

Representing DFPS in Child Welfare Cases

SUPREME COURT OF TEXAS CHILDREN'S COMMISSION

JULY 31, 2026



Identifying the Client

- While attorneys representing the Texas Department of Family and Protective Services (DFPS) most routinely work with caseworkers and their supervisors, the client is DFPS—not an individual caseworker, supervisor, or program director.
- This presentation focuses on DFPS child welfare services, including cases involving a Single Source Continuum Contractor (SSCC) under Community-Based Care.



Statutory Authority to Represent DFPS

Tex. Fam. Code § 264.009 establishes the general order of representation:

- (a) Except as provided by Subsection (b), (c), or (f), in any action under this code, the department shall be represented in court by the county attorney of the county where the action is brought, unless the district attorney or criminal district attorney of the county elects to provide representation.
- (b) If the county attorney, district attorney, or criminal district attorney is unable to represent the department in an action under this code because of a conflict of interest or because special circumstances exist, the attorney general shall represent the department in the action.
- (c) If the attorney general is unable to represent the department in an action under this code, the attorney general shall deputize an attorney who has contracted with the department under Subsection (d) or an attorney employed by the department under Subsection (e) to represent the department in the action.
- (f) In a county with a population of 2.8 million or more, in an action under this code, the department shall be represented in court by the attorney who represents the state in civil cases in the district or county court of the county where the action is brought. If such attorney is unable to represent the department in an action under this code because of a conflict of interest or because special circumstances exist, the attorney general shall represent the department in the action.



Statutory Authority to Represent DFPS, cont.

Tex. Fam. Code § 264.009 also authorizes:

(d) Subject to the approval of the attorney general, the department may contract with a private attorney to represent the department in an action under this code.

(e) The department may employ attorneys to represent the department in an action under this code.

Tex. Fam. Code § 264.163 further provides that:

In a catchment area in which a Single Source Continuum Contractor (SSCC) is providing family-based safety services or community-based care services, legal representation of DFPS shall be provided in accordance with [Tex. Fam. Code § 264.009](#).

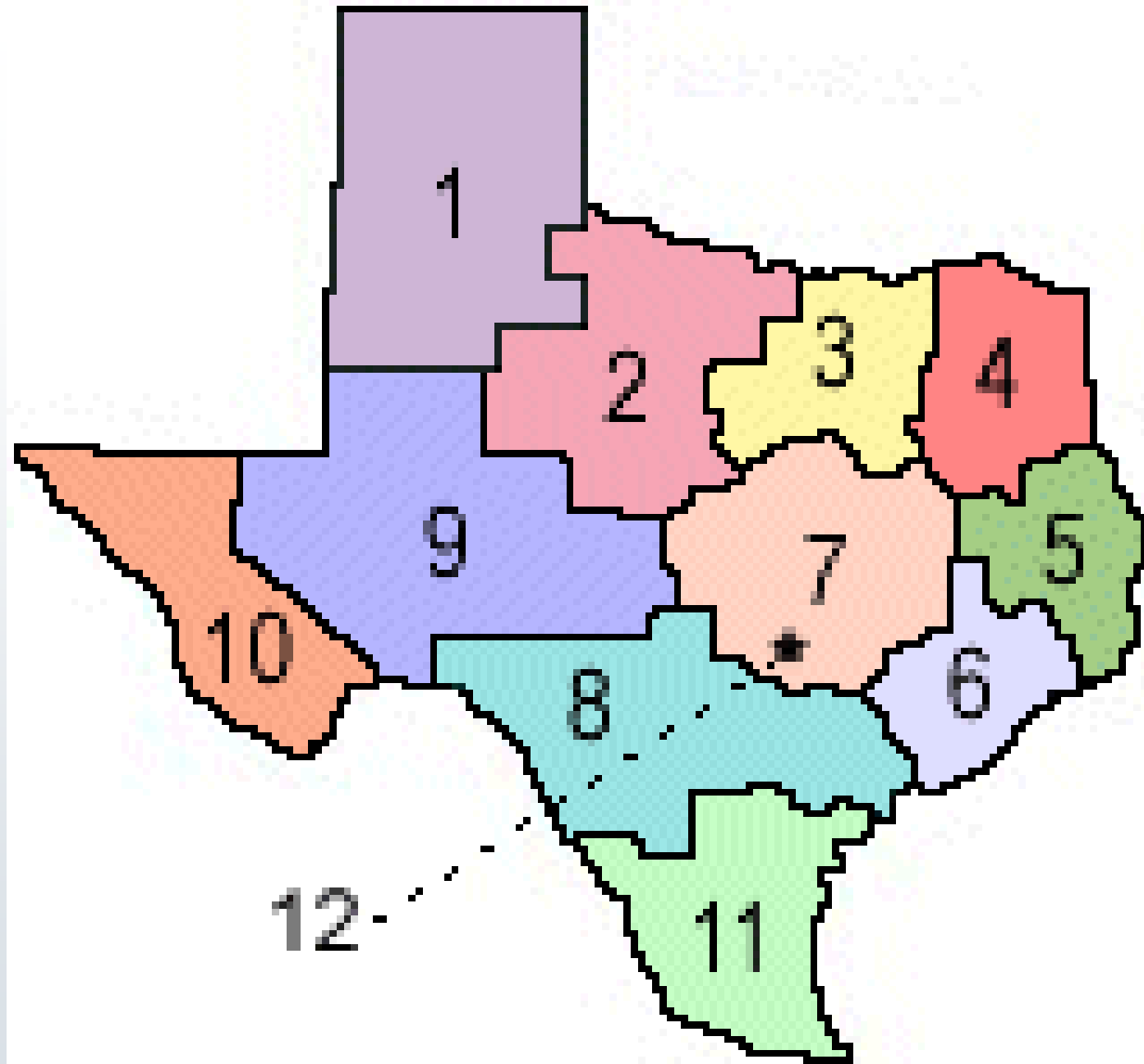


DFPS Structure



DFPS Regions

- There are 12 DFPS regions.
- A list of the Counties within the Regions and Districts can be found on the [DFPS website](#).



Understanding DFPS Structure

Representation may cross organizational and geographic lines:

- DFPS regions
- Judicial and County boundaries
- Community-Based Care catchment areas
- SSCC and DFPS responsibilities

Know Who Can Make the Decision

Identify the authorized decision-maker for:

- Filing a petition or seeking custody
- Aggravated circumstances requests
- Placement changes
- Determination to return the child home
- Permanency-goal changes
- Mediation or Rule 11 Agreements
- Trial position
- Dismissal/Nonsuit requests

How to protect the Department's decision?

Attorney advises; the authorized client representative decides DFPS's objective.



Representation Models



Representation Models in Practice

- In your county, DFPS cases may be:
 - Handled solely by the County or District Attorney's Office
 - Handled solely by the DFPS Regional Attorney's Office
 - Split between the County and District Attorney's Office
 - Split between the County or District Attorney's Office and the DFPS Regional Attorney's Office
- Conflicts/Sanctions



Different Approaches to Representation

- Intake Staffing / Paperwork
- Multiple Attorney Office – Case Distribution
- After-hours and night response
- Your conversations with your client
- Other parties' conversations with your client

Client's Objective - DFPS Mission / Vision / Values

DFPS Mission

DFPS builds on strengths of families and communities to keep children and vulnerable adults safe so they thrive.

DFPS Vision

Safe children and adults,

Strong families and communities,

Stronger Texas.

DFPS Values

DFPS prioritizes safety and worth to constantly improve what DFPS does and how DFPS does it.

DFPS is transparent, committed, and acts with integrity.

DFPS honors and respects dignity and individual differences.

DFPS is collaborative and share collective responsibility in achieving goals.



Texas Disciplinary Rules of Professional Conduct

- As advisor, a lawyer provides a client with an **informed understanding** of the client's legal **rights and obligations** and explains their practical implications. (Preamble)
- **Rule 1.01 Competent and Diligent Representation** ... (b) In representing a client, a lawyer shall not: (1) **neglect** a legal matter entrusted to the lawyer; or (2) frequently **fail to carry out** completely the obligations that the lawyer owes to a client or clients. (c) As used in this Rule, neglect signifies inattentiveness involving a conscious disregard for the responsibilities owed to a client or clients.
- **Rule 1.02 Scope and Objectives of Representation** (a) Subject to paragraphs (b), (c), (d), (e), and (f), a lawyer shall **abide by a clients decisions** (2) whether to accept an offer of settlement of a matter, except as otherwise authorized by law... **Comment 2.** Except where prior communications have made it clear that a particular proposal would be unacceptable to the client, a lawyer is **obligated to communicate any settlement offer** to the client in a civil case...



Texas Disciplinary Rules of Professional Conduct

- **Rule 1.03 Communication** (a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.
- **Rule 2.01 Advisor** In advising or otherwise representing a client, a lawyer shall exercise independent professional judgment and render candid advice. **Comment: Scope of Advice** 1. A client is entitled to straightforward advice expressing the lawyer's honest assessment. Legal advice often involves unpleasant facts and alternatives that a client may be disinclined to confront. In presenting advice, a lawyer endeavors to sustain the client's morale and may put advice in as acceptable a form as honesty permits. However, a lawyer should not be deterred from giving candid advice by the prospect that the advice will be unpalatable to the client.



Key Practices in Representing DFPS

- Understand DFPS's legal and policy responsibilities.
- Maintaining communication about issues and deadlines.
- Evaluate the evidence supporting the requested outcomes.
- Explain risks and lawful alternatives.
- Confirm the client's objective and decision-making authority.



Attorney/Client Relationship

- Attorney/Client Privilege.
- Caseworker is not a professional witness.
- Compassion for your own client.
- Communication styles.
- Nurturing the relationship:
 - Training
 - Workshops
- DFPS has specific rights and duties afforded to no other person or entity under the Family Code.



Resources

Texas Family Code and DFPS Policy

DFPS Policy can be found at <https://www.dfps.Texas.gov/handbooks/>

Helpful Websites:

- DFPS Regions and contact information
 - https://www.dfps.Texas.gov/Contact_Us/Offices.asp
- Community Based Care
 - https://www.dfps.texas.gov/Doing_Business/Purchased_Client_Services/Community-Based_Care_Contracts/default.asp
- Requesting a Copy of a Case Record
 - https://www.dfps.texas.gov/policies/Case_Records/default.asp



Legal Advice & Social Work

Honesty over Harmony – “Andre Davison – Executive Director of the Harris County Law Library”

- Courage to have difficult and direct conversations with your client, opposing counsel, the judiciary and co-workers concerning the law, policy and necessary actions.
- Identifying resources in the community alongside your client to ensure that the client, opposing counsel and the judiciary are informed.
 - Discussing the resources and applicability/necessity to/in the matter.

Consistent Communication with Your Client

- Staff with the client:
 - At intake
 - Before hearings
 - Before mediations
 - Before final trial
 - When significant facts or positions change
- Follow up after each event
- Routine, consistent, and open communication helps prevent surprises.



Preparing for the Hearing or Trial

Before and after staffing with your client:

- Review your pleadings (filed and future)
- Generate a list of your objective/outcome for the hearing/trial:
 - List your best evidence for proof
 - List your arguments
 - Anticipate opposing evidence and arguments.
- Create and/or review your witness list(s)
 - Witness preparation – your client and outside witness(es)
- Assemble your exhibits/exhibit list(s)

After the hearing/trial, confirm the order, deadlines, responsibilities, and follow-up.



Work Productively with Other Counsel

- Successful representation begins with clean and open hands.
 - Share information when permitted and appropriate; protect privilege, confidentiality, and statutory restrictions.
- Collaboration can narrow disputes without compromising the client's position.
- Use Rule 11 agreements when appropriate.
- Communicate directly and clearly with counsel for the children and parents and the guardian ad litem.
- Document your conversations with opposing counsel with a follow up email.
- Communication via email with the judiciary and all counsel is also a tool that practitioners often overlook.



Professional Duties Apply in Every Interaction

- Develop professional relationships with judges and opposing counsel.
- Do not take for granted that everyone understands the legal process in the same manner that you do.
 - Meet people where they are and encourage others to do the same.
 - Life is happening to us all. Operating from a position of “hope” benefits the entire case.
- Having difficult conversations with judges and opposing counsel, providers and witnesses without being difficult.



Professional Relationships Improve Case Practice

- Set aside separate time to meet with each person outside of court if possible.
 - Training/Bar Sections
- Keep regular office hours.
- Respond promptly and professionally.
- Ask to discuss the case with opposing counsel prior to a hearing/trial.

Difficult Conversations without Being Difficult

Have the courage to communicate necessary messages, even when they may not be well received.

- Necessary objections.
- Competing arguments and positions.
- Opposing arguments/positions.
- DFPS policy and expected outcomes



Establish Clear Boundaries

The Department's duties.

- Identify and follow up on the Department's responsibilities to locate, communicate, file reports, and provide services.

The Attorney's Role.

- Identify what you are responsible for—and what you are not.
- Establish and maintain appropriate boundaries.
- Clarify responsibility for Discovery.

Treat the Department as you would any other client.



Responsibilities of Other Parties

- Their Motion = Their Order.
- Their Witness = Their Subpoena.
- Meeting the burden every time.
- “No” is a complete sentence.

Art of the Pivot

New facts, changed circumstances, legal rulings, and client decisions may require a change in approach.

The pivot may occur with:

- Your client
- Other counsel
- The court



Pivoting with the Client

When the facts or law change:

- Reassess strengths, risks, and options.
- Explain why the earlier position may no longer be supportable.
- Identify who can approve a new direction.
- Obtain and document the client's decision.
- Update strategy consistent with law, ethics, and the lawful objective.
- Flexibility is appropriate when circumstances materially change.



Pivoting with Opposing Counsel

- Listen with your ears don't listen to respond.
 - You may learn new information that your client needs to consider.
- Don't judge opposing counsel based on past experiences.
- Be ready to pivot legally based on the actions of opposing counsel.
 - New “building base” suggestion(s).
- Anticipate likely motions, evidence, and alternatives and be flexible in your responses.



Pivoting in Court

MY JUDGE LIKES IT THIS WAY!

- Represent your client's interests when the position is consistent with the law and the facts.
- Develop your legal strategy and case presentation.
- Be prepared to call witnesses out of order.
- Do not be discouraged when the court directs how the case will be presented.
- Advocate for your preferred presentation but remain flexible without jeopardizing your client's position.



Sustainable Practice Supports Effective Advocacy

- Physical health
- Mental health
- Personal boundaries and time away
- Knowing when and where to seek help



Questions?

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Thank You!

Questions related to MCLE self reporting may be sent to cctraining@txcourts.gov

