

CHILD PROTECTION CASES – BEST PRACTICES

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EDUCATION

UNIVERSITY OF HOUSTON LAW CENTER, Houston, Texas

Juris Doctorate, May 2005

- Mock Trial Team – St. John’s Civil Rights Tournament, *Semi-Finalist*
- Black Law Students’ Association, 2003-2004 *Vice President of Internal Affairs*
- Honor Court, 2003-2004 *Magistrate*, 2004-2005 *Chief Magistrate*

UNIVERSITY OF TEXAS AT SAN ANTONIO, San Antonio, Texas

B.A. Criminal Justice with emphasis in Legal Studies, Magna Cum Laude, May 2001

- NCAA Division I Women’s Basketball, 1999-2002
- Student-Athlete Advisory Committee, 2000-2001 *Representative*, 2001-2002 *President*

COWLEY COUNTY COMMUNITY COLLEGE, Arkansas City, Kansas

Associate of Arts, May 1999

- NJCAA Women’s Basketball, 1997-1999

LEGAL EXPERIENCE

HARRIS COUNTY CPS PROJECT COURT, Houston, Texas

Associate Judge, February 2014 to present

Hearing cases involving children placed in the permanent managing conservatorship of the Texas Department of Family and Protective Services.

THE GRIFFITH LAW FIRM, PLLC, Houston, Texas (Formerly Chatman & Griffith, PLLC)

Attorney, November 2005 – February 2014

Practice Areas: Child Welfare Law, Family Law, Adoptions, STAR Family Intervention Court

UNIVERSITY OF HOUSTON LAW CENTER, Houston, Texas

Assistant Mock Trial Coach, 2005-2008

Student Attorney for the Juvenile Dependency & Juvenile Defense Clinics, Spring 2004 - Fall 2005

311TH JUDICIAL DISTRICT COURT, THE HONORABLE DOUGLAS WARNE, Houston, Texas

Judicial Assistant, October 2003 – December 2004

NATIONAL ASSOCIATION OF COUNSEL FOR CHILDREN

CHILD WELFARE LAW SPECIALIST, 2011

PROFESSIONAL ORGANIZATIONS

HOUSTON BAR ASSOCIATION, Family Law Section, 2007 to present

Board of Directors, June 2007 to May 2010

TABLE OF CONTENTS

INTRODUCTION 1

I. BEST PRACTICE WHEN REPRESENTING A CHILD 1

 A. Traditional Services for Children 1

 B. Extra Services for Children 1

 C. Going the extra mile for Children 2

II. BEST PRACTICE WHEN REPRESENTING A PARENT 2

 A. Hearings 2

 B. Family Service Plan 2

 C. Legislative Update..... 2

III. CONCLUSION 2

APPENDIX A 3

CHILD PROTECTION CASES – BEST PRACTICES

INTRODUCTION

The best practice in CPS cases can be broken down into two different categories; when representing a child and when representing a parent.

Whether representing a parent or a child, the best representation will come from an attorney ad litem who visits or meets frequently with their client, has a solid understanding of the services available in their area, and stays up to date with the current law and legislative changes.

I. BEST PRACTICE WHEN REPRESENTING A CHILD

Representing a child can be one of the most rewarding and challenging experiences as an attorney ad litem. There are some children that come into CPS custody that have been through some unimaginable experiences. On the other hand, there are some children who are clueless as to the actions of their parent(s) that led them into CPS custody. The services provided to a child must be tailored to each specific child's experiences and needs. Having frequent contact in person and over the phone with a client is one of the best ways for an attorney ad litem to assess their client's needs. Additionally, the attorney ad litem shall interview the caregivers, school personal, and parent(s) (if available) and review their client's school records, psychological, and/or CANS assessment. With this knowledge, the attorney ad litem can ensure their client is receiving appropriate services for their needs.

The absolute best practice when representing a child is to get to know the child. Not only is visiting with a child over the age of 4 mandatory, it is the only way to determine what the child needs and wants! Tex. Fam. Code §107.004(d).

A. Traditional Services for Children

There are a wide range of services available to children. An attorney ad litem must ensure the services the child is receiving is appropriate to help the child's specific needs. One of the most common recommendations for children in CPS custody is therapy. There are several different types of therapy. Ensuring your client is receiving the appropriate type of therapy can make the difference in his or her long-term outcome. Attorney ad litem should be in contact with their client's therapist and ask questions regarding what the child is working on therapy and how the child is progressing. Attorney ad litem should also make sure the child's therapy is including the therapeutic services recommended in the child's psychological.

Another common practice is for children to be placed on psychotropic medications. Although we are

not doctors of medicine, attorney ad litem should be knowledgeable in the different psychotropic medications their clients are taking. Also, when appropriate, prior to the child starting medication the attorney ad litem should ensure the caregiver has used non-pharmacological interventions, behavioral strategies, or appropriate psychosocial therapeutic services for the child in order to eliminate the need for medication. If there is still a determination to place a child on psychotropic medication, the child should be actively receiving appropriate psychosocial therapy, behavioral strategies, and non-pharmacological interventions. See Tex. Fam. Code §266.011. Additionally, the child shall see the prescribing physician, physician's assistant, or nurse practitioner at least every 90 days. Id.

B. Extra Services for Children

In addition to the common talk and play therapy, attorney ad litem should explore extra therapy such as family or sibling therapy. These therapies are not in lieu of visitation but as additional time for your client to work on issues with their parent(s) or sibling(s).

If family reunification is CPS or your goal as an attorney ad litem, family therapy is an excellent tool to assess the parent-child relationship. It can also assess whether the parent(s) has made meaningful progress on their family service plan. Family therapy often starts in the therapist's office but can often move to a parent(s) home before, during, and after the child transitions home. Although it may be more convenient, family therapy should never be considered visitation. Visitation is for the parent and child to have fun and bond. Family therapy is an extra service to assist the family.

There are times when siblings are separated for reasons outside of their control and sometimes they are separated because of the family dynamics between the siblings. Reasons for separating siblings can range from fighting and bullying to parentification and sexually inappropriate interactions. The traditional response is to separate the siblings and allow occasional supervised visitation, if any. Attorney ad litem need to consider the alternative of sibling therapy. No one will ever know for certain what the family dynamic was prior to the children coming into care and how it has affected the sibling's relationship. Therefore, instead of separation there should be a focus on healing. Sibling therapy can work to increase the interaction between the siblings in a safe and appropriate environment and help the siblings get to the point where they can safely be in the same home.

Far too often, siblings who have been separated for years and all a sudden placed are placed in the same adoptive home. When the siblings are competing and fighting with each other the adoptive placement breaks

down. This should rarely happen if there is not only a focus on the parent-child relationship but also the sibling's relationship.

Finally, children in CPS custody are not allowed to do activities that children not in CPS custody are allowed to do. In August of 2013, CPS released a letter regarding Normalcy Activities for Children. (See Appendix A). Unfortunately, most caseworkers are not familiar with CPS' normalcy policy. Caseworkers often are not allowing children to do common activities such as spending the night at a friend's house without backgrounds checks on everyone including their 14-year-old friend. Attorney ad litem should become familiar with this document and make a push to "normalize" children in CPS custody's everyday experiences.

C. Going the extra mile for Children

In addition to knowing the basic services for children, attorney ad litem need to learn the extra benefits CPS has to offer children in CPS custody. Some of the services all attorney ad litem familiarize themselves with are as follows:

1. Preparation for Adult Living (PAL)
2. Circle of Support
3. Transition Planning Meetings
4. Determination of Intellectual Disability (DID)
5. Home and Community-Based Services (HCS Homes)
6. Department of Aging and Disability Services (DADS)
7. In home behavioral service providers
8. State Tuition waiver
9. Education Training Voucher (ETV)

These are just a few of the services that can help attorney ad litem go the extra mile for their clients.

II. BEST PRACTICE WHEN REPRESENTING A PARENT

A. Hearings

Being prepared for every hearing starts with frequent contact with your client. Your client, whether in the right or wrong, deserves a quality defense put forward on their behalf. This including fighting the show cause, when appropriate and ensuring the family service plan is appropriate.

B. Family Service Plan

No more than 45 days after the full adversary hearing CPS must file a family service plan, which specifically lays out the services CPS, is requesting the parent to complete in order to achieve the permanency goal. Tex. Fam. Code §§ 263.101 and 263.102. Tex. Fam. Code §263.102 specifically states the

requirements of the family service plan. A family service plan should be specific, made in conference with the parent, have services that address the reason for the child's removal; and contains the warning provided in Tex. Fam. Code §§ 263.102 and 263.202. For example, if the child was removed for physical abuse and there are no positive drug tests or any allegations of drug use; it may not be necessary for a parent to do a drug and alcohol evaluation and random drug testing in order to alleviate the reason for the child's removal.

A typical family service plan will include the following:

- a) Parenting Classes
- b) Stable and hazard free housing for 6 months;
- c) Stable income for 6 months;
- d) Psychosocial or psychological;
- e) Individual counseling;
- f) Random drug testing;
- g) Drug and alcohol assessment;
- h) Attend all visits, court hearings, and meetings;
- i) Maintain weekly or monthly contact with the caseworker; and
- j) Notify the caseworker within 24 hours of moving or a change in phone numbers.

Several other services can be included in a family service plan. If a child was removed for sexual abuse, the family service plan may request the parent to complete services at the Children's Assessment Center (or equivalent agency). If the child is removed for domestic violence, the family service plan may request the parent to take a batterers intervention and prevention class or domestic violence awareness.

Family Service Plans can often make or break a parent's case. It is one of the most common CPS termination grounds. Being ready to defend your parent-client at the status hearing is always best practice.

C. Legislative Update

There were several important and game changing legislative updates signed into law this last legislative cycle. It is very important to stay on top of the changes and see how they can help or hurt your client in the future.

III. CONCLUSION

The bottom line, the best practice in a CPS case is staying involved. Get to know your client, whether you represent a parent or a child. Stay up to date on all the legislative changes and learn the extra services available in your community to help you clients.



TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

COMMISSIONER
John J. Specia, Jr.

Date: August 8, 2013
To: Residential Contractors
From: Audrey Deckinga
Assistant Commissioner for Child Protective Services
Subject: Normalcy Activities for Children

DFPS encourages caregivers to allow every child, youth and young adult to have normal life experiences that enrich their lives. The child's surroundings and experiences should reflect a family setting, but when a more structured setting is required, normalcy can be provided in those types of settings as well. These experiences would include home activity, school activity, employment opportunity, exercise and recreation with the freedom to make decisions. Children, youth and young adults should be allowed to participate in extracurricular activities in school such as proms, yearbook staff, sports (as a spectator or participant), and cheerleading. Social activities such as dating, going to the mall, joining the boy scouts or even having friends over to visit is important for youth to promote a feeling of normalcy. The same activities we arrange for our own children should be considered for every child, youth and young adult in foster care.

For decision-making regarding participation in activities, caseworkers and caregivers should apply a "prudent parent standard" and ask, what information would I require, before I would give my own child permission to engage in an activity? As a parent, we would not require background checks on all individuals 14 years of age or older who live in a home where my child wants to spend the night with a friend. As conservators and caregivers of a child or youth in foster care, we should apply a similar standard in making these decisions.

The foster parent and caseworker should have a discussion about the expectations for allowing the child or youth to participate in age-appropriate activities and should ensure that these are referenced in the service plan (at a level that allows for flexibility yet provides guidance as to which activities a child or youth is ready to participate).

When children, youth and young adults participate in these activities it allows them an opportunity to gain skills to become independent, and learn about making good decisions. DFPS understands that every child will test boundaries and break some rules like missing a curfew. However, with the oversight and guidance of the caregiver this is how the child, youth and young adult can learn about natural consequences of their choices and begin to gain an understanding of making positive choices.

Normalcy Activities for Children

August 8, 2013

Page 2

The Department relies on input from children and youth, residential child care operations, foster parents/caregivers, and CPS workers to determine what is in the best interest of each child based on their developmental level, level of supervision required, and needs. These determinations are usually made during the service planning meetings. Below are a few frequently asked questions and responses which apply after the caregiver has considered the prudent parent standard:

Q: Can children spend the night at a friend's house?

Yes. Spending the night at a friend's house can be an exciting experience for a child. The caregiver and CPS worker should discuss whether the child is ready to spend the night away from home, if it is appropriate for the child's developmental level, and assess whether the friend's home meets the "prudent parent standard". In addition, it is important that the child and caregiver discuss and agree on any expectations for the overnight visit and what to do if they are uncomfortable during their visit.

Q: If a child spends the night at a friend's house, is a background check needed on the friend and their family?

No. A background check is not required if a child spends the night at a friend's house.

Q: If a child wants to have a friend come visit the foster home or spend the night, is a background check required?

No. A background check is not required unless there reason to believe the child who is visiting has a criminal history. As conservators and caregivers of a child or youth, the prudent "parent standard" should be applied in making these decisions.

Q: Can a child have a job?

Yes. A part time or full time job can provide important opportunities for youth to apply the skills that they learn in job readiness and vocational training and engage them in learning essential life skills related to the working environment. The caregiver, CPS worker and youth should discuss the youth's readiness for taking on a job and explore various options that allow learning in a workplace. Caregivers should refer youth to the Texas Workforce Solutions offices for assistance in looking for a job. Please refer to the Memo sent 5/30/2013 from Audrey Deckinga Assistant Commissioner for Child Protective Services titled "Accessing Workforce Services."

Youth can also access Transition Service Centers

<http://www.dfps.state.tx.us/txyouth/resources/local/> in each region that serve as central locations for services such as Preparation for Adult Living (PAL), job readiness, job search help, exploring job options, help with enrolling in college, help with housing, and mentoring.

Q: Can a child participate in extracurricular activities?

Yes. It is encouraged that children participate in extracurricular activities to the extent that the caregiver and CPS worker feel the specific activity is appropriate for the child's developmental level. Please refer to DFPS Memo sent March 5, 2012 from Audrey Deckinga, Assistant Commissioner for Child Protective Services titled "Enhancing Extracurricular, Social and Enrichment Activities for Children and Youth in Foster Care" which provides more information regarding the importance of Children's participation in extracurricular, social and enrichment activities.

Q: Can a child date or attend the prom?

Yes. Caregivers can help youth understand healthy dating practices by assisting with recognizing healthy and unhealthy behavior, developing coping skills for addressing jealousy and anger, recognizing when a relationship may no longer be working, and knowing how to end a relationship. Prom can feel like a rite of passage for young people and the high school prom is usually the first formal event in the lives of young people. Attending Prom can be both exciting and stress producing but provide an opportunity for youth, caregivers and peers to collaborate in the development of planning for the event and engaging in communicate about logistics, behavior and contingencies.

Q: Can a child take driver's education classes and/or get a license?

Yes. Youth can take driver's education classes and/or get a driver's license, although logistically, it may be difficult given the costs of driver's education, car insurance and a vehicle. To help with cost of the driver's license, caregivers, in collaboration with youth, may receive a driver's license fee waiver through the local Department of Public Safety (DPS) Office. Foster parents should remember that if they are teaching the youth to drive, they should be the only passenger in the vehicle. Please refer to the CPS Handbook for policy regarding youth getting a driver license: http://www.dfps.state.tx.us/handbooks/CPS/Files/CPS_pg_x10600.asp#CPS_10642

Caregivers should ensure that youth understand the importance of safe driving behavior and there are many resources for caregivers and teens to access to reinforce the "rules of the road". The DPS website is a good place to start:

<http://www.txdps.state.tx.us/DriverLicense/teendriver.htm>

in addition to the American Automobile Association (AAA) website about Teen Driver Safety: <http://teendriving.aaa.com/TX/>.

Finally, caregivers, the youth and the CPS worker should discuss the child's maturity level and consider issues that may need to be considered that may need to be documented in the youth's service plan prior to driving a vehicle.

Q: Can a child ride in a vehicle with an underage friend who has a driver's license?

Yes, however, caregivers must ensure that they have talked to Children and Youth about the importance of safe driving behavior and discussed such issues as using seat belts, not texting while driving, use of alcohol, number of passengers in car, and curfews.

The driver may also be assessed for any risks to include, having a valid driver license (which may include restrictions required by the Texas Graduated Driver Licensing Law (GDL) and having current insurance among other potential risk factors that are considered prudent by the caregiver and CPS worker. DFPS does not require a background check to be completed for a child to ride in a vehicle with a friend.

Q: Can a child have a cell phone?

Yes. However, there is no current policy and/or Minimum Standard that drives a decision to allow or not allow a youth to have a cell phone. When the caregiver and caseworker are considering allowing a youth to have a cell phone, some of the factors to consider include, but are not limited to:

- appropriateness based on the youth's developmental level and maturity,
- the youth's ability to be responsible for a cell phone,

- types of cell phone and functions (calls, texting, web access, picture taking, etc.) that the youth is allowed to utilize,
- determination on payment arrangement, whether by foster parents or by the youth (CPS does not pay for youth cell phones),
- rules regarding the use of cell phone and consequences when rules are violated, and
- other Children/Youth having access to the phone is a concern if they are not approved to have a cell phone.

If the caregiver, caseworker, and youth decide that a cell phone is appropriate, an agreement can be developed and signed by all parties.

Q: Can a child participate in social media and have an account on with social media sites like Facebook, Twitter or Instagram?

Children, youth, and young adults in foster care are permitted to use email and the Internet, including social media sites, with age-appropriate supervision by their caregivers. The individual child, youth, or young adult's age and developmental needs are taken into consideration when establishing guidelines for use. The established guidelines and level of supervision for each method of communication is documented in the child's plan of service.

If a child, youth, or young adult in foster care wishes to use the Internet, including social media sites, the caseworker has regular and candid conversations with the child, youth, or young adult to discuss safe and appropriate practices. The caseworker speaks regularly with the caregiver to establish and review expectations, availability, and rules regarding use of the Internet and social media. The child, youth, or young adult must be included in the conversation.

The caseworker informs the caregiver and the foster child, youth, or young adult that information posted or shared with others on the Internet or through email is not private. Even with privacy settings, other people may be able to view this information. The caseworker explains that caution should be taken when providing any personal information via email or on the Internet or social networking sites.

Q: Can a child play on a playscape?

Yes, children can play in a public park on a playscape. Caregivers must provide supervision appropriate to the child's age and developmental level and use prudent judgment when assessing the safety of the playground equipment before letting a child play on it. When a playscape is on a GRO facility grounds then it must maintain compliance with RCCL Minimum Standards.

Q: Can a child participate in water sports?

Yes, children in care may participate in both swimming activities and watercraft activities. There are minimum standards which provide structure for safety and supervision while children participate in these activities.

Q: Can a child ride a bicycle, all-terrain vehicle (ATV), or motorcycle?

There are no standards prohibiting children from riding a bicycle, though a helmet and appropriate protective clothing are recommended. Use of an all-terrain vehicle (ATV) is considered a higher risk recreational activity; there are minimum standards which provide structure for safety and supervision as well as age restrictions for children to participate in this

activity. Those standards are not intended to limit the safe and appropriate use of utility vehicles, golf carts, riding mowers, etc. There are no standards specific to motorcycles, however the Texas Transportation Code prohibits allowing a child under five years old to ride on a motorcycle, unless seated in a sidecar. Additionally, whenever a child is being transported, the driver and all passengers must follow all federal, state, and local laws when driving, including laws on the use of child passenger safety systems, seat belts, and liability insurance.

Q: Can a child go on hunting trips or participate in other activities that involve firearms, weapons, explosives, projectiles, or toys that explode/shoot (such as BB guns)?

Yes, however there are requirements in Licensing Minimum Standards and CPS Policy.

While hunting and other outdoor experiences can be healthy activities for certain young people, the decision to allow the youth to engage in hunting must be considered carefully. The youth's safety and well-being are of primary importance. Therefore, the youth's individual needs and current behavior must be the focal point of the decision making process.

Licensing Minimum Standards requires:

1. For facilities, children receiving emergency care services or treatment services are not permitted to use firearms, weapons, explosives, projectiles, or toys that explode/shoot. All children in RTCs are considered to be receiving treatment services, so this requirement applies to all children residing in RTCs.
2. For all other children residing in facilities and foster homes, the operation must determine that it is appropriate for a specific child to use firearms, weapons, explosives, projectiles, or toys that explode/shoot.

If a child is in the conservatorship of Child Protective Services (CPS), additional requirements apply.

Before CPS approves the use of firearms for hunting:

- the child must be at least 12 years old;
- the child must complete the Texas Hunter Education course facilitated by the Texas Parks and Wildlife Department;
- the child must purchase a hunting license;
- the CPS caseworker, CPS Supervisor, and CPS Program Director must grant permission for the activity; and
- the adult accompanying the child must sign Form 1704 "Acknowledgement of Hunting Supervision Responsibility for Youth in DFPS Conservatorship", which is a statement acknowledging his or her responsibility in supervising the child. The signed Form 1704 "Acknowledgement of Hunting Supervision Responsibility for Youth in DFPS Conservatorship" must be filed in the child's record.

The CPS caseworker grants permission for the activity based on the child's history and behaviors and based on the recommendations of the caregiver after discussions with the child/youth (if appropriate). The child's biological parents are consulted if parental rights have not been terminated and the parents can be located with reasonable efforts. Others may also be consulted, such as the child's attorney ad litem or Court Appointed Special Advocate (CASA) worker.

Normalcy Activities for Children

August 8, 2013

Page 6

If you would like more information regarding normalcy activities for children, please contact Maryann Fisher for CPS Program-related issues at 512-438-4981 or by email at maryann.fisher@dfps.state.tx.us. If you have questions regarding such activities and how they relate to Minimum Standards, please send an email to RCCLStan@dfps.state.tx.us. Question that cross multiple divisions of DFPS can be submitted to the residential contracts mailbox residential_contracts@dfps.state.tx.us and a coordinated response will be provided.