

An Act

ENROLLED SENATE
BILL NO. 989

By: Floyd of the Senate

and

Baker of the House

An Act relating to guardians; amending 10A O.S. 2011, Section 1-4-306, as amended by Section 1, Chapter 271, O.S.L. 2015 (10A O.S. Supp. 2018, Section 1-4-306), which relates to guardians ad litem; modifying responsibility for development of guardians ad litem manual; requiring posting of link to manual on Oklahoma State Courts Network (OSCN) website; amending 30 O.S. 2011, Section 1-124, which relates to guardianship and conservatorship handbook; modifying responsibility for preparation of guardianship and conservatorship handbook; directing posting of link to handbook on OSCN website; amending 43 O.S. 2011, Section 107.3, as amended by Section 1, Chapter 16, O.S.L. 2017 (43 O.S. Supp. 2018, Section 107.3), which relates to appointment of guardians ad litem; modifying responsibility for development of standard operating manual; mandating posting of link to manual on OSCN website; and providing an effective date.

SUBJECT: Guardianship manuals

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

SECTION 1. AMENDATORY 10A O.S. 2011, Section 1-4-306, as amended by Section 1, Chapter 271, O.S.L. 2015 (10A O.S. Supp. 2018, 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 filed alleging that the child is a deprived child; provided, that the court may appoint counsel without such request, if it deems representation by counsel necessary to protect the interest of the parent, legal guardian, or custodian.
- b. The court shall not be required to appoint an attorney for any person other than a parent, or legal guardian of the child pursuant to the provisions of this paragraph.
- 2. a. The court may appoint an attorney or a guardian ad litem for the child when an emergency custody hearing is held; provided, that when a petition is filed alleging the child to be deprived, the court shall appoint a separate attorney for the child, who shall not be a district attorney, regardless of any attempted waiver by the parent, legal guardian or custodian of the child of the right of the child to be represented by counsel. The child's attorney shall be independent of and not selected by the district attorney, the child's parent, legal guardian, or custodian. If financially capable, the parent, legal guardian or custodian shall reimburse the Court Fund for the services of a court-appointed attorney for the child.
- b. The attorney appointed for the child shall make arrangements to meet with the child as soon as possible after receiving notification of the appointment. Except for good cause shown, the attorney shall meet with the child prior to any hearing in such proceeding. The attorney may speak with the child over the telephone if a personal visit is not possible due to exigent circumstances. If a

meaningful attorney-client relationship between the child and the attorney is prohibited due to age or disability of the child, the attorney shall contact the custodian or caretaker of the child prior to the hearing.

- c. The attorney shall represent the child and any expressed interests of the child. To the extent that a child is unable to express an interest, either because the child is preverbal, very young or for any reason is incapable of judgment and meaningful communication, the attorney shall substitute his or her judgment for that of the child and formulate and present a position which serves the best interests of the child. Such formulation must be accomplished through the use of objective criteria rather than solely the life experience or instinct of the attorney. The objective criteria shall include, but not be limited to:

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

The attorney shall make such further inquiry as the attorney deems necessary to ascertain the facts, to interview witnesses, examine and cross-examine witnesses, make recommendations to the court and participate further in the proceedings to the degree appropriate for adequately representing the interests of the child. A child is a party to all deprived proceedings and is therefore able to participate as fully as the parents and the district attorney in

all aspects of the proceedings including, but not limited to, voir dire, cross-examination, the subpoena of witnesses, and opening and closing statements.

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

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

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

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

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

3. The guardian ad litem shall 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:

- a. review documents, reports, records and other information relevant to the case, meet with and observe the child in appropriate settings, including the child's current placement, and interview parents, foster parents, health care providers, child protective services workers and any other person with knowledge relevant to the case,

- b. advocate for the best interests of the child by participating in the case, attending any hearings in the matter and advocating for appropriate services for the child when necessary,
- c. monitor the best interests of the child throughout any judicial proceeding, and
- d. present written reports on the best interests of the child that include conclusions and recommendations and the facts upon which they are based.

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

5. ~~On or before December 31, 2009, the Administrative Director of the Courts~~ The Oklahoma Bar Association shall develop a standard operating manual for guardians ad litem which shall include, but not be limited to, legal obligations and responsibilities, information concerning child abuse, child development, domestic abuse, sexual abuse, and parent and child behavioral health and management including best practices. After publication of the manual, all guardians ad litem shall certify to the court in which he or she is appointed as a guardian ad litem that the manual has been read and all provisions contained therein are understood. The guardian ad litem shall also certify that he or she agrees to follow the best practices described within the standard operating manual. The ~~Administrative Director~~ Office of the Courts shall provide public access to the standard operating manual ~~and shall periodically review and revise the manual as deemed necessary~~ by providing a link to the manual on the Oklahoma State Courts Network (OSCN) website.

C. 1. Whenever a court-appointed special advocate program is available to the court to serve as a guardian ad litem, priority may be given to appointment of the court-appointed special advocate to serve as guardian ad litem for the child regardless of whether a

guardian ad litem has been requested pursuant to the provisions of this subsection.

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

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

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

Section 1-124. ~~The Administrative Office of the Courts Oklahoma Bar Association shall prepare a guardianship and conservatorship handbook for distribution by the Administrative Office of the Courts to the district courts by providing a link to the handbook on the Oklahoma State Courts Network (OSCN) website. The handbook shall be written in clear, simple language and shall include information about the laws and procedures which apply to adult guardianships and conservatorships and the duties and responsibilities of such guardians and conservators. In conjunction with the guardianship~~ The handbook, the Administrative Office of the Courts shall develop include a summary of the duties of guardians and conservators including, but not limited to, statutory notices, timetables, and required court approvals. The summary shall emphasize the significance of timely accountability to the court and to the ward as well as the sanctions and penalties which may be imposed for failure to comply with the requirements of the law or orders of the court. ~~Copies of the handbook shall be made available to the public through the offices of the district court clerks.~~

SECTION 3. AMENDATORY 43 O.S. 2011, Section 107.3, as amended by Section 1, Chapter 16, O.S.L. 2017 (43 O.S. Supp. 2018, 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:

- a. review documents, reports, records and other information relevant to the case, meet with and observe the child in appropriate settings, and interview parents, caregivers and health care providers and any other person with knowledge relevant to the case including, but not limited to, teachers, counselors and child care providers,
- b. advocate for the best interests of the child by participating in the case, attending any hearings in the matter and advocating for appropriate services for the child when necessary,
- c. monitor the best interests of the child throughout any judicial proceeding,
- d. present written factual reports to the parties and court prior to trial or at any other time as specified by the court on the best interests of the child, which determination is solely the decision of the court, and
- e. the guardian ad litem shall, as much as possible, maintain confidentiality of information related to the case and is not subject to discovery pursuant to the Oklahoma Discovery Code.

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

4. ~~On or before December 31, 2007, the Administrative Director of the Courts~~ The Oklahoma Bar Association shall develop a standard operating manual for guardians ad litem which shall include, but not be limited to, legal obligations and responsibilities, information concerning child abuse, child development, domestic abuse, sexual abuse, and parent and child behavioral health and management including best practices. After publication of the manual, all guardians ad litem shall certify to the court in which he or she is appointed as a guardian ad litem that the manual has been read and all provisions contained therein are understood. The guardian ad litem shall also certify that he or she agrees to follow the best practices described within the standard operating manual. The ~~Administrative Director~~ Office of the Courts shall provide public access to the standard operating manual ~~and shall periodically review and revise the manual as deemed necessary by providing a link to the manual on the Oklahoma State Courts Network (OSCN) website.~~

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

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

a. the following three conditions are satisfied:

- (1) the professional mediator has substantial training concerning the effects of domestic violence or child abuse on victims,
- (2) a party who is or alleges to be the victim of domestic violence is capable of negotiating with the other party in mediation, either alone or with assistance, without suffering an imbalance of power as a result of the alleged domestic violence, and
- (3) the mediation process contains appropriate provisions and conditions to protect against an

imbalance of power between parties resulting from the alleged domestic violence or child abuse, or

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

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

C. As used in this section:

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

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

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

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

2. Consider the false allegations in determining custody; and

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

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

Passed the Senate the 9th day of May, 2019.

Presiding Officer of the Senate

Passed the House of Representatives the 24th day of April, 2019.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____