

Nuts and Bolts of Parent and Child Representation in Child Welfare Cases

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Duties of Parents' and Children's Attorneys

THRESHOLD DUTIES FOR
COURT APPOINTED
ATTORNEYS REPRESENTING
PARENTS AND CHILDREN
ARE THE SAME

Scope and Application

In addition to the duties that every attorney owes their client under the Texas Disciplinary Rules of Professional Conduct, there are specific statutory duties for attorneys appointed to represent parents and children in child welfare cases.

Duties of parents' and children's attorneys apply equally to Court-ordered Services (COS) / Motion to Participate (MTP) cases as they do to cases where the Department of Family and Protective Services (DFPS) has Temporary Managing Conservatorship (TMC).

Tex. Fam. Code § 264.203(g)-(h)



Interview the Client

Interview the client after initial appointment within a reasonable amount of time unless the client's location is unknown (for child client, applies to age four or older).

Tex. Fam. Code §§ 107.0131(a)(1)(A)(i), 107.003(a)(1)(A)(i)



Interview Each Person with Significant Knowledge

Interview each person who has significant knowledge of the case.

Tex. Fam. Code §§ 107.0131(a) (1)(A)(ii), 107.003(a)(1)(A)(ii)



Interview the Parties

Interview the parties to the suit.

Tex. Fam. Code §§ 107.0131(a)(1)(A)(iii), 107.003(a)(1)(A)(iii)



Conduct an Investigation

Conduct an independent investigation into the facts of the case.

Tex. Fam. Code §§ 107.0131(a)(1)(B), 107.003(a)(1)(D)



Know the Facts of Your Case

Obtain and review copies of all court files in the suit during the attorney's course of representation.

Tex. Fam. Code §§ 107.0131(a)(1)(C)(i), 107.003(a)(1)(E)

Conduct formal discovery under the Texas Rules of Civil Procedure or a local discovery control plan.

Tex. Fam. Code §§ 107.0131(a)(1)(C)(ii), 107.003(a)(1)(F)



Make Progress in Your Case

Take any action consistent with the client's interests that the attorney considers necessary to expedite the proceedings.

Tex. Fam. Code §§ 107.0131(a)(1)(D), 107.003(a)(1)(G)

Encourage settlement and the use of alternative forms of dispute resolution.

Tex. Fam. Code §§ 107.0131(a)(1)(E), 107.003(a)(1)(H)

Review and sign, or decline to sign, a proposed or agreed order affecting the client.

Tex. Fam. Code § 107.0131(a)(1)(F), 107.003(a)(1)(I)



Communicate with Your Client

Meet before each court hearing with the client (for child client, applies to age four or older).

Tex. Fam. Code §§ 107.0131(a)(1)(G), 107.004(d)(1)

Abide by the client's objectives for representation (for child client, child must be competent to form an attorney-client relationship and form that relationship).

Tex. Fam. Code §§ 107.0131(a)(1)(H), 107.004(a)(2)



Educate Yourself and Hold Yourself to the Highest Standard

Become familiar with the American Bar Association's standards of practice for attorneys in abuse and neglect cases.

Tex. Fam. Code §§ 107.0131(a)(1)(I), 107.004(a)(3)

Complete at least three hours of continuing legal education relating to representing parents and at least three hours of continuing legal education relating to representing children in child protection cases as soon as practicable after the attorney ad litem is appointed, unless the court finds that the attorney ad litem has experience equivalent to that education.

Tex. Fam. Code §§ 107.0131(a)(1)(J), 107.004(b)



Additional Duties for a Child's Attorney

COURT APPOINTED ATTORNEYS
REPRESENTING CHILDREN HAVE
SUPPLEMENTAL RESPONSIBILITIES
IN THE FAMILY CODE

Interview and Interact with Child Clients in a Way that They Can Understand

Interview and interact with the child in a developmentally appropriate manner.

Tex. Fam. Code §§ 107.003(a)(1)(A)(i), 107.004(a)

Elicit in a developmentally appropriate manner the name of any adult, particularly an adult residing in the child's community, who could be a relative or designated caregiver.

Tex. Fam. Code § 107.003(b)(4)



Interview and Interact with Child Clients in a Way that They Can Understand, cont.

Advise the child.

Tex. Fam. Code § 107.004(a)(1)

Meet with the child or meet with the person whom the child ordinarily resides if the child is younger than four years of age, with sufficient time before the hearing to allow the attorney to prepare in accordance with the child's expressed objectives and meet in a private setting that allows for confidential communication.

Tex. Fam. Code §§ 107.004(d)(1)(B), 107.004(d-1)



Interview and Interact with Child Clients in a Way that They Can Understand, cont.

Exceptions – If the court:

- Finds at that hearing that the attorney has shown good cause why the attorney's compliance is not feasible or, in the case of a child, not in the best interest of the child. **Tex. Fam. Code §107.004(e)**; or
- On a showing of good cause, authorizes the attorney to comply by conferring with the parent or child, as appropriate, by telephone or video conference. **Tex. Fam. Code § 107.004(e)**



Communication with the Court

Report to the court whether the attorney met with the child prior to each hearing, and if not, request the court to find that compliance was not feasible or not in the best interest of the child.

Tex. Fam. Code § 107.004(d)(2)



AAL Duties Regarding Well-being Issues

Consider the impact on the child in formulating the attorney's presentation of the child's expressed objectives of representation to the court.

Tex. Fam. Code § 107.003(a)(1)(C)

Determine whether the child's educational needs and goals have been identified and addressed.

Tex. Fam. Code § 107.004(d-2)



AAL Duties Regarding Safety Issues

Review periodically the child's safety and well-being, including any effects of trauma to the child, and take appropriate action including requesting a review hearing when necessary to address issues of concern.

Tex. Fam. Code § 107.004(d-3)

Complete a training program regarding trauma-informed care and the effect of trauma on children in the conservatorship of DFPS.

Tex. Fam. Code § 107.004(b-1)(1)



AAL Duties Regarding Health Issues

Obtain and review copies of relevant records relating to the child, including school, law enforcement, social services, medical and mental health records.

Tex. Fam. Code §§ 107.003(a) (1)(E), 107.006

Review the medical care provided to the child.

Tex. Fam. Code § 107.003(b)(1)

Elicit, in a developmentally appropriate manner, the child's opinion on the medical care provided.

Tex. Fam. Code § 107.003(b)(2)



Duties for a Child's
Attorney When the
Client is at Least 16
Years Old

MEDICAL CONSENT AND
IDENTIFICATION
DOCUMENTS

Duties When Representing Children at Least 16 Years of Age

Advise the child of the child's right to request the court to authorize the child to consent to their own medical care.

Tex. Fam. Code § 107.003(b)(3)(A)

Ascertain whether the child has received a certified copy of their birth certificate, social security card or replacement card, driver's license (DL) or state identification card, or any other document DFPS determines appropriate.

Tex. Fam. Code § 107.003(b)(3)(B)



Substituted Judgment

CIRCUMSTANCES WHEN THE
ATTORNEY CAN SPEAK TO
BEST INTEREST OF THE CHILD,
AND THE DISTINCTION
BETWEEN AAL/GAL

Substituted Judgment

In limited circumstances, a child's attorney may decline to follow their client's direction and instead present to the court a position the attorney determines will serve the best interest of the child. If a guardian ad litem (GAL) has been appointed, the attorney must consult with the guardian ad litem for the child but is not bound by the guardian ad litem's opinion or recommendation. However, the attorney for the child must ensure that the guardian's opinion and recommendation regarding the best interest of the child is presented to the court.



Substituted Judgment, cont.

The attorney may only substitute their judgment for their child client's direction if the attorney determines that the child cannot meaningfully formulate the child's objectives of representation because the child:

- Lacks sufficient maturity to understand and form the attorney-client relationship;
- Despite appropriate legal counseling continues to express objectives of representation that would be seriously injurious to the child; or
- For any other reason is incapable of making reasonable judgments and engaging in meaningful communication.

Tex. Fam. Code § 107.008



Duties of a Child's Attorney Appointed in the Dual Role

CIRCUMSTANCES WHEN THE
ATTORNEY SERVES AS AAL
AND GAL

Duties of a Child's Attorney Appointed in the Dual Role

Conduct an investigation to determine the best interests of the child.

Tex. Fam. Code § 107.002(a)(1)

Consider the child's expressed objectives without being bound by those objectives.

Tex. Fam. Code § 107.002(b)(3)

Interview each person who has significant knowledge of the case including educators and child welfare service providers.

Tex. Fam. Code § 107.002(b)(1)(B)

If substituting judgment, the attorney may present to the court a position the attorney determines will serve the best interest of the child.

Tex. Fam. Code § 107.008



Duties of a Child's Attorney Appointed in the Dual Role, cont.

Practice Tip:

In some Texas jurisdictions, long-standing practice has been to appoint an attorney serving in the dual role of attorney and guardian litem to every child in a child welfare case. However, an attorney who serves in the dual role may face an ethical dilemma when representing a child who is capable of forming an attorney-client relationship and directing representation, if the child's objectives are incompatible with the attorney's assessment of the child's best interest, but the child's objectives do not meet the standard required to substitute judgment.

The dilemma can be resolved by requesting appointment of another person to serve in the role of guardian ad litem for the child.

Tex. Fam. Code § 107.0125



Representing Alleged Fathers

THE IMPORTANCE OF
ESTABLISHING PATERNITY

Duties for an Attorney Appointed to an Alleged Father

Conduct an investigation regarding the petitioner's due diligence in locating the alleged father, including verifying that the petitioner has obtained a certificate of the results of a search of the paternity registry.

Interview any party or other person with significant knowledge of the case who may have information relating to the identity or location of the alleged father.

Conduct an independent investigation to identify or locate the alleged father, as applicable.



Duties for an Attorney Appointed to an Alleged Father, cont.

If the alleged father is identified and located, the attorney ad litem shall:

- Provide to each party and the court the alleged father's name and address and any other locating information; and
- If appropriate, request the court's approval for the attorney ad litem to assist the alleged father in establishing paternity.



Duties for an Attorney Appointed to an Alleged Father, cont.

If the alleged father is adjudicated to be a parent of the child and is determined by the court to be indigent, and opposes the termination, the court may appoint the attorney ad litem to continue to represent the father's interests pursuant to **Tex. Fam. Code § 107.013**

If unable to identify or locate the alleged father, the attorney ad litem must submit to the court a written summary of the attorney ad litem's efforts to identify or locate the alleged father with a statement that the attorney ad litem was unable to identify or locate the alleged father.

Tex. Fam. Code § 107.0132



Representing an
Unknown Parent,
Unlocated Parent, or
Parent Who Has Been
Served by Publication

INDEPENDENT
INVESTIGATION TO FIND
ANY OUTSTANDING PARTIES

Unknown Parent, Unlocated Parent, or Parent Who Has Been Served by Publication

Attorney Duties:

- Conduct an investigation regarding the petitioner's due diligence in locating the parent.
- Interview any party or other person with significant knowledge of the case who may have information relating to the identity or location of the parent.
- Conduct an independent investigation to identify or locate the parent, as applicable.



Unknown Parent, Unlocated Parent, or Parent Who Has Been Served by Publication, cont.

If the attorney identifies and locates the parent, the attorney must:

- Provide to each party and the court the parent's name and address and any other available locating information unless the court finds that:
 - disclosure of a parent's address is likely to cause that parent harassment, serious harm, or injury; or
 - the parent has been a victim of family violence; and
- If appropriate, assist the parent in making a claim of indigence for the appointment of an attorney.



Unknown Parent, Unlocated Parent, or Parent Who Has Been Served by Publication, cont.

- If unable to identify or locate the parent, the attorney ad litem must submit to the court a written summary of the attorney ad litem's efforts to identify or locate the parent with a statement that the attorney ad litem was unable to identify or locate the parent. On receipt of the summary, the court must discharge the attorney from the appointment.

Tex. Fam. Code § 107.014



New Duties Related to RTC's and QRTPs

REQUIREMENTS FOR AALS
WITH CLIENTS PLACED IN
RESIDENTIAL TREATMENT
CENTERS AND QUALIFIED
RESIDENTIAL TREATMENT
PROGRAMS

Duties for an Attorney Appointed to Represent a Child Placed in an RTC or QRTP

Effective September 1, 2023 (SB 1930):

- If the child is considered for placement in an RTC, QRTP, or similar setting, an attorney ad litem must review any available information regarding the child's needs including the Child and Adolescent Needs and Strengths assessment (CANS), psychological evaluations, discharge notes, incident reports and counseling notes and determine if the placement is appropriate to meet the child's needs. The attorney ad litem must meet with the child to elicit the child's opinion regarding the child's current or proposed placement. The attorney ad litem must advise the child regarding DFPS' request for placement and the likelihood of the request being granted.



Duties for an Attorney Appointed to Represent a Child Placed in an RTC or QRTP, cont.

- The attorney ad litem must advocate to the court for the child's specific desires regarding the requested placement. The attorney ad litem may request a placement conference and participate in any placement conferences conducted by DFPS regarding an RTC, QRTP, or similar placement.

Tex. Fam. Code § 107.004(f)

*Please note that attorneys serving as GALs also have duties under **Tex. Fam. Code § 107.002**.



Duties for an Attorney Appointed to Represent a Parent of a Child Placed in an RTC or QRTP, cont.

Effective September 1, 2023 (SB 1930):

- An attorney appointed to represent a parent may participate in a case staffing related to a placement in an RTC or QRTP.

Tex. Fam. Code § 107.0131(a)



Any questions?

- Thank you!

