

## **BRINGING KIDS TO COURT: SHOULD THEY STAY OR SHOULD THEY GO? (A Panel Discussion)**

Should children who are the subject of lawsuits filed by the Texas Department of Family and Protective Services (TDFPS) be brought to the court hearings that take place during the pendency of the lawsuit? If a final order appoints TDFPS as the managing conservator of a child, should the child attend the periodic placement review hearings that occur while he/she is in the conservatorship of TDFPS? As an attorney ad litem and/or the guardian ad litem for the child, the practitioner will have to take into consideration numerous factors in making this decision. Our discussion will focus on the issue of whether or not children should come to court, and, if the child is coming to court, what steps should be taken to ensure the emotional safety of the child.

Two sections of the Texas Family Code mandate the attendance of the child at permanency hearings and placement review hearings unless the court specifically excuses the child's attendance.

Tex. Fam. Code § 263.302 provides that the child shall attend each permanency hearing unless the court specifically excuses the child's attendance. The review hearings held during the time that TDFPS has temporary managing conservatorship of a child are called permanency hearings. Section 263.302 also provides that the court shall consult with the child in a developmentally appropriate manner regarding the child's permanency plan, if the child is four years of age or older and if the court determines it is in the best interest of the child.

Tex. Fam. Code § 263.501 provides that the child shall attend each placement review hearing unless the court specifically excuses the child's attendance. If TDFPS has been named as a child's managing conservator in a final order, the court shall conduct a placement review hearing at least once every six months until the child is adopted or the child becomes an adult. Section 263.501 also provides that the court shall consult with the child in a developmentally appropriate manner regarding the child's permanency plan, if the child is four years of age or older and if the court determines it is in the best interest of the child.

Although each of the sections discussed above mandate the attendance of the child at the hearings unless specifically excused, in actual practice, in many courts the norm is that the child does not attend the permanency hearings and placement review hearings; the child only attends upon the specific request of the court, the caseworker, or the child's guardian/attorney ad litem.

In addition to the permanency hearings, the child's attorney or a party's attorney may want the child to attend an evidentiary hearing as a witness. Testifying in court can be traumatic for children. The child's attorney should carefully consider the issue and discuss it with the child in an age appropriate manner. Alternatives to in-court testimony should be considered when appropriate, and evidentiary rules may permit the child's out of court statements to be considered by the fact-finder. The court may interview the child

in chambers as set out in Tex. Fam. Code §153.009. The attorney must have a good understanding of both Tex. R. Ev. Article 8, Hearsay; and Tex. Fam. Code Chapter 104, Evidence. Tex. Fam. Code § 104.003 provides a mechanism for a child's testimony to be prerecorded and videotaped and limits the persons who may be present in the room when the child testifies. If the court orders the child's testimony to be taken in this manner, the child may not be compelled to testify in court during the proceeding (Tex. Fam. Code § 104.005). Under specific circumstances, remote televised testimony is permitted by Tex. Fam. Code § 104.004.

When deciding whether or not to bring a child to court, some factors to consider may be as follows:

The desires of child;

The child's understanding of the court process;

The rationale for bringing child to court;

The age of the child;

The intellectual capacity of the child;

Any medical condition of the child;

Any physical impairments;

Any developmental issues;

Any behavioral issues;

Any psychological conditions;

Any psychiatric considerations;

The emotional stability of the child;

The location of child's placement;

The nature of child's current placement (psychiatric hospital, residential treatment center, therapeutic foster home, group home, foster home, etc.);

The logistics of travel to court depending on the child's age, location, etc.;

The other parties who may attend the hearing (will child's abuser be present?); and

Any other factor that may affect the child's best interest.

If you are the attorney ad litem for the child or you are serving in the dual role of guardian ad litem and attorney ad litem, you owe your client the duties of undivided loyalty, confidentiality, and competent representation. Fam. Code § 107.001(2). The Texas Family Code requires you to become familiar with the American Bar Association's standards of practice for attorneys who represent children in abuse and neglect cases, the suggested amendments to those standards adopted by the National Association of Counsel for Children, and the American Bar Association's standards of practice for attorneys who represent children in custody cases. The ABA's Standards of Practice for Attorneys Who Represent Children in Abuse and Neglect Cases state that in most circumstances, the child should be present at significant court hearings, regardless of whether the child will testify. The related commentary does discuss factors to be considered in making a determination to exclude the child from the hearing. The decision must be based upon the unique circumstances of each individual child.

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