

Court of Appeal Decisions on duties of an attorney ad litem

Court of Appeals of Texas, San Antonio.

In the GUARDIANSHIP OF Lillian GLASSER, an Incapacitated Person.

No. 04-07-00559-CV. / Decided: January 30, 2009

The attorney ad litem performs the services of an attorney—he does legal and factual research, gives advice and makes recommendations to his client, and conducts litigation. See *id.* § 647 (Vernon 2003); *City of Houston v. Woods*, 138 S.W.3d 574, 582 (Tex.App.—Houston [14th Dist.] 2004, no pet.); *Coleson v. Bethan*, 931 S.W.2d 706, 712-13 (Tex.App.—Fort Worth 1986, no writ). “It is the attorney ad litem’s duty to ‘defend the rights of his involuntary client with the same vigor and astuteness he would employ in the defense of clients who had expressly employed him for such purpose.’ ” *In re Estate of Stanton*, 202 S.W.3d 205, 208 (Tex.App.—Tyler 2005, pet. denied) (quoting *Estate of Tartt v. Harpold*, 531 S.W.2d 696, 698 (Tex.Civ.App.—Houston [14th Dist.] 1975, writ ref’d n.r.e.)).

Ineffective Assistance of Counsel

In *Ex Parte Parker*, 2014 Tex. App. LEXIS 36 (Tex. App. Amarillo, January 3, 2014, no pet.), the appeals court noted that allegations of ineffective assistance of an appointed attorney ad litem would be reviewed under the same standard as in cases regarding termination of parental rights.

The standard (applied by both the Texas Supreme Court and the U. S. Supreme Court) requires a complainant to demonstrate 1) the counsel’s assistance fell below an objective standard of reasonableness and 2) that the ad litem’s deficient assistance prejudiced the Ward’s case. Such allegations must be firmly founded in, and affirmatively demonstrated by, the court’s record.