

STANDING ORDER FOR RULES AND PROCEDURES
FOR CHILD PROTECTIVE SERVICES CASES
IN BELL AND LAMPASAS COUNTIES

INTRODUCTION

The Court has tailored this order for the specific and unique factors that apply to suits brought under Subtitle E of the Texas Family Code, and in making this order, the Court has taken into account the following factors, including but not limited to (1) the best interests of the child(ren), (2) the rights of the parent(s), (3) the significant amount of disclosure routinely made through statutorily required court reports and review hearings, (4) the publicly funded nature of this special statutory litigation and (5) the detrimental effect of exposing the child(ren) involved in the litigation to multiplicitous interviews and meeting. IT IS THEREFORE ORDERED that the following rules and procedures are implemented to ensure the efficient, fair, and equitable operation of the suits affecting parent-child relationships filed by the Texas Department of Family and Protective Services (TDFPS) in Bell and Lampasas Counties, Texas.

These rules are created to assist the parties in their representation of their respective clients, to implement policies to protect the best interests of the children the subject of these suits, and to clarify certain statutory and procedural policies.


RULE 1 - REFERRAL TO ASSOCIATE JUDGE

1.1 REFERRAL TO ASSOCIATE JUDGE. Pursuant to the Orders Appointing Associate Judge signed by the Presiding Judge for the Third Administrative Judicial Region of the State of Texas, and respective Orders of Referral signed by the Presiding District Judges for Bell and Lampasas Counties, all pending substitute care and child protective service cases under Subtitle E of the Texas Family Code, together with matters ancillary to the adjudication of such cases, are referred and assigned to the associate judge of the Cen-Tex Child Protection Foster Care Court.

RULE 2 - HEARING SCHEDULE

2.1 LOCATION OF HEARINGS. Hearings shall be held at such times and locations as may be determined expedient by the associate judge. Hearings, when possible, will be conducted in an available courtroom or other suitable location. Hearings in Bell County shall be conducted primarily on the Second Floor Commissioner's Courtroom of the Old Courthouse unless the parties are notified otherwise. Hearings in Lampasas County shall be conducted primarily in the District Courtroom, unless the parties are otherwise notified.

2.3 SCHEDULING OF HEARINGS. All hearings before the associate judge shall be scheduled by the associate judge or the court coordinator for the Cen-Tex Child Protection Foster Care Court. Final hearings on the merits shall be set upon written request of the parties in accordance with the pretrial scheduling order.

BY:  SHEILA NORMAN
DISTRICT COURT
BELL COUNTY, TX
DEPUTY

2005 OCT 26 PM 5:03

FILED 

SCAN

MICROFILM
CRS-1327

RULE 3 - EMERGENCY ORDERS FOR REMOVAL OF CHILDREN

3.1 OBTAINING EMERGENCY EX PARTE ORDERS. An emergency *ex parte* order authorizing the possession of a child by the TDFPS, attachment of a child, and/or appointment of the TDFPS as temporary managing conservator of a child may be obtained from either the associate judge of the Cen-Tex Child Protection Foster Care Court or the presiding judges or any other district judge of Bell County. Unless otherwise ordered, the 14-day adversary and all subsequent hearings shall be conducted by the associate judge of the Cen-Tex Child Protection Foster Care Court.

3.2 NOTIFICATION OF ADVERSARY HEARING. Upon the entry of an emergency *ex parte* order, the TDFPS shall notify all parties, including the attorney ad litem and guardian ad litem for the child(ren), of the date and location of the 14-day adversary hearing by no later than the second business day from the date of the order.

RULE 4 - NOTICES OF HEARINGS

4.1 SERVICE OF PROCESS ON PARTIES. The TDFPS is responsible to ensure that all parties entitled to process are served with citation in a timely fashion so as to not to necessitate postponement of any review or final hearing or extension of the dismissal date.

4.2 NOTIFICATION OF HEARINGS. Following the 14 day adversary hearing, the Court Co-ordinator for the Cen-Tex Child protection Foster Care Court is responsible for notification of all parties, including the attorney ad litem and guardian ad litem for the child(ren), of all adversary, status, permanency, placement review and other hearings in connection with the case, including final hearings on trial on the merits. All such notices of hearings shall be in writing and served in the manner as prescribed in Rule 21a of the Texas Rules of Civil Procedure by delivering a copy to the party to be served or the party's attorney of record, either in person, by certified or registered mailed to the party's last known address or by telephonic document transfer to the party's current telecopier number, or by electronically transmitting the notice to the parties or to the parties' attorney's e-mail address..

4.3. RESPONSIBILITY OF TDFPS. All parties must be served or have waiver on file by the date of the Initial Permanency Hearing. If any parties to the action have not been served by that date, the TDFPS shall provide written proof at the initial permanency hearing of their reasonable efforts to exercise due diligence in finding such party.

RULE 5 - PROCEDURE FOR REMOVAL OF CHILD(REN) FOLLOWING ATTEMPTED PLACEMENT

5.1 REMOVAL FROM COURT ORDERED PLACEMENT. Unless otherwise ordered, if TDFPS, as managing conservator, determines that a court ordered placement with a parent or relative is no longer a safe environment for the child(ren) and that the continued placement is not in the best interest of the child(ren), TDFPS is authorized, in its discretion, to immediately remove the child(ren) from the home and custody of the custodial parent, non-custodial parent, or relative without the necessity of first obtaining an order of the Court. Upon removal of the child(ren) by TDFPS from the court ordered placement in the home and custody

of a parent or relative under these circumstances, TDFPS shall file a motion to modify the previous of the Court by no later than the 3rd working day following the date of removal, supported by affidavit, advising that the child(ren) have been removed and returned to the custody of TDFPS. The affidavit shall be sworn to by a person with personal knowledge stating the facts and circumstances known to the TDFPS which necessitated the removal and the reasons why continued placement in the home was no longer in the best interest of the child(ren). A copy of such motion shall be delivered to all parties (or their respective attorneys) in accordance with (T.R.C.P. 21 a) or by Rule 4.2 above, by no later than the 3rd working day following the date of the removal.

5.2 REMOVAL FROM OTHER COURT ORDERED PLACEMENT. Unless otherwise ordered, if TDFPS, as temporary managing conservator, determines that a prior placement of a child(ren) by the TDFPS in a non-relative setting is no longer a safe environment for the child(ren) and that the continued placement is not in the best interest of the child(ren), the TDFPS is authorized, in its discretion, to immediately remove the child(ren) from that non-relative placement without the necessity of filing a motion or obtaining an order of the Court authorizing the removal. The TDFPS shall notify the court and all parties (or their respective attorneys) of the removal of the child(ren) from the non-relative placement by no later than the 3rd working day following the date of the removal.

RULE 6 - APPOINTMENT OF ATTORNEY AD LITEM FOR INDIGENT PARENTS

6.1 APPLICATION FOR COURT APPOINTED ATTORNEY. Effective September 1, 2005, the Court will consider whether appointment of an attorney ad litem for a parent is required. The Court shall make the initial inquiry as to the requirement of the appointment of an attorney in the applicable case. An unrepresented indigent parent who responds in opposition to the suit filed by TDFPS may request the appointment of an attorney ad litem due to the inability to afford an attorney or otherwise obtain legal representation by timely completing and submitting an application for court appointment attorney and affidavit of indigence in the form as provided by the Court at the first available hearing after the effective date.

6.2 PRESUMED INDIGENCE. A parent determined to be indigent is presumed to remain indigent for the remainder of the case and upon appeal. A parent's status as indigent may be reviewed by the Court upon request of any party or upon the Court's own initiative. A parent's status as indigent may be modified upon a showing that a material change in the parent's financial circumstances has occurred. Upon notice and hearing, the Court may terminate or discontinue the appointment of an attorney ad litem for the parent if the parent previously found to be indigent is determined to be no longer indigent due to either a material change in the parent's financial circumstances or upon disclosure of additional information regarding the parent's financial status.

RULE 7 - DISCOVERY

7.1 DISCOVERY. A party or an ad litem for the child(ren) may undertake whatever investigation they deem appropriate and whatever formal discovery is authorized by this order. In addition, the court shall carefully consider motions for discovery provided by this order as the need arises. However, the court encourages cooperation to ensure full disclosure without costly and time consuming discovery.

7.2 INTERROGATORIES. Except with leave of court, a party or ad litem for the child may not serve interrogatories. In lieu of interrogatories, this order provides for certain standard disclosure upon request.

7.3 DEPOSITIONS. Except with leave of court, a party or ad litem may not take depositions. Upon a parent or ad litem's request, TDFPS shall make available for an interview any TDFPS personnel with relevant information.

7.4 PRODUCTION. Except as provided by this order, a party or ad litem may not serve a request for production without leave of court. Upon the written request of a parent or ad litem, TDFPS shall produce a copy of the deidentified case record in no more than thirty (30) days from the date the request was received. A "deidentified case record" is a COMPLETE case record with any confidential information redacted. After the record is produced, TDFPS shall supplement the record at least thirty (30) days before trial on the merits. Upon the written request of a parent or ad litem, in a reasonable time and place, TDFPS shall make available for review all videos, audios and photographs relevant to the case. Upon written request of a parent or ad litem, in a reasonable time and place, TDFPS shall make available for review any written policies or guidelines relevant to the case. Upon written requests of TDFPS or any ad litem, in no more than ten days from the date of receipt of said request, a parent shall sign a release of information for all medical, psychological or psychiatric records, and for all treatment records, including records relating to drug and alcohol abuse.

7.5. STANDARD DISCLOSURE. Upon written request, a party shall disclose, within thirty days of the date of said request :

(a) Each fact witness that may be called, their name, address and telephone number, and a brief statement as to their connection with the case;

(b) Each expert witness that may be called, their name, address and telephone number, a brief statement of their qualification (or a copy of their resume), a brief statement of the subject matter of their testimony, and the gist of their opinions;

(c) All documentary evidence in the possession of the TDFPS or the Attorney ad litem not found in the case record that may be offered into evidence. Such evidence that comes into the possession of TDFPS or the Attorney ad litem after thirty days before trial shall be disclosed when obtained;

(d) A list of all videos, audios and photographs that may be offered into evidence. All such videos, audio and photographs shall be made available for inspection.

(e) A list of all physical evidence that may be offered into evidence. All such physical evidence shall be made available for inspection. At least twenty (20) days before trial, the attorney ad litem for the child(ren), upon written request, shall disclose items required by subsections (a) – (e) above that may be part of the attorney ad litem's case which may be offered into evidence and that has not been previously disclosed by a party. At least fifteen (15) days prior to trial, any party required to make a thirty (30) day disclosure may make a supplemental disclosure in response to any other party or the ad litem's disclosure.

7.6. DEADLINES. Except with leave of court, all pleadings must be amended or supplemented at least thirty (30) days prior to trial. All discovery must be completed at least thirty days prior to trial. All parties must be named and served at least seventy-five (75) days prior to trial. The cases will be tried at least 3 weeks prior to the dismissal dates set by statute.

7.7. SERVICE. All parties who do not have an attorney shall maintain a current address on file with the District Clerk. Pursuant to TRCP, a notice to a party without a lawyer may be made by notice in open court,

or personal service, or service to the current address on file with the clerk by sending notice both certified mail and first class mail, or pursuant to Rule 4.2 above.

***RULE 8 - ORDERS FOR COOPERATION IN INVESTIGATION
BETWEEN ATTORNEY AD LITEM AND GUARDIAN AD LITEM***

8.1 COOPERATION BETWEEN THE ATTORNEY AD LITEM AND THE GUARDIAN AD LITEM AND WITH AN INVESTIGATOR FOR EITHER AD LITEM. The Texas Family Code provides that an attorney appointed to represent the interests of a child in a proceeding brought by TDFPS may be appointed in one or more roles. The potential appointments are as attorney ad litem or guardian ad litem or the dual role of attorney ad litem AND guardian ad litem. In an action brought by TDFPS, an appointment of an Attorney ad Litem is considered to be a dual role appointment regardless of the language of the order, unless another individual is appointed as Guardian ad Litem. It is obvious that the legislature considers these roles to be closely aligned, and although each of the appointments were created with different obligations, their primary purpose is hinged upon the "best interest of the child". An Attorney ad Litem and a Guardian ad Litem both have an obligation to investigate the information available within certain statutory guidelines. The Attorney ad Litem AND the Guardian ad Litem BOTH have the same obligations regarding interviewing the child(ren) the subject of the suit. In considering the detrimental impact on the child to have multiple interviews with BOTH the attorney ad litem and guardian ad litem, and taking into account the ambiguous requirement for such interviews, the Court hereby ORDERS that Guardian ad Litem shall have immediate access to the child pursuant to Section 107.006(a), T.F.C., for the purpose of meeting with an interviewing the child prior to any court hearing. The Guardian ad Litem is required to create a written record of said interview with the child(ren) and deliver that report and exchange any information with the Attorney ad Litem as to information provided by the child. The Court will allow the attorney ad litem to forego the requirement to meet the child prior to every court hearing, because the Court finds that said meeting would be duplicitous of the effort made by the Gaurdian ad litem, and the Court specifically finds that in addition to scheduling a meeting by the Guardian ad litem prior to each court hearing, an additional meeting with the Attorney ad Litem would not be feasible or in the child's best interests. Furthermore, the Court finds that the files, records and reports used and developed in the investigation by the Guardian ad Litem may only be disclosed to the Attorney ad Litem, pursuant to Section 261.201 (a)(2), T.F.C., unless otherwise ordered by the Court.

The Guardian ad Litem, in complying with Sections 107.003 and 107.004, T.F.C., shall create a written record of said compliance. The Court further finds and orders that the Attorney ad Litem, at their discretion, may review and rely on the written record of the Guardian Ad Litem and that this review and reliance on the written record of the Guardian ad Litem shall constitute a good faith effort of the Attorney ad Litem to comply with Section 107.003 and 107.004, T.F.C.

Approved and Adopted:

On this 26th day of October, 2005, but effective September 1, 2005.



Judge Rick Morris
146th District Court
Bell County

Approved and Adopted:

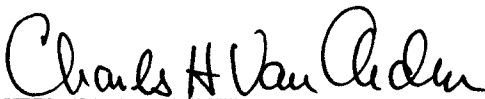
On this 26th day of October, 2005, but effective September 1, 2005.



Judge Joe Carroll
27th District Court
Bell and Lampasas County

Approved and Adopted:

On this 26th day of October, 2005, but effective September 1, 2005.



Judge Charles Van Orden
Associate Judge
Cen-Tex Child Protection Court