

1 **SENATE FLOOR VERSION**

2 February 26, 2019

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL NO. 989

6 By: Floyd

7 An Act relating to guardians; amending 10A O.S. 2011,
8 Section 1-4-306, as amended by Section 1, Chapter
9 271, O.S.L. 2015 (10A O.S. Supp. 2018, Section 1-4-
10 306), which relates to guardians ad litem; modifying
11 responsibility for development of certain manual;
12 amending 30 O.S. 2011, Section 1-124, which relates
13 to guardianship and conservatorship handbook;
14 modifying responsibility for development of certain
15 handbook; amending 43 O.S. 2011, Section 107.3, as
16 amended by Section 1, Chapter 16, O.S.L. 2017 (43
17 O.S. Supp. 2018, Section 107.3), which relates to
18 appointment of guardians ad litem; modifying
19 responsibility for development of certain manual; and
20 providing an effective date.

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

22 SECTION 1. AMENDATORY 10A O.S. 2011, Section 1-4-306, as
23 amended by Section 1, Chapter 271, O.S.L. 2015 (10A O.S. Supp. 2018,
24 Section 1-4-306), is amended to read as follows:

Section 1-4-306.

A. 1. a. If a parent or legal guardian of the child requests an
attorney and is found to be indigent, counsel may be
appointed by the court at the emergency custody
hearing and shall be appointed if a petition has been

1 filed alleging that the child is a deprived child;
2 provided, that the court may appoint counsel without
3 such request, if it deems representation by counsel
4 necessary to protect the interest of the parent, legal
5 guardian, or custodian.

6 b. The court shall not be required to appoint an attorney
7 for any person other than a parent, or legal guardian
8 of the child pursuant to the provisions of this
9 paragraph.

10 2. a. The court may appoint an attorney or a guardian ad
11 litem for the child when an emergency custody hearing
12 is held; provided, that when a petition is filed
13 alleging the child to be deprived, the court shall
14 appoint a separate attorney for the child, who shall
15 not be a district attorney, regardless of any
16 attempted waiver by the parent, legal guardian or
17 custodian of the child of the right of the child to be
18 represented by counsel. The child's attorney shall be
19 independent of and not selected by the district
20 attorney, the child's parent, legal guardian, or
21 custodian. If financially capable, the parent, legal
22 guardian or custodian shall reimburse the Court Fund
23 for the services of a court-appointed attorney for the
24 child.

1 b. The attorney appointed for the child shall make
2 arrangements to meet with the child as soon as
3 possible after receiving notification of the
4 appointment. Except for good cause shown, the
5 attorney shall meet with the child prior to any
6 hearing in such proceeding. The attorney may speak
7 with the child over the telephone if a personal visit
8 is not possible due to exigent circumstances. If a
9 meaningful attorney-client relationship between the
10 child and the attorney is prohibited due to age or
11 disability of the child, the attorney shall contact
12 the custodian or caretaker of the child prior to the
13 hearing.

14 c. The attorney shall represent the child and any
15 expressed interests of the child. To the extent that
16 a child is unable to express an interest, either
17 because the child is preverbal, very young or for any
18 reason is incapable of judgment and meaningful
19 communication, the attorney shall substitute his or
20 her judgment for that of the child and formulate and
21 present a position which serves the best interests of
22 the child. Such formulation must be accomplished
23 through the use of objective criteria rather than
24 solely the life experience or instinct of the

1 attorney. The objective criteria shall include, but
2 not be limited to:

- 3 (1) a determination of the circumstances of the
4 child through a full and efficient
5 investigation,
- 6 (2) assessment of the child at the moment of
7 the determination,
- 8 (3) examination of all options in light of the
9 permanency plans available to the child,
10 and
- 11 (4) utilization of medical, mental health and
12 educational professionals, social workers
13 and other related experts.

14 The attorney shall make such further inquiry as the
15 attorney deems necessary to ascertain the facts, to
16 interview witnesses, examine and cross-examine
17 witnesses, make recommendations to the court and
18 participate further in the proceedings to the degree
19 appropriate for adequately representing the interests
20 of the child. A child is a party to all deprived
21 proceedings and is therefore able to participate as
22 fully as the parents and the district attorney in all
23 aspects of the proceedings including, but not limited
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1 to, voir dire, cross examination, the subpoena of
2 witnesses, and opening and closing statements.

3 3. The attorney shall be allowed a reasonable fee for such
4 services as determined by the court.

5 4. When an attorney is required to travel to more than one
6 district court location in order to represent a child or children
7 whom the attorney has been court-appointed to represent, the court
8 may in its discretion allow the attorney a reasonable reimbursement
9 for mileage.

10 5. The court shall ensure that the child is represented by
11 independent counsel throughout the pendency of the deprived action.

12 B. 1. After a petition is filed, the court shall appoint a
13 guardian ad litem upon the request of the child or the attorney of
14 the child, and may appoint a guardian ad litem sua sponte or upon
15 the request of the Department of Human Services, a licensed child-
16 placing agency, or another party to the action.

17 2. A guardian ad litem shall not be a district attorney, an
18 employee of the office of the district attorney, the child's
19 attorney, an employee of the court, an employee of a juvenile
20 bureau, or an employee of any public agency having duties or
21 responsibilities towards the child.

22 3. The guardian ad litem shall be appointed to objectively
23 advocate on behalf of the child and act as an officer of the court
24 to investigate all matters concerning the best interests of the

1 child. In addition to other duties required by the court and as
2 specified by the court, a guardian ad litem shall have the following
3 responsibilities:

- 4 a. review documents, reports, records and other
5 information relevant to the case, meet with and
6 observe the child in appropriate settings, including
7 the child's current placement, and interview parents,
8 foster parents, health care providers, child
9 protective services workers and any other person with
10 knowledge relevant to the case,
- 11 b. advocate for the best interests of the child by
12 participating in the case, attending any hearings in
13 the matter and advocating for appropriate services for
14 the child when necessary,
- 15 c. monitor the best interests of the child throughout any
16 judicial proceeding, and
- 17 d. present written reports on the best interests of the
18 child that include conclusions and recommendations and
19 the facts upon which they are based.

20 4. The guardian ad litem shall be given access to the court
21 files and agency files and access to all documents, reports, records
22 and other information relevant to the case and to any records and
23 reports of examination of the child's parent or other custodian,
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1 made pursuant to the laws relating to child abuse and neglect
2 including reports generated by service providers.

3 5. ~~On or before December 31, 2009, the~~ The Administrative
4 Director of the Courts, in conjunction with the Estate Planning,
5 Probate and Trust Committee of the Oklahoma Bar Association, shall
6 develop a standard operating manual for guardians ad litem which
7 shall include, but not be limited to, legal obligations and
8 responsibilities, information concerning child abuse, child
9 development, domestic abuse, sexual abuse, and parent and child
10 behavioral health and management including best practices. After
11 publication of the manual, all guardians ad litem shall certify to
12 the court in which he or she is appointed as a guardian ad litem
13 that the manual has been read and all provisions contained therein
14 are understood. The guardian ad litem shall also certify that he or
15 she agrees to follow the best practices described within the
16 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 C. 1. Whenever a court-appointed special advocate program is
21 available to the court to serve as a guardian ad litem, priority may
22 be given to appointment of the court-appointed special advocate to
23 serve as guardian ad litem for the child regardless of whether a
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1 guardian ad litem has been requested pursuant to the provisions of
2 this subsection.

3 2. For purposes of the Oklahoma Children's Code, a "court-
4 appointed special advocate" and a "guardian ad litem" shall have the
5 same function except as otherwise provided by law. In like manner,
6 a court-appointed special advocate, except as specifically otherwise
7 provided by law or by the court, shall have the same power, duties,
8 and responsibilities as assigned to a guardian ad litem by law and
9 shall have such other qualifications, duties, and responsibilities
10 as may be prescribed by rule by the Supreme Court.

11 3. A court-appointed special advocate shall serve without
12 compensation.

13 SECTION 2. AMENDATORY 30 O.S. 2011, Section 1-124, is
14 amended to read as follows:

15 Section 1-124. The Administrative Office of the Courts, in
16 conjunction with the Estate Planning, Probate and Trust Committee of
17 the Oklahoma Bar Association, shall prepare a guardianship and
18 conservatorship handbook for distribution to the district courts.
19 The handbook shall be written in clear, simple language and shall
20 include information about the laws and procedures which apply to
21 adult guardianships and conservatorships and the duties and
22 responsibilities of such guardians and conservators. In conjunction
23 with the guardianship handbook, the Administrative Office of the
24 Courts shall develop a summary of the duties of guardians and

1 conservators including, but not limited to, statutory notices,
2 timetables, and required court approvals. The summary shall
3 emphasize the significance of timely accountability to the court and
4 to the ward as well as the sanctions and penalties which may be
5 imposed for failure to comply with the requirements of the law or
6 orders of the court. Copies of the handbook shall be made available
7 to the public through the offices of the district court clerks.

8 SECTION 3. AMENDATORY 43 O.S. 2011, Section 107.3, as
9 amended by Section 1, Chapter 16, O.S.L. 2017 (43 O.S. Supp. 2018,
10 Section 107.3), is amended to read as follows:

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

16 2. The guardian ad litem may be appointed to objectively
17 advocate on behalf of the child and act as an officer of the court
18 to investigate all matters concerning the best interests of the
19 child. In addition to other duties required by the court and as
20 specified by the court, a guardian ad litem shall have the following
21 responsibilities:

22 a. review documents, reports, records and other
23 information relevant to the case, meet with and
24 observe the child in appropriate settings, and

1 interview parents, caregivers and health care
2 providers and any other person with knowledge relevant
3 to the case including, but not limited to, teachers,
4 counselors and child care providers,

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

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

11 d. present written factual reports to the parties and
12 court prior to trial or at any other time as specified
13 by the court on the best interests of the child, which
14 determination is solely the decision of the court, and

15 e. the guardian ad litem shall, as much as possible,
16 maintain confidentiality of information related to the
17 case and is not subject to discovery pursuant to the
18 Oklahoma Discovery Code.

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

21 4. ~~On or before December 31, 2007, the~~ The Administrative
22 Director of the Courts, in conjunction with the Estate Planning,
23 Probate and Trust Committee of the Oklahoma Bar Association, shall
24 develop a standard operating manual for guardians ad litem which

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

14 B. When property, separate maintenance, or custody is at issue,
15 the court:

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

21 a. the following three conditions are satisfied:

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

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

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

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

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

20 C. As used in this section:

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

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

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

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

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

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

16 SECTION 4. This act shall become effective November 1, 2019.

17 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
18 February 26, 2019 - DO PASS AS AMENDED

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