CONFIDENTIALITY ISSUES IN DFPS CASES

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The scope of this paper is intended to address the various confidentiality issues that arise when a private attorney represents a parent or a child in a Department of Family and Protective Services (DFPS) case. An attorney involved in a DFPS case may need to obtain information that is confidential or may have information that is confidential. This article will attempt to explain how an attorney may gather confidential information and how confidential information may be protected.

I. Representing Parents in DFPS Cases

An attorney may represent a parent in a DFPS case as a retained attorney or as an attorney appointed by the Court. In a DFPS case where a parent is indigent and opposes the relief sought by the DFPS the Court must appoint an Attorney Ad Litem ("AAL") for the parent. The Court must also appoint an AAL for parents who have not appeared for various reasons, but those appointments are not addressed by this article. The retained attorney and the AAL for the indigent parent have the normal duties and obligations regarding representation, confidentiality and privileges present in all attorney-client relationships.

Practice Tip: When representing parents, send discovery to everyone (AAL for the child, the GAL, and DFPS). Otherwise, the party who has not been sent discovery can sponsor evidence that was not disclosed by a party who received discovery.

Practice Tip: Do not represent both parents. The potential for conflict is too great.

II. Potential Roles of an Attorney Representing the Interests of a Child in a DFPS Case

An attorney appointed to represent the interests of a child in a DFPS case may be appointed in one or more roles. The potential appointments are as Guardian Ad Litem ("GAL"), Attorney Ad Litem ("AAL"), or the dual role of GAL and AAL. In a DFPS case, an appointment of an AAL is considered to be a dual role appointment regardless of the language of the order, unless another individual is appointed as the GAL. Texas Family Code, Section 107.0125(d). In 2003 a new role of Amicus Attorney was created, but Amicus Attorneys cannot be appointed in cases filed by governmental entities such as DFPS cases. Each of the appointments has different purposes and somewhat different obligations. A GAL is "[a] person appointed to represent the best interests of a child." Texas Family Code, Section 107.001(5). A GAL need not be an attorney, but for the purposes of this Article we will assume that the person appointed as a GAL is an attorney. An AAL is "[a]n attorney who provides legal services to a … child, and who owes to the [child] duties of undivided loyalty, confidentiality, and competent representation." Texas Family Code, Section 107.001(2). The AAL appointment is a typical attorney-client relationship, but the client is impaired by age, if not other impairments. An attorney appointed in the dual role of GAL and AAL, has the obligation to represent the child and the obligation to represent the child's best interest. Conflicts may develop between the wishes and directives of the child client and the attorney's opinion regarding the child client's best interest. The resolution of these conflicts is discussed later in section V.

III. Information Gathering Duties

An attorney appointed as a GAL has various obligations to gather information. Generally, the GAL should investigate to the extent the GAL determines necessary to determine the best interest of the child. Texas Family Code, Section 107.002. Specifically the GAL has the obligation to "obtain and review copies of the child's relevant medical, psychological, and school records." Texas Family Code, Section 107.002. Additionally, the GAL must interview the child (in a developmentally

appropriate manner), persons with "significant knowledge of the child's history and condition" (including foster parents), and the parties to the suit.

The AAL has the same obligations as the GAL regarding interviewing the child, persons with significant knowledge and the parties to the suit. Texas Family Code, Section 107.003. Regarding the review of documents, however, the AAL is charged with reviewing *all relevant records* instead of only the types of records specifically listed for review by the GAL. Texas Family Code, Section 107.003. The AAL must also interview the parties. Id.

Practice Tip: If the parties' attorney refuses to consent to an interview, then the AAL should depose the parties. The AAL also controls whether the child may be interviewed by the other attorneys.

In a case involving the appointment of a GAL and/or an AAL, the Court shall issue an order authorizing access to information relating to the child. Texas Family Code, Section 107.006.

IV. Additional Duties of the AAL

The AAL has additional duties that the GAL does not have. These additional duties also apply to an attorney appointed in a dual role. The AAL has the obligation to elicit the expressed wishes of the child in a developmentally appropriate manner. Texas Family Code, Section 107.004. The AAL shall also provide advice to the child. Id. If the AAL determines that the child understands the nature of the attorney-client relationship and has formed that relationship, then the AAL shall represent and follow the child's expressed objectives. Texas Family Code, Section 107.004(2). The Family Code further provides the AAL shall consider the impact on the child in formulation of the AAL's presentation of the child's expressed objectives. Texas Family Code, Section 107.003(1)(C).

V. Conflict Between Duties of GAL and AAL

The GAL has the primary duty to represent the best interest of the child. The AAL's primary duty is to advocate for the expressed objectives of the child. When there is a dual role appointment there is the potential for a conflict between these duties. If the child is unable to understand the nature of the attorney-client relationship, then the AAL may determine what presentation would be in the child's best interest and present that position. Texas Family Code, Section 107.008. The child may not be able to meaningfully formulate her own objectives for the following reasons:

1. The child lacks sufficient maturity to understand and form an attorney-client relationship.
2. Despite legal counseling, the child persists in expressing objectives that would be seriously injurious to the child.
3. The child is incapable of making reasonable judgments and engaging in meaningful communication, for whatever reason.

If an attorney who is only appointed as an AAL determines that his client is not competent to understand the nature of the attorney-client relationship or cannot meaningfully formulate the child's objectives of representation, then the AAL may impose his own judgment regarding how to advocate for the best interest of the child. If the AAL determines that the child cannot formulate her own objectives and there is a GAL appointed for the child, then the AAL shall consult with the GAL and shall consult and ensure the opinion and basis of the recommendation are presented, but may present a different position that the AAL determined is in the child's best interest.

If, however, the child is competent to understand the nature of the attorney client

relationship, then the AAL must advocate for the child's expressed objectives. This is true even if the AAL believes that different objectives would be in the child's best interest. But if the AAL is also a GAL, then the attorney will have to determine whether the child's objectives are in the child's best interest. If an attorney serving in a dual role determines that the child's objectives are not in the child's best interest, then there is a conflict in the obligations of the individual serving in the dual role. Prior to 2003 the Texas Family Code Section 107.002(f) provided that in this instance, the attorney would withdraw as GAL and would continue as AAL. This provision was deleted when the substituted judgment provision was added to the Texas Family Code. Nevertheless, when the child is competent to understand, but still wishes to take a course of action that is not in her best interest, the substituted judgment provision does not apply. In such an instance, the attorney needs to withdraw as GAL and remain as AAL, as would have been the procedure under the now deleted Section 1007.002(f). This action is also consistent with Texas Disciplinary Rule of Professional Conduct 1.02(g) that requires a lawyer to "take reasonable action to secure the appointment of a guardian … or seek other protective orders … whenever the lawyer reasonably believes that such action should be taken to protect the client." When seeking to withdraw as GAL and have an new GAL appointed, the attorney should point out to the Court that the substituted judgment provision does not apply to all instances where a conflict between the directions of the child client and the attorneys opinion about the best interest of the child are in conflict.

As in all other instances, that attorney will need to protect the confidences of the child client when seeking to withdraw as GAL. Regardless, of the attorney's determination that the child's directions are not in the child's best interest, those instructions are confidential and should not be revealed. The attorney could only reveal the confidential communications to the new GAL, if "the lawyer reasonably believes that the client lacks legal competence and that such action should be taken to protect the client." Texas Disciplinary Rules of Professional Conduct, Rules 1.05(c)(4) and 1.02(g). In such an instance, the attorney serving in the dual role should have been able to exercise substituted judgment under the Family Code, so in the instance where a new GAL is appointed, the AAL will not be able to disclose confidential communications with the child client.

VI. Authorization for Access by GAL and AAL

When the Court appoints a GAL and/or an AAL, the Court should also issue an order authorizing the GAL and/or AAL to have immediate access to the child and any information relating to the child. Texas Family Code, Section 107.006(a). Pursuant to such an order, the custodian of any relevant records regarding the child (including social services, drug and alcohol treatment, medical or mental health evaluation or treatment, law enforcement records, records of court proceedings, and records of trusts or accounts which the child has a beneficial interest) should release the records to the GAL and/or AAL. Texas Family Code, Section 107.006(b). The child's medical, drug and alcohol mental health records, which are privileged according to other law, may be released only in accordance with the other law. Texas Family Cody, Section 107.006(c). Other law that might affect the GAL and/or AAL's ability to gather records and information might involve elements of state and federal law.

VII. Mental Health Records

A patient or mental health professional acting on behalf of the patient may object to the disclosure of the patient's records pursuant to the Texas Health and Safety Code. Texas Health and Safety Code,

Chapter 611. In a judicial proceeding involving the parent child relationship, the mental health professional may disclose the records, but the language is permissive not mandatory. Texas Health and Safety Code, Section 611.006. Nevertheless, the mental health professional's determination does not supersede the Court's authority to order the production of records. Given that, the GAL and/or AAL require an Order from the Court granting them the right to the records, which will have to be released. This provision seems to limit the Court's ability to order the production of mental health records of a child. This limitation gives the mental health professional the right to deny access to the records. Therefore, unless the trial court orders otherwise, the mental health professional could refuse to disclose some or all of the mental health records of the child pursuant to the Health and Safety Code. Given that this privilege can also be asserted by the patient, in this case the child, then the GAL and/or AAL may be thwarted in his attempt to gather his client's records, by the child or the child's mental health professional.

It should be noted that the Texas Health and Safety Code provides that a mental health professional can refuse to disclose the patient's mental health records to the patient. Texas Health and Safety Code, Section 611.045. It would appear that the discretion of the mental health professional or the wishes of the child will determine if the GAL and/or AAL will be able to compel the production of the mental health records. The review of records by the GAL and/or the AAL is discretionary. The attorney could decide that the mental health records need not be reviewed. If, however, the attorney determines that the records should be produced over the mental health professional objections, then a hearing should be conducted regarding the production of the records.

If the child is objecting to the release of the records, then that raises a different issue. In such a case, if the AAL determines that the child understands the nature of the attorney-client relationship, then it seems that the AAL can defer to the wishes of the child. If, however, the attorney is a GAL or an AAL that has determined that his judgment should be substituted for the child, then the attorney should attempt to obtain the records over the objection of the child.

VIII. Potential Conflict Between Health and Safety Code and the Rules of Evidence

The issue of Confidentiality of Mental Health records in civil proceedings is addressed in Rule 510 of the Texas Rules of Evidence. The general rule is that "[c]ommunication between a patient and a professional is confidential and shall not be disclosed in civil cases." Texas Rules of Evidence, Rule 510(b)(1). The privilege may be claimed by the patient or the mental health professional. Rule 510(c). The mental health professional may only claim the privilege on behalf of the child. Id. The comments to Rule 510 indicate that the rule governs disclosure of mental health records in judicial proceedings and that the Health and Safety Code applies in other circumstances. This comment might be persuasively used in attempting to compel disclosure of records over the objection of the mental health professional or the child who is relying on the Health and Safety Code to assert privilege.

Until 1998 Rule 510 contained a specific exception to the privilege in suits affecting the parent-child relationship. The specific exception was dropped with the 1998 amendment to Rule 510. The comments to Rule 510 indicate, however, that the omission of the specific exception, should not be interpreted that the exception does not apply to suits affecting the parent-child relationship, but that the exception should be considered according to subparagraph (d)(5), as construed in *R.K. v. Ramirez,* 887 S.W.2d 836 (Tex. 1994). Subparagraph (d)(5) provides that an exception to the mental health privilege

applies "as to communication or record relevant to an issue of …mental or emotional condition of a patient in any proceeding in which any party relies upon the condition as a part of the party's claim or defense." According to the Texas Supreme Court: "[a]s a general rule, a mental condition will be a 'part' of a claim or defense, if the pleadings indicate that the jury must make a factual determination concerning the condition itself." *R.K. v. Ramirez* at 843. A suit filed by DFPS will involve a question of termination of parental rights or permanent conservatorship by DFPS. The issue of the child's mental health would be part of the best interest determination that the judge or jury might need to make. Additionally, it is 'part' of the responsibility of the GAL to consider all relevant mental health records of the child in forming an opinion regarding the best interest of the child.

According to the Texas Government Code, adoption of a rule of procedure that is contrary to other law governing procedure in civil proceedings has the effect of appealing the other law. Texas Government Code, Section 22.004(c). The adoption of the rule does not, however, repeal substantive law. Arguably, the limitations of the disclosure of mental health records set out in the Health and Safety Code, would not apply to civil proceedings if those provisions conflict with Rule 510 of the Rules of Evidence. Provided that the mental health information for the child was part of a claim or defense, then according to Rule 510, the information would not be privileged. The mental health professional might refuse to disclose the information to the child, but they would likely be compelled to produce the records to the GAL and/or AAL.

If the mental health professional does not want the mental health records disclosed to the child, but must produce the records to the child's representative, then that representative must decide whether to disclose the information to their client. The Texas Disciplinary Rules of Professional Conduct provide that a lawyer "shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information" and "shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." Texas Disciplinary Rules of Professional Conduct, Rule 1.03. The comments to Rule 1.03 provide that when dealing with a mentally disabled or legal incompetent client, it may not be possible to maintain the usual attorney-client relationship. The decision of whether to disclose information regarding the child's mental health records to the child, has no clear answer. This issue would be further complicated if other parties to the litigation are able to gather the same information from the mental health profession or from the attorney after the attorney has gathered the information. If the GAL is convinced that the information should not be disclosed to the child, then the GAL should seek a protective order from the Court to prohibit the disclosure of the information to the other parties to the litigation. It will likely be very difficult to prevent the discovery of this information by the other parties to the litigation.

IX. Acquiring the Mental Health Records of the Child when Representing the Parent of the Child

A parent has the right to the medical, psychological and educational records of their child, unless that right has been limited by the Court. When representing a parent in a DFPS case the attorney should determine whether the Court has limited the parent's access to information regarding the child's medical, psychological and educational condition. If the parent's right to this information has been restricted by the Court, seek to reinstate the parent's right to this information. Alternatively, seek the right as counsel for the parent to acquire the information in your own name. In a case of abuse or neglect, it would seem that the

attorney for the parent should be able to establish that the child's information is not privileged pursuant to Rule 510 of the Texas Rules of Evidence as set out in VIII above.

The Texas Supreme Court has recognized that pursuant to Section 611.045(b), if a mental health professional believes that disclosure of the patient's mental health records to a parent would be harmful to the child, then the records are protected from disclosure. *Abrams v. Jones*, 35 S.W. 3rd 620 (Tex. 2000). This confidentiality supercedes a parent's right to the mental health records pursuant to Section 153.073 of the Texas Family Code and supercedes a court order recognizing the parent's right to the child's mental health records. Id. at 626. As discussed above, a patient's right to his or her own mental health records is not absolute and neither is a parent's right to the mental health records of the child. If the mental health professional refuses to disclose the child's mental health records, then the mental health professional will have the burden to prove that disclosure would harm the child. A parent "acting on behalf" of a child is entitled to the mental health records of their child. Texas Health and Safety Code, Section 611.045. The Supreme Court recognized that a parent embroiled in a suit affecting the parent child relationship may have motives of their own and not be "acting on behalf" of the child. Id. at 625. A parent is not entitled to the mental health records of the child, if they are not acting on behalf of the child in making the request. Id. at 626. Certainly an argument might be made that a parent in a DFPS case that is seeking disclosure of the child's mental health records is doing so on their own behalf and not that of the child. The parent's attorney needs to be prepared to confront this argument.

X. Acquiring the Mental Health Records of the Parents when Representing the Child

As stated above the GAL has the obligation to "conduct an investigation to the extent that the GAL considers necessary to determine the best interest of the child." The AAL has the obligation to "investigate the facts of the case to the extent the attorney considers appropriate." Both of these obligations might involve investigating the mental health records of the parents of the child. In fact, if the parents of the child have any significant history of mental health treatment, it would seem that the GAL and/or AAL should obtain and review the parents' mental health records. The GAL and/or AAL should seek a Court order authorizing the GAL and/or AAL to access the social services, drug and alcohol treatment, medical or mental health evaluation or treatment records, law enforcement records of the parents of the child. The same methods suggested for overcoming opposition to the release of these records of the child should be employed to deal with resistance to the release of the parents' records.

The GAL and/or AAL should exercise caution in disclosing the parents' information to the child. The determination of whether to disclose to a child information regarding his or her parents, will have to be made on a case by case basis, weighing the competency and mental health of the child and the need for the information so that the child can make informed decisions regarding his or her legal representation. If the attorney is just acting as the GAL, then the decision will be easier. Given that the GAL is to act in the child's best interest, the decision regarding disclosure is not complicated by the consideration of the child's need for information to formulate the child's objectives in the litigation. If the AAL has determined that, pursuant to 107.008, the AAL may substitute their judgment for the child's, then the AAL may make the decision to not disclose without concern for the impact on the child's ability to make a fully informed decision. The difficult circumstance will be when the AAL has to decide whether to disclose sensitive information regarding a child's parent(s),

when the child is formulating the objectives of her representation.

XI. Duty to Disclose Child Abuse

Regardless of the source of the information a GAL and/or AAL, or an attorney representing a parent in a child protective services case has the obligation to report child abuse. Texas Family Code, Section 261.101. The duty to report is required when "[a] person having cause to believe that a child's physical or mental health or welfare has been adversely affected by abuse or neglect by any person." Texas Family Code, Section 261.101(a). The report shall be made within 48 hours of the attorney first suspecting that the child has been or may be abused or neglected. The report is to be made to:

(1) any local or state law enforcement agency;
(2) the department if the alleged or suspected abuse involves a person responsible for the care, custody, or welfare of the child;
(3) the state agency that operates, licenses, certifies, or registers the facility in which the alleged abuse or neglect occurred; or
(4) the agency designated by the court to be responsible for the protection of children.

The duty to report applies without regard to whether the communications giving rise to the duty to report are privileged. The attorney has the duty to report suspected child abuse or neglect, even if the information is based on privileged communications with the attorney's client. Although the attorney has an obligation to report suspected abuse or neglect even if it is based on privileged communications with the attorney's client, the evidence based on the attorney client privilege may be excluded from evidence in the trial. Therefore the attorney will not be compelled to disclose the privileged information in the trial, but by that time the privileged information will have already been disclosed. The reporting of privileged information will significantly undermine the relationship between the attorney and the client.

An attorney acting as a GAL, an AAL, or the attorney for a parent should disclose to the client the obligation to report suspected abuse as part of the initial interview, unless the child is unable to understand such a disclosure. Making such a disclosure of the obligation to report abuse might lessen the impact of the attorney reporting information regarding abuse that is otherwise privileged information. After making a report of child abuse based on client information, it might be impossible for an AAL or an attorney for a parent to continue to represent the client. If the report makes it impossible to continue to work with the client, then the attorney should move to withdraw.

XII. Compliance with Health Insurance Portability and Accountability Act ("HIPAA")

The passage of HIPAA, together with the regulations implemented by the Department of Health and Human Services to implement the Act, radically changed the privacy standards for health care records. Where in conflict, HIPAA supersedes any state law regarding the privacy of health care records. The definitions of health care provider, health care and health information are extremely broad. One should assume that any medical, dental, mental health or treatment records are going to be covered by HIPAA. Records covered by HIPAA are not to be disclosed without compliance with the regulations adopted by the Department of Health and Human Services. Therefore, an attorney needing such records will need to comply with HIPAA requirements in addition to other state or federal laws or rules in order to obtain health care records of a child or parent in a DFPS case.

Prior to disclosure, the patient's consent is required. 45 CFR 164.506. A consent must contain the following:

1. Inform the individual of the intended disclosure that may be made to carry out treatment, payment or health care options;
2. Must refer the individual to the required notices and inform the individual of their right to review notices prior to signing the consent;
3. If the right to revise privacy practices has been reserved, a notice that the change of practices may occur and how the individual can obtain revised notices;
4. State that:
    a. The individual may request restrictions on use and disclosure;
    b. The covered entity does not have to agree to the restrictions; and
    c. If the covered entity agrees with the restriction, it is binding.
5. State that an individual has the right to revoke consent, in writing, except to the extent that there has been reliance upon it;
6. Be signed and dated.

Disclosure of Psychotherapy Notes requires a stand-alone authorization for release that cannot be combined with another authorization. An authorization to disclose psychotherapy notes must contain the following:

1. A description of the information to be used or disclosed that identifies the information in a specific and meaningful fashion;
2. The name or other specific identification of the person(s), or class of persons, authorized to make the requested use or disclosure;
3. The name or other specific identification of the person(s), or class of persons, to whom the covered entity may make the requested use or disclosure;
4. An expiration date or an expiration event that relates to the individual or the purpose of the use or disclosure;
5. A statement of the individual's right to revoke the authorization in writing and the exceptions to the right to revoke, together with a description of how the individual may revoke the authorization;
6. A statement that information used or disclosed pursuant to the authorization may be subject to redisclosure by the recipient an no longer be protected by this rule;
7. Signature of the individual and date; and
8. If the authorization is signed by a personal representative of the individual, a description of such representatives authority to act for the individual.

Many medical providers that I have obtained records from since the effective date of HIPAA have their own form of authorization that has been prepared by the health care provider's lawyer. Health care providers have refused to release records based on a HIPAA compliant form that was not prepared by their own counsel. The best practice is to ask the entity or professional that has possession of the records if they have their own HIPAA form and, if so, use theirs.

According to the HIPAA regulations, a health care provider can deny access to a patient's psychotherapy notes. 45 CFR 164.524. The justification that will be applicable in the denial of the records in a DFPS case will be one of the following:

1. that the mental health professional has determined, in exercise of professional judgment, that the disclosure of the psychotherapy notes will likely endanger the life or physical safety of the individual or another person.
2. that the psychotherapy notes contain reference to another person and the mental health professional, in exercise of professional judgment, has determined that disclosure of the notes is reasonably likely to cause substantial harm to such other person.
3. that the individual's personal representative has requested the psychotherapy notes and the mental health professional, in exercise of professional judgment, has determined that disclosure of the notes to the representative would cause substantial harm to the patient or another person.

Denial of disclosure for one of the preceding reasons is reviewable. The person seeking the information, may seek a review of the denial by a mental health professional, picked by the denying professional, but who did not participate in the original decision to deny. The GAL should be able to consent to release as personal representative. Have the Court issue and order granting that authority.

Medical records covered by HIPAA may also be disclosed pursuant to Court Order or Subpoena. 45 CFR 164.512 Given the difficulty of obtaining releases in contested case, issuing a subpoena or getting a court order requiring the disclosure of the medical records might be the best approach. To obtain medical records pursuant to a subpoena, the party seeking the records must show that notice has been given to the person whose records are sought and that the person has been given the opportunity to object to the disclosure and in some instances, efforts must be made to have a protective order entered regarding the requested records. Id. Considering the process of giving the notice, allowing for the opportunity to object and protective order that are potentially required to subpoena medical records, filing a Motion for Order to Release the Records may be more expeditious.

XIII. Obtaining Records Pertaining to Alcohol and Drug Abuse Treatment

To obtain records of alcohol or drug abuse treatment from a facility that, directly or indirectly, receives federal funds, the individual must comply with Federal Regulations regarding the release of such information. 42 CFR Part 2. A court order is required to obtain alcohol and drug abuse treatment records. To order the disclosure of the records the Court must find:

1. The disclosure is necessary to protect against an existing threat to life or serious bodily injury (this includes child abuse and neglect and verbal threats);
2. The disclosure is necessary in connection with the investigation or prosecution of an extremely serious crime;
3. The disclosure is necessary in connection with litigation or other administrative proceedings in which the patient offers testimony or other evidence of the confidential communications.

42 C.F.R., Part 2 § 2.63 (October 1999)

An order entered by a Court under these regulations in a civil proceeding must:

1. Result from an Application;
2. Be served upon the Patient;

3. Allow for a written response;
4. Come out of a hearing process that protects the patient from unnecessary disclosure of confidential information prior to the ruling;
5. Come out of a hearing that is held in private unless the patient requests that it be public;
6. Contain findings that good cause exists for the disclosure and that:
    a. Other ways of finding out the information are not available or would not be effective; and
    b. The public interest and need for disclosure outweigh the potential injury to the patient, the physician-patient relationship and the treatment services'
7. An order authorizing disclosure must:
    a. Limit disclosure to only those portions of the records which are essential to fulfill the objective of the order;
    b. Limit disclosure to those persons whose need for information is the basis for the order; and
    c. Include such other measures as are necessary to limit the disclosure for the protective of the patient, the physician-patient relationship and the treatment services (i.e., prohibition of re-disclosure, sealing of files, etc.)

42 C.F.R., Part 2 §2.64 (October 1999)

XIV. **Conclusion**

Representing abused and neglected children and parents accused of abusing or neglecting children, is some of the most difficult work that a family lawyer will have to do. Given the seriousness of the issues involved in DFPS litigation, the private attorney should leave no stone unturned. Much of the information that will be important to the case will be confidential. Given the difficulty in obtaining such information, a plan for identifying and obtaining the information should begin immediately after being appointed or hired to represent the interest of a child or a parent. The plan for gathering information should involve seeking an Order to Release Records that the AAL and/or GAL determine to be necessary.