD LITEM APPOINTMENTS FOR CHILD COMMITTED TO TEXAS YOUTH COMMISSION. If an order appointing the Department of Family and Protective Services as managing conservator of a child does not continue the appointment of the child's guardian ad litem or attorney ad litem and the child is committed to the Texas Youth Commission or released under supervision by the Texas Youth Commission, the court may appoint a guardian ad litem or attorney ad litem for the child.

Added by Acts 2009, 81st Leg., R.S., Ch. [108](#), Sec. 3, eff. May 23, 2009.

Sec. 107.017. APPOINTMENT OF AMICUS ATTORNEY PROHIBITED. The court may not appoint a person to serve as an amicus attorney in a suit filed by a governmental entity under this chapter.

Added by Acts 2003, 78th Leg., ch. 262, Sec. 1, eff. Sept. 1, 2003.

PART 2. APPOINTMENTS IN SUITS OTHER THAN SUITS BY GOVERNMENTAL ENTITY

Sec. 107.021. DISCRETIONARY APPOINTMENTS. (a) In a suit in which the best interests of a child are at issue, other than a suit filed by a governmental entity requesting termination of the parent-child relationship or appointment of the entity as conservator of the child, the court may appoint one of the following:

- (1) an amicus attorney;
- (2) an attorney ad litem; or
- (3) a guardian ad litem.

(a-1) In a suit requesting termination of the parent-child relationship that is not filed by a governmental entity, the court shall, unless the court finds that the interests of the child will be represented adequately by a party to the suit whose interests are not in conflict with the child's interests, appoint one of the following:

- (1) an amicus attorney; or
- (2) an attorney ad litem.

(b) In determining whether to make an appointment under this section, the court:

- (1) shall:

(A) give due consideration to the ability of the parties to pay reasonable fees to the appointee; and

(B) balance the child's interests against the cost to the parties that would result from an appointment by taking into consideration the cost of available alternatives for resolving issues without making an appointment;

(2) may make an appointment only if the court finds that the appointment is necessary to ensure the determination of the best interests of the child, unless the appointment is otherwise required by this code; and

(3) may not require a person appointed under this section to serve without reasonable compensation for the services rendered by the person.

Added by Acts 2003, 78th Leg., ch. 262, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. [172](#), Sec. 8, eff. September 1, 2005.

Sec. 107.022. CERTAIN PROHIBITED APPOINTMENTS. In a suit other than a suit filed by a governmental entity requesting termination of the parent-child relationship or appointment of the entity as conservator of the child, the court may not appoint:

- (1) an attorney to serve in the dual role; or
- (2) a volunteer advocate to serve as guardian ad litem for a child unless the training of the volunteer advocate is designed for participation in suits other than suits filed by a governmental entity requesting termination of the parent-child relationship or appointment of the entity as conservator of the child.

Added by Acts 2003, 78th Leg., ch. 262, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. [172](#), Sec. 9, eff. September 1, 2005.

Sec. 107.023. FEES IN SUITS OTHER THAN SUITS BY GOVERNMENTAL ENTITY. (a) In a suit other than a suit filed by a governmental entity requesting termination of the parent-child relationship or appointment of the entity as conservator of the child, in addition to the attorney's fees that may be awarded under Chapter 106, the following persons are entitled to reasonable fees and expenses in an amount set by the court and ordered to be paid by one or more parties to the suit:

- (1) an attorney appointed as an amicus attorney or as an attorney ad litem for the child; and
- (2) a professional who holds a relevant professional license and who is appointed as guardian ad litem for the child, other than a volunteer advocate.

(b) The court shall:

(1) determine the fees and expenses of an amicus attorney, an attorney ad litem, or a guardian ad litem by reference to the reasonable and customary fees for similar services in the county of jurisdiction;

(2) order a reasonable cost deposit to be made at the time the court makes the appointment; and

(3) before the final hearing, order an additional amount to be paid to the credit of a trust account for the use and benefit of the amicus attorney, attorney ad litem, or guardian ad litem.

(c) A court may not award costs, fees, or expenses to an amicus attorney, attorney ad litem, or guardian ad litem against the state, a state agency, or a political subdivision of the state under this part.

(d) The court may determine that fees awarded under this subchapter to an amicus attorney, an attorney ad litem for the child, or a guardian ad litem for the child are necessities for the benefit of the child.

Added by Acts 2003, 78th Leg., ch. 262, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. [172](#), Sec. 10, eff. September 1, 2005.

SUBCHAPTER C. APPOINTMENT OF VOLUNTEER ADVOCATES

Sec. 107.031. VOLUNTEER ADVOCATES. (a) In a suit filed by a governmental entity requesting termination of the parent-child relationship or appointment of the entity as conservator of the child, the court may appoint a charitable organization composed of volunteer advocates whose charter mandates the provision of services to allegedly abused and neglected children or an individual who has received the court's approved training regarding abused and neglected children and who has been

certified by the court to appear at court hearings as a guardian ad litem for the child or as a volunteer advocate for the child.

(b) In a suit other than a suit filed by a governmental entity requesting termination of the parent-child relationship or appointment of the entity as conservator of the child, the court may appoint a charitable organization composed of volunteer advocates whose training provides for the provision of services in private custody disputes or a person who has received the court's approved training regarding the subject matter of the suit and who has been certified by the court to appear at court hearings as a guardian ad litem for the child or as a volunteer advocate for the child. A person appointed under this subsection is not entitled to fees under Section 107.023.

(c) A court-certified volunteer advocate appointed under this section may be assigned to act as a surrogate parent for the child, as provided by 20 U.S.C. Section 1415(b), if:

- (1) the child is in the conservatorship of the Department of Family and Protective Services;
- (2) the volunteer advocate is serving as guardian ad litem for the child; and
- (3) a foster parent of the child is not acting as the child's parent under Section 29.015, Education Code.

Added by Acts 1995, 74th Leg., ch. 751, Sec. 15, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1294, Sec. 6, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 430, Sec. 3, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 262, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. [172](#), Sec. 11, eff. September 1, 2005.

SUBCHAPTER D. SOCIAL STUDY

Sec. 107.0501. DEFINITIONS. In this subchapter:

(1) "Social study" means an evaluative process through which information and recommendations regarding adoption of a child, conservatorship of a child, or possession of or access to a child may be made to a court, the parties, and the parties' attorneys. The term does not include services provided in accordance with the Interstate Compact on the Placement of Children adopted under Subchapter B, Chapter 162, or an evaluation conducted in accordance with Section 262.114 by an employee of or contractor with the Department of Family and Protective Services.

(2) "Social study evaluator" means an individual who conducts a social study under this subchapter.

Added by Acts 2007, 80th Leg., R.S., Ch. [832](#), Sec. 1, eff. September 1, 2007.

Sec. 107.051. ORDER FOR SOCIAL STUDY. (a) The court may order the preparation of a social study into the circumstances and condition of:

(1) a child who is the subject of a suit or a party to a suit; and

(2) the home of any person requesting conservatorship of, possession of, or access to a child.

(b) The social study may be made by a private entity, a person appointed by the court, a domestic relations office, or a state agency, including the Department of Family and Protective Services if the department is a party to the suit.

(c) In a suit in which adoption is requested or conservatorship of, possession of, or access to a child is an issue and in which a social study has been ordered and the Department of Family and Protective Services is not a party, the court shall appoint a private agency, another person, or a domestic relations office to conduct the social study.

(d) Except as provided by Section 107.0511(b), each individual who conducts a social study must be qualified under Section 107.0511.

Added by Acts 1995, 74th Leg., ch. 751, Sec. 15, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 1390, Sec. 7, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 133, Sec. 2, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 488, Sec. 1, eff. June 11, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. [832](#), Sec. 2, eff. September 1, 2007.

For expiration of Subsections (g), (h), and (i), see Subsection (i).

Sec. 107.0511. SOCIAL STUDY EVALUATOR: MINIMUM QUALIFICATIONS. (a) In this section:

(1) "Full-time experience" means a period during which an individual works at least 30 hours per week.

(2) "Human services field of study" means a field of study designed to prepare an individual in the disciplined application of counseling, family therapy, psychology, or social work values, principles, and methods.

(b) The minimum qualifications prescribed by this section do not apply to an individual conducting a social study:

(1) in connection with a suit pending before a court located in a county with a population of less than 500,000;

(2) in connection with an adoption governed by rules adopted under Section 107.0519(a);

(3) as an employee or other authorized representative of a licensed child-placing agency; or

(4) as an employee or other authorized representative of the Department of Family and Protective Services.

(c) The executive commissioner of the Health and Human Services Commission shall adopt rules prescribing the minimum qualifications that an individual described by Subsection (b)(3) or (4) must possess in order to conduct a social study under this subchapter.

(d) To be qualified to conduct a social study under this subchapter, an individual must:

(1) have a bachelor's degree from an accredited college or university in a human services field of study and a license to practice in this state as a social worker, professional counselor, marriage and family therapist, or psychologist and:

(A) have two years of full-time experience or equivalent part-time experience under professional supervision during which the individual performed functions involving the evaluation of physical, intellectual, social, and psychological functioning and needs and the potential of the social and physical environment, both present and prospective, to meet those needs; and

(B) have participated in the performance of at least 10 court-ordered social studies under the supervision of an individual qualified under this section;

(2) meet the requirements of Subdivision (1)(A) and be practicing under the direct supervision of an individual qualified under this section in order to complete at least 10 court-ordered social studies under supervision; or

(3) be employed by a domestic relations office, provided that the individual conducts social studies relating only to families ordered by a court to participate in social studies conducted by the office.

(e) If an individual meeting the requirements of this section is not available in the county served by the court, the court may authorize an individual determined by the court to be otherwise qualified to conduct the social study.

(f) In addition to the qualifications prescribed by this section, an individual must complete at least eight hours of family violence dynamics training provided by a family violence service provider to be qualified to conduct a social study under this subchapter.

(g) The minimum qualifications prescribed by this section do not apply to an individual who, before September 1, 2007:

(1) lived in a county that has a population of 500,000 or more and is adjacent to two or more counties each of which has a population of 50,000 or more;

(2) received a four-year degree from an accredited institution of higher education;

(3) worked as a child protective services investigator for the Department of Family and Protective Services for at least four years;

(4) worked as a community supervision and corrections department officer; and

(5) conducted at least 100 social studies in the previous five years.

(h) A person described by Subsection (g) who performs a social study must:

(1) complete at least eight hours of family violence dynamics training provided by a family violence service provider; and

(2) participate annually in at least 15 hours of continuing education for child custody evaluators that meets the Model Standards of Practice for Child Custody Evaluation adopted by the Association of Family and Conciliation Courts as those standards existed May 1, 2009, or a later version of those standards if adopted by rule of the executive commissioner of the Health and Human Services Commission.

(i) Subsections (g) and (h) and this subsection expire September 1, 2017.

Added by Acts 2001, 77th Leg., ch. 133, Sec. 3, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. [832](#), Sec. 3, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. [1113](#), Sec. 2, eff. September 1, 2009.

Sec. 107.0512. SOCIAL STUDY EVALUATOR: CONFLICTS OF INTEREST AND BIAS. (a) A social study evaluator who has a conflict of interest with any party in a disputed suit or who may be biased on the basis of previous knowledge, other than knowledge obtained in a court-ordered evaluation, shall:

(1) decline to conduct a social study for the suit;

or

(2) disclose any issue or concern to the court before accepting the appointment or assignment.

(b) A social study evaluator who has previously conducted a social study for a suit may conduct all subsequent evaluations in the suit unless the court finds that the evaluator is biased.

(c) This section does not prohibit a court from appointing an employee of the Department of Family and Protective Services to conduct a social study in a suit in which adoption is requested or possession of or access to a child is an issue and in which the department is a party or has an interest.

Added by Acts 2007, 80th Leg., R.S., Ch. [832](#), Sec. 3, eff. September 1, 2007.

Sec. 107.0513. GENERAL PROVISIONS APPLICABLE TO CONDUCT OF SOCIAL STUDY AND PREPARATION OF REPORT. (a) Unless otherwise directed by a court or prescribed by a provision of this title, a social study evaluator's actions in conducting a social study shall be in conformance with the professional standard of care applicable to the evaluator's licensure and any administrative rules, ethical standards, or guidelines adopted by the state agency that licenses the evaluator.

(b) In addition to the requirements prescribed by this subchapter, a court may impose requirements or adopt local rules applicable to a social study or a social study evaluator.

(c) A social study evaluator shall follow evidence-based practice methods and make use of current best evidence in making assessments and recommendations.

(d) A social study evaluator shall disclose to each attorney of record any communication regarding a substantive issue between the evaluator and an attorney of record representing a party in a disputed suit. This subsection does not apply to a communication between a social study evaluator and an attorney ad litem or amicus attorney.

(e) To the extent possible, a social study evaluator shall verify each statement of fact pertinent to a social study and shall note the sources of verification and information in the report.

(f) A social study evaluator shall state the basis for the evaluator's conclusions or recommendations in the report. A social study evaluator who has evaluated only one side of a disputed case shall refrain from making a recommendation regarding conservatorship of a child or possession of or access to a child, but may state whether the party evaluated appears to be suitable for conservatorship.

(g) Each social study subject to this subchapter must be conducted in compliance with this subchapter, regardless of whether the study is conducted:

- (1) by a single social study evaluator or multiple evaluators working separately or together; or
- (2) within a county served by the court with continuing jurisdiction or at a geographically distant location.

(h) A social study report must include the name, license number, and basis for qualification under Section 107.0511 of each social study evaluator who conducted any portion of the social study.

Added by Acts 2007, 80th Leg., R.S., Ch. [832](#), Sec. 3, eff. September 1, 2007.

Sec. 107.0514. ELEMENTS OF SOCIAL STUDY. (a) The basic elements of a social study under this subchapter consist of:

- (1) a personal interview of each party to the suit;

(2) an interview, conducted in a developmentally appropriate manner, of each child at issue in the suit who is at least four years of age;

(3) observation of each child at issue in the suit, regardless of the age of the child;

(4) the obtaining of information from relevant collateral sources;

(5) evaluation of the home environment of each party seeking conservatorship of a child at issue in the suit or possession of or access to the child, unless the condition of the home environment is identified as not being in dispute in the court order requiring the social study;

(6) for each individual residing in a residence subject to the social study, consideration of any criminal history information and any contact with the Department of Family and Protective Services or a law enforcement agency regarding abuse or neglect; and

(7) assessment of the relationship between each child at issue in the suit and each party seeking possession of or access to the child.

(b) The additional elements of a social study under this subchapter consist of:

(1) balanced interviews and observation of each child at issue in the suit so that a child who is interviewed or observed while in the care of one party to the suit is also interviewed or observed while in the care of each other party to the suit;

(2) an interview of each individual residing in a residence subject to the social study; and

(3) evaluation of the home environment of each party seeking conservatorship of a child at issue in the suit or possession of or access to the child, regardless of whether the home environment is in dispute.

(c) A social study evaluator may not offer an opinion regarding conservatorship of a child at issue in a suit or possession of or access to the child unless each basic element of a social study under Subsection (a) has been completed. A

social study evaluator shall identify in the report any additional element of a social study under Subsection (b) that was not completed and shall explain the reasons that the element was not completed.

Added by Acts 2007, 80th Leg., R.S., Ch. [832](#), Sec. 3, eff. September 1, 2007.

Sec. 107.0515. REPORTS OF CERTAIN PLACEMENTS FOR ADOPTION. A social study evaluator shall report to the Department of Family and Protective Services any adoptive placement that appears to have been made by someone other than a licensed child-placing agency or the child's parents or managing conservator.

Added by Acts 2007, 80th Leg., R.S., Ch. [832](#), Sec. 3, eff. September 1, 2007.

Sec. 107.0519. PRE-ADOPTIVE SOCIAL STUDY. (a) This section does not apply to a study prepared by a licensed child-placing agency or the Department of Family and Protective Services. The procedures required in relation to a study prepared by a licensed child-placing agency or the Department of Family and Protective Services are governed by rules adopted by the executive commissioner of the Health and Human Services Commission, including rules adopted under Chapter 42, Human Resources Code.

(b) A pre-adoptive social study shall be conducted as provided by this section to evaluate each party in a proceeding described by Subsection (c) who requests termination of the parent-child relationship or an adoption.

(c) The social study under this section shall be filed in any suit for:

(1) termination of the parent-child relationship in which a person other than a parent may be appointed managing conservator of a child; or

(2) an adoption.

(d) The social study under this section must be filed with the court before the court may sign the final order for termination of the parent-child relationship.

(e) The costs of a social study in a suit for adoption under this section shall be paid by the prospective adoptive parent.

(f) Unless otherwise agreed to by the court, the social study under this section must comply with the minimum requirements for the study under rules adopted by the executive commissioner of the Health and Human Services Commission.

(g) In a suit filed after the child begins residence in the prospective adoptive home, the pre-adoptive social study under this section and the post-placement adoptive social study under Section 107.052 may be combined in a single report. Under this subsection, the pre-adoptive social study will be completed after the child is placed in the home.

Added by Acts 2007, 80th Leg., R.S., Ch. [832](#), Sec. 3, eff. September 1, 2007.

Sec. 107.052. POST-PLACEMENT ADOPTIVE SOCIAL STUDY AND REPORT. (a) In a proceeding in which a pre-adoptive social study is required by Section 107.0519 for an adoption, a post-placement adoptive social study must be conducted and a report filed with the court before the court may render a final order in the adoption.

(b) Unless otherwise agreed to by the court, the post-placement adoptive social study must comply with the minimum requirements for the study under rules adopted by the executive commissioner of the Health and Human Services Commission.

Added by Acts 1995, 74th Leg., ch. 751, Sec. 15, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 133, Sec. 4, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. [832](#), Sec. 4, eff. September 1, 2007.

Sec. 107.053. PROSPECTIVE ADOPTIVE PARENTS TO RECEIVE COPY. In all adoptions a copy of the report shall be made available to the prospective adoptive parents prior to a final order of adoption.

Added by Acts 1995, 74th Leg., ch. 751, Sec. 15, eff. Sept. 1, 1995.

Sec. 107.054. REPORT FILED WITH COURT. The agency or person making the social study shall file with the court on a date set by the court a report containing its findings and conclusions. The report shall be made a part of the record of the suit.

Added by Acts 1995, 74th Leg., ch. 751, Sec. 15, eff. Sept. 1, 1995.

Sec. 107.055. INTRODUCTION OF REPORT AT TRIAL. (a) Disclosure to the jury of the contents of a report to the court of a social study is subject to the rules of evidence.

(b) In a contested case, the agency or person making the social study shall furnish copies of the report to the attorneys for the parties before the earlier of:

(1) the seventh day after the date the social study is completed; or

(2) the fifth day before the date of commencement of the trial.

(c) The court may compel the attendance of witnesses necessary for the proper disposition of the suit, including a representative of the agency making the social study, who may be compelled to testify.

Added by Acts 1995, 74th Leg., ch. 751, Sec. 15, eff. Sept. 1, 1995.

Sec. 107.056. PREPARATION FEE. If the court orders a social study to be conducted, the court shall award the agency or other person a reasonable fee for the preparation of the study that shall be imposed in the form of a money judgment and paid directly to the agency or other person. The person or agency may enforce the judgment for the fee by any means available under law for civil judgments.

Added by Acts 1995, 74th Leg., ch. 751, Sec. 15, eff. Sept. 1, 1995.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. [832](#), Sec. 5, eff. September 1, 2007.