

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 57th Legislature (2019)

4 COMMITTEE SUBSTITUTE
5 FOR ENGROSSED
6 SENATE BILL NO. 989

By: Floyd of the Senate

and

Baker of the House

7
8
9
10 COMMITTEE SUBSTITUTE

11 An Act relating to guardians; amending 10A O.S. 2011,
12 Section 1-4-306, as amended by Section 1, Chapter
13 271, O.S.L. 2015 (10A O.S. Supp. 2018, Section 1-4-
14 306), which relates to guardians ad litem; modifying
15 responsibility for development of guardians ad litem
16 manual; requiring posting of link to manual on
17 Oklahoma State Courts Network (OSCN) website;
18 amending 30 O.S. 2011, Section 1-124, which relates
19 to guardianship and conservatorship handbook;
20 modifying responsibility for preparation of
21 guardianship and conservatorship handbook; directing
22 posting of link to handbook on OSCN website; amending
23 43 O.S. 2011, Section 107.3, as amended by Section 1,
24 Chapter 16, O.S.L. 2017 (43 O.S. Supp. 2018, Section
25 107.3), which relates to appointment of guardians ad
26 litem; modifying responsibility for development of
27 standard operating manual; mandating posting of link
28 to manual on OSCN website; and providing an effective
29 date.

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

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

4 Section 1-4-306.

5 A. 1. a. If a parent or legal guardian of the child requests an
6 attorney and is found to be indigent, counsel may be
7 appointed by the court at the emergency custody
8 hearing and shall be appointed if a petition has been
9 filed alleging that the child is a deprived child;
10 provided, that the court may appoint counsel without
11 such request, if it deems representation by counsel
12 necessary to protect the interest of the parent, legal
13 guardian, or custodian.

14 b. The court shall not be required to appoint an attorney
15 for any person other than a parent, or legal guardian
16 of the child pursuant to the provisions of this
17 paragraph.

18 2. a. The court may appoint an attorney or a guardian ad
19 litem for the child when an emergency custody hearing
20 is held; provided, that when a petition is filed
21 alleging the child to be deprived, the court shall
22 appoint a separate attorney for the child, who shall
23 not be a district attorney, regardless of any
24 attempted waiver by the parent, legal guardian or

1 custodian of the child of the right of the child to be
2 represented by counsel. The child's attorney shall be
3 independent of and not selected by the district
4 attorney, the child's parent, legal guardian, or
5 custodian. If financially capable, the parent, legal
6 guardian or custodian shall reimburse the Court Fund
7 for the services of a court-appointed attorney for the
8 child.

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

22 c. The attorney shall represent the child and any
23 expressed interests of the child. To the extent that
24 a child is unable to express an interest, either

1 because the child is preverbal, very young or for any
2 reason is incapable of judgment and meaningful
3 communication, the attorney shall substitute his or
4 her judgment for that of the child and formulate and
5 present a position which serves the best interests of
6 the child. Such formulation must be accomplished
7 through the use of objective criteria rather than
8 solely the life experience or instinct of the
9 attorney. The objective criteria shall include, but
10 not be limited to:

- 11 (1) a determination of the circumstances of the
12 child through a full and efficient
13 investigation,
- 14 (2) assessment of the child at the moment of
15 the determination,
- 16 (3) examination of all options in light of the
17 permanency plans available to the child,
18 and
- 19 (4) utilization of medical, mental health and
20 educational professionals, social workers
21 and other related experts.

22 The attorney shall make such further inquiry as the attorney
23 deems necessary to ascertain the facts, to interview witnesses,
24 examine and cross-examine witnesses, make recommendations to the

1 court and participate further in the proceedings to the degree
2 appropriate for adequately representing the interests of the child.
3 A child is a party to all deprived proceedings and is therefore able
4 to participate as fully as the parents and the district attorney in
5 all aspects of the proceedings including, but not limited to, voir
6 dire, cross-examination, the subpoena of witnesses, and opening and
7 closing statements.

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

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

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

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

22 2. A guardian ad litem shall not be a district attorney, an
23 employee of the office of the district attorney, the child's
24 attorney, an employee of the court, an employee of a juvenile

1 bureau, or an employee of any public agency having duties or
2 responsibilities towards the child.

3 3. The guardian ad litem shall be appointed to objectively
4 advocate on behalf of the child and act as an officer of the court
5 to investigate all matters concerning the best interests of the
6 child. In addition to other duties required by the court and as
7 specified by the court, a guardian ad litem shall have the following
8 responsibilities:

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

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

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

23 C. 1. Whenever a court-appointed special advocate program is
24 available to the court to serve as a guardian ad litem, priority may

1 be given to appointment of the court-appointed special advocate to
2 serve as guardian ad litem for the child regardless of whether a
3 guardian ad litem has been requested pursuant to the provisions of
4 this subsection.

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

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

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

17 Section 1-124. The ~~Administrative Office of the Courts~~ Oklahoma
18 Bar Association shall prepare a guardianship and conservatorship
19 handbook for distribution by the Administrative Office of the Courts
20 to the district courts by providing a link to the handbook on the
21 Oklahoma State Courts Network (OSCN) website. The handbook shall be
22 written in clear, simple language and shall include information
23 about the laws and procedures which apply to adult guardianships and
24 conservatorships and the duties and responsibilities of such

1 guardians and conservators. ~~In conjunction with the guardianship~~
2 ~~The handbook, the Administrative Office of the Courts shall develop~~
3 include a summary of the duties of guardians and conservators
4 including, but not limited to, statutory notices, timetables, and
5 required court approvals. The summary shall emphasize the
6 significance of timely accountability to the court and to the ward
7 as well as the sanctions and penalties which may be imposed for
8 failure to comply with the requirements of the law or orders of the
9 court. ~~Copies of the handbook shall be made available to the public~~
10 ~~through the offices of the district court clerks.~~

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

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

19 2. The guardian ad litem may be appointed to objectively
20 advocate on behalf of the child and act as an officer of the court
21 to investigate all matters concerning the best interests of the
22 child. In addition to other duties required by the court and as
23 specified by the court, a guardian ad litem shall have the following
24 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, which
17 determination is solely the decision of the court, and
- 18 e. the guardian ad litem shall, as much as possible,
19 maintain confidentiality of information related to the
20 case and is not subject to discovery pursuant to the
21 Oklahoma Discovery Code.

22 3. Expenses, costs, and attorney fees for the guardian ad litem
23 may be allocated among the parties as determined by the court.
24

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

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

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

24 a. the following three conditions are satisfied:

- 1 (1) the professional mediator has substantial
2 training concerning the effects of domestic
3 violence or child abuse on victims,
4 (2) a party who is or alleges to be the victim of
5 domestic violence is capable of negotiating with
6 the other party in mediation, either alone or
7 with assistance, without suffering an imbalance
8 of power as a result of the alleged domestic
9 violence, and
10 (3) the mediation process contains appropriate
11 provisions and conditions to protect against an
12 imbalance of power between parties resulting from
13 the alleged domestic violence or child abuse, or
14 b. in the case of domestic violence involving parents,
15 the parent who is or alleges to be the victim requests
16 mediation and the mediator is informed of the alleged
17 domestic violence; and

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

23 C. As used in this section:
24

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

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

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

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

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

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

19 SECTION 4. This act shall become effective November 1, 2019.
20

21 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 04/04/2019 - DO
22 PASS, As Amended.
23
24