

*Judge Baldemar Garza
229th Judicial District Court
401 North Britton Avenue
Rio Grande City, Texas 78582*

January 11, 2022

To all Attorneys

Re: Rules regarding appointment of ad-litem attorneys, guardian ad litem, social study investigators and mediators.

Please be advised that the 84th Texas Legislature passed two bills providing new procedures and reporting requirements for court appointments. Senate bill 1369 also added new reporting requirements regarding the appointment and payment of persons covered under Senate Bill 1876 and competency evaluators in 2015.

Judges of any district, county or probate court, master court or court referee of a position for which any type of fee may be paid in a civil, probate or family law case under Titles 1, 2 & 4 of the Texas Family Code are obligated to report said information. All reports required under the order are prepared by the district and county clerks for the courts they serve.

The Bill also requires that the monthly reports include all appointments made during a month, in additions to payments made during the month. If the amount paid to a person in a month on one case exceeds \$1,000.00, the report must also include any information related to the case that is available to the court on the number of hours billed and billed expenses. (*Of note is the fact that Representative Harold V. Dutton, Jr. filed a request for an attorney general opinion regarding the constitutionality of SB 1876 claiming it is a violation of the doctrine of separation of powers, in addition to the suggestion that it imposes the requirement that persons appointed be “qualified” but give no standards for the determination that an individual is “qualified”.*) These laws are effective as of September 1, 2016.

The report must be sent to the *Office of Court Administration* and must include:

- The name of each person appointed by the court in the month;
- The name of the judge and the date of the order approving compensation to be paid to a person appointed;
- The number and style of the case;
- The number of cases each person was appointed to in the month;
- The total amount of compensation paid to each person and the source of compensation;
- If the total amount paid to a person in one case in the month exceeds \$1,000.00, the number of hours billed for the work performed and the billed expenses;

- If no appointment was made during the reporting period, the clerk must submit a report indicating so.

Section 37.03 of the Texas Government Code requires the following:

- (a) In addition to a list required by other state law or rule, each court in this state shall establish and maintain the following lists:
 1. a list of all attorneys who are *qualified* to serve as attorney ad litem **and** are registered with the court;
 2. a list of all attorneys and other persons who are *qualified* to serve as guardian ad litem and are registered with the court;
 3. a list of all persons who are registered with the court to serve as mediator; and
 4. a list of all attorneys and private professional guardians who are *qualified* to serve as guardian ad litem as defined by section 1002.012, Estates Code, and are registered with the court.
- (b) A court may establish and maintain more than one list required under Subsection (a) that is categorized by the type of case and the person's qualifications.
- (c) A local administrative judge, at the request of one or more of the courts the judge serves, shall establish and maintain the lists required under subsection (a) for those courts. The local administrative judge may establish and maintain one set of lists for all of the requesting courts and may maintain for the courts more than one list as provided in subsection (b).

The court must implement certain procedures to insure that each person that submits a request to be placed on the list that establishes that persons qualifications, is placed on a rotation and that the rotation is followed except under very specific circumstances.

Section 37.004 states as follows:

- (a) Except as provided by Subsections (c) and (d), in each case in which the appointment of an attorney ad litem, guardian ad litem, or guardian is necessary, a court using a rotation system shall appoint the person whose name appears first on the applicable list maintained by the court as required by Section 37.003.
- (b) In each case in which the appointment of a mediator is necessary because the parties to the case are unable to agree on a mediator, a court using a rotation system shall appoint the person whose name appears first on the mediator list maintained by the court as required under Section 37.003.
- (c) The court may appoint a person included on the applicable list whose name does not appear first on the list, or a person who meets statutory or other requirements to serve who is not

included on the list, if the appointment of that person as attorney ad litem, guardian ad litem, or guardian is agreed on by the parties and is approved by the court.

- (d) On finding good cause, the court may appoint a person included on the applicable list whose name does not appear first on the list, or a person who meets statutory or other requirements to serve on the case and who is not included on the list, if the appointment of that person as attorney ad litem, guardian ad litem, mediator or guardian is required on a complex matter because the person:
- (1) Possesses relevant specialized education, training, certification, skill, language proficiency, or knowledge of the subject matter of the case;
 - (2) Has relevant prior involvement with the parties or case; or
 - (3) Is in a relevant geographic location.
- (e) A person who is not appointed in the order in which the person's name appears on the applicable list shall remain next in order on the list.
- (f) After a person has been appointed as attorney ad litem, guardian ad litem, mediator, or guardian from the applicable list, the court shall place that person's name at the end of the list.

Section 37.005 further requires the posting of each list established under Section 37.003 at the courthouse of the County in which the Court is located and on any Internet website of the Court.

In order to ensure that *all* individuals are afforded the opportunity to act as guardian ad litem, attorney ad litem and mediators the Court finds that the following procedures be implemented in regard to cases in the 229th Judicial District Court:

1. Attorney ad Litem for child or parent in child protection case:

- a. Prepare letter addressed to 229th Judicial District Court to be placed on Rotation List.
- b. Attach resume which includes the following:
 - Name
 - Address
 - State Bar Number
 - Phone number
 - Fax number
 - Email address
- c. Proof of completion of three (3) hours of continuing legal education relating to representation of children or parents in child protection cases depending on the type of appointment, as soon as practicable after the appointment. *However, the attorney is not required to comply with this requirement if the court finds that the attorney ad litem*

has experience equivalent to the education. If a person is required to complete the CLE, the attorney must receive an additional three (3) hours of CLE annually by the anniversary of the day the person was added to the courts list in order to remain on the list of attorneys who are eligible to represent children and parents in child protection cases.

2. Attorneys who serve as guardians or attorneys ad litem in guardianship proceedings:

- a. Prepare letter addressed to 229th Judicial District Court to be placed on Rotation List.
- b. Attach resume which includes the following:
 - Name
 - Address
 - State Bar Number
 - Phone number
 - Fax number
 - Email address
- c. For guardianships established after September 1, 2015, the attorney must have completed a four-hour course of study that includes an hour on alternatives to guardianships and the support and services available to proposed wards. The certification issued by the State Bar expires two years from the date it is issued.

3. Professional guardians:

Persons who are in the business of providing guardianship services are required to be certified by the Judicial Branch Certification Commission and would need this certification in order to be “qualified to serve” as a private professional guardian and be registered with the court and placed on the list.

- a. Prepare letter addressed to 229th Judicial District Court to be placed on Rotation List.
- b. Attach resume which includes the following:
 - Name
 - Address
 - Phone number
 - Fax number
 - Email address

4. Mediators:

- d. Prepare letter addressed to 229th Judicial District Court to be placed on Rotation List.

e. Attach resume which includes the following:

- Name
- Address
- State Bar Number
- Phone number
- Fax number
- Email address

The Court is not required to appoint the mediator if the parties agree on the mediator *without* court intervention. *Only in cases in which the parties cannot agree on a mediator and the Court appoints one, is the Court required to make a report with reference to said appointment.*

A court is not required to make an appointment from the required list for:

1. A mediation conducted by an alternative dispute resolution system established under Chapter 152, Civil Practice & Remedies Code;
2. The appointment of a “guardian ad litem or other person appointed under a program authorized by Sec. 107.031 of the Family Code (CASA appointment);
3. The appointment of an attorney ad litem, guardian ad litem, amicus attorney, or mediator appointed under a domestic relations office established under Chapter 203, Family Code, or
4. A person other than an attorney or a private professional guardian appointed to serve as a guardian as defined by Sec. 1002.012, Estates Code.

Courts are permitted to appoint persons who are not next on the list or who are not on the list but meet the statutory or other requirements necessary for the appointment in two instances as follows:

1. When the parties have agreed on the person & the court approves the appointment;
2. On a finding of good cause, if the appointment is required on a complex matter because the person has “relevant specialized education, training, certification, skill, language proficiency or knowledge of the subject matter” or “has relevant prior involvement with the parties or is in a relevant geographic location.”

Those individuals who would like to be considered for appointments which relate to the above, are instructed to submit their letters requesting that he/she be placed on said list along with the information noted above. The attorneys should submit said information by February 28, 2022, if they would like to be placed on this list. If anyone has any questions or comments, they should not hesitate to request an appointment to discuss the above.

Sincerely,

Baldemar Garza

Baldemar Garza
229th Judicial District Court Judge