

Defending the CPS Case
How to Level the Playing Field

Kellye A. Swanda
18th Annual Juvenile Law Conference
Dr. Robert O. Dawson Juvenile Law Institute
February 2, 2005

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Education:

B.A. in Political Science from the University of Texas at Arlington, 1987.

J.D. from Texas Wesleyan University School of Law, 1995.

Professional Experience:

Swanda & Swanda, P.C., 1999 to present, handling Adoption, CPS Matters, Juvenile Delinquency, Divorce, Criminal, Child Custody, & Child Support.

Assistant District Attorney, Tarrant County, 1995-1999. Special prosecutor assigned to represent Child Protective Services.

Lectures, Papers Presented and Honors:

18th Annual Juvenile Law Conference – “Defending a CPS Case.” 2005

Dallas Bar Association Juvenile Justice Committee – “It Ain’t Over ‘Til the Foreman Sings” Trial Pannel 2004

Advanced Family Law Course - “Defending a CPS Case.” 2004

Texas Criminal Defense Lawyer’s Association Forensic Seminar - “CPS Investigations” 2003.

Texas Criminal Defense Lawyer’s Association Forensic Seminar - “CPS Investigations”, 2001.

Texas Children’s Justice Project’s Continuing Legal Education Program
“Representation in Abuse & Neglect Cases”, September 22, 2000.

Texas Criminal Defense Lawyer’s Association’s 13th Annual Advanced Short Course, “Rusty Duncan” Seminar, “CPS Investigations” – June 2, 2000.

Tarrant County Criminal Defense Lawyers Continuing Legal Education –
“Defending a Criminal Client in a CPS Investigation” – October 1999.

Guest Television Host of Arlington’s AT&T Cablevision’s Weekly Program: “For the Record” –
Hosted multiple television programs on government affairs - 1998 – 2002.

Multiple Interdisciplinary Child Sexual Abuse Training
Tarrant County College Police Academy – 3 semesters; 1995-1998.

Court Appointed Special Advocate Legal Training – 1995–2001.

Foster Parent Legal Training – “The CPS Court System” – 1995-1999.

Tarrant County Sexual Abuse Advisory Counsel - “The CPS Court System” – May 1998.

Education Seminars for Child Protective Services’ Social Workers – 1995-1999.

Named by “Fort Worth Magazine” - (December 2002) as the top lawyer for CPS cases and for Adoption cases.

Appointed to the Child Abuse and Neglect Committee for the State Bar of Texas – 2002 – 2005.

Leadership Arlington - Class of 2002-2003; Chairperson of the Government Section.

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DEFENDING THE CPS CASE – HOW TO LEVEL THE PLAYING FIELD

I. INTRODUCTION

This article addresses the structure of CPS, the Investigative Process, how to defend a parent involved in a CPS case and how a CPS case may affect your divorce or custody case.

II. "SLEEPING WITH THE ENEMY"

CPS has substantial power. They do not need a search warrant. They can go into a home and remove a child without a court order. However, they must obtain a court order on the next business day. T.F.C. §262.106.

CPS has legitimacy because they are a governmental agency charged with the task of protecting children from neglect and abuse.

CPS has the power to make "findings" with regard to allegations of neglect and abuse. These findings can affect a parent's future rights to parent their children. This is true even if the child is not legally removed from that parent. A negative finding by CPS can effect a Court's decision on granting custody to a particular parent. Not only can a negative finding, but also an unable to determine finding will preclude a parent from operating a day care, and working at a day care or school.

CPS investigators are limited by time (30 days) to complete their investigation. If the case is complex, (the fact situation surrounding the allegation of abuse), then it is more likely that the finding by CPS is either erroneous or is inadequate. Erroneous or inadequate findings will skew the true story for the fact finder and may greatly affect the outcome of the case.

III. STRUCTURE OF CHILD PROTECTIVE SERVICES

CPS is profoundly understaffed. This results in poor training, inadequate time to address the workload, and poor moral. A compounding problem is their budgetary constraints.

The Texas Department of Family and Protective Services ("TDFPS") is the entity over Child Protective Services ("CPS"), Adult Protective Services ("APS"), and Child Care Licensing ("CCL").

Chapter 261 of the Texas Family Code sets forth the law for the investigation of child abuse and neglect.

A. Intake workers – receive the telephone calls from persons reporting abuse or neglect. They determine whether or not the nature of abuse or neglect warrants an investigation. To do so the worker looks for information indicating that either a child has been abused/neglected and is in danger of further abuse/neglect; or, there is reasonable likelihood that a child will be abused or neglected in the foreseeable future. If this finding is made, the worker assigns a "priority level" to the case.

1. Priority 1 – Allegations of immediate risk of abuse or neglect that could result in death or serious harm. 40 Tex. Admin. Code § 700.505(b)(1) Examples: a child has died and other children remain the home; failure to thrive; sexual abuse (and is in immediate danger of further abuse); preschooler left alone; a child that has sustained a severe physical injury; a child's care-giver is extremely intoxicated or mentally impaired. Priority 1s must be responded to within 24 hours. 40 Tex. Admin. Code § 700.505(a)(1).

2. Priority 2 – Allegations of all other forms of abuse or neglect. 40 Tex. Admin. Code § 700.505 (b)2. These must be responded to within 10 days. Tex. Admin. Code §700.505 (a) 2. The intake worker takes down the caller's information and inputs this information into the computer.

3. The intake worker also checks the computer, which contains a central registry to ascertain whether or not the alleged perpetrator has been accused of child abuse before. Reports of abuse are maintained in the central registry until the alleged victim turns age 18.

NOTE: CPS only investigates persons accused of abuse or neglect who are responsible for the care, custody, or welfare of the child.

4. The time-frame mentioned above in which the investigation must start, begins when the intake worker receives the call/report.

B. Investigators –

1. How they get the case – They receive the referral from the intake worker. They investigate allegations of child abuse.

2. Time to complete the investigation Investigators must complete their investigation within 30 days and must have their report completed within 45 days (from the date of assignment). The time

frame for completions of an investigation is often inadequate. The more complex the fact situation surrounding the allegation of abuse or neglect, the more likely the findings will be inadequate. **INVESTIGATIONS MAY BE CONDUCTED BY TRAINEES AFTER COMPLETING THEIR TRAINING CLASSES!!!!!!!!!!!!**

3 Thorough Investigations.

Thorough investigations are mandated if the interview with the alleged victim or parent or alleged perpetrator suggests that: abuse or neglect did occur; or, risk is indicted; or it is impossible at this point to determine whether abuse/neglect occurred and/or is likely to occur in the future.

4. Elements of a thorough Investigation. The following are mandatory elements of a thorough investigation: interview alleged victim; interview at least one of the parents; and interview the alleged perpetrator; check abuse/neglect backgrounds on CPS's computer system; interview other children (usually siblings) who may have been exposed to abuse/neglect; visit the home (neglect cases); and check the criminal background of the alleged perpetrator.

5. EXCEPTION Anonymous Reports. When a report of abuse and neglect is made anonymously, a preliminary investigation is mandated. Tex. Fam. Code §261.304. Unless CPS determines that there is some evidence to corroborate the report of abuse/neglect, CPS may NOT conduct a thorough investigation and/or take action against the person accused of abuse. Tex. Fam. Code § 261.304(c). To corroborate the report of abuse/neglect, the worker must check the abuse and neglect background of every member of the home AND contact and interview a reliable collateral (teacher/neighbor).

6. Referral to law enforcement. The investigator is required to forward the report of child abuse to law enforcement. Texas Family Code § 261.105. The District Attorney may inform CPS that it desires notification of reports of child abuse & neglect. Tex. Fam. Code § 261.1055.

7. Dispositions of Investigation. The investigator meets with her supervisor to assign a disposition to the investigation. Dispositions are either:

- a. Reason to Believe – (Substantiated);
- b. Unable to Determine (Unsubstantiated);
- c. Ruled Out (False); or
- d. Family Moved

(unable to investigate).

8. Risk Assessment. At the conclusion of the investigation, the investigator MUST document findings regarding the likelihood of child abuse/neglect occurring the foreseeable future. This is called a "Risk Assessment." It is a form that has either two options: "at risk" or "not at risk".

9. Supervisory Approval. The supervisor must approve the disposition assigned to the case.

a. In cases where there will be no post involvement by CPS, the approval must be completed within 60 days after case intake.

b. In cases where post-investigation services will be provided, the investigation must be approved within 5 days.

10. Mandatory Notices.

a. CPS must send the parent/alleged perpetrator notice of the disposition of the case.

b. If the case was "Ruled Out," the notice will contain information on how to seal the case and purge the computer records of the referral. This notice must be given within 15 days following the conclusion of the Investigation. The removal of information must occur within 90 days from receipt of a properly submitted request. During this removal time period, CPS may not release information relating to this particular false report of abuse/neglect. The request for removal of information from records must occur within 45 days after the mailing date of the notification of the disposition of "Ruled Out."

c. If the case was "Reason to Believe," the notice will contain information on the right to request an administrative review. Please note that the alleged perpetrator must ask CPS for a "Form 2234". CPS will not complete the form for you. CPS does not tell the alleged perpetrator about this form.

C. On-going Case Workers – If the case was dispositioned as Reason to Believe or if there is risk, on-going workers receive the case from the investigator.

1. Develop a Service Plan. The on-going worker develops a case service plan for the family and directs the family to services.

2. Court Duties. The on-going worker attends the review hearings and trial and permanency planning team meetings.

D. Supervisors – Supervise on-going workers and/or investigators.

E. Program Managers – Oversees supervisors.

F. Program Directors – Usually one in each of the 5 largest counties; and others are spread out through the state.

G. BACKGROUND ON CPS WORKERS:

1. Required to have a college degree (IN ANYTHING!);
2. Required to attend the “Academy” – this is a three month training on the identification of abuse and neglect and investigative procedures;
3. Now they are ready to investigate allegations of child abuse, interview child victims, assign a disposition, and refer the case to law enforcement.
4. Turn over is high. Other agencies seek qualified persons and pay more.

IV. THE LAW ON INVESTIGATION OF CHILD ABUSE BY CPS:

A. Investigations.

TEXAS FAMILY CODE § 261.302.

“CONDUCT OF INVESTIGATIONS”

- (a) *The investigation may include:*
- (1) *a visit to the child’s home, unless the alleged abuse or neglect can be confirmed or clearly ruled out without a home visits; and*
 - (2) *an interview with and examination of the subject child, which may include a medical, psychological, or psychiatric examination.*
- (b) *The interview with and examination of the child may:*
- (1) *be conducted at any reasonable time and place, including the child’s home or the child’s school;*
 - (2) *include the presence of persons the department or designated agency determines are necessary; and*
 - (3) *include transporting the child for purposes relating to the interview or investigation.*
- (c) *The investigation may include an interview with the child’s parents and an interview with and medical, psychological, or psychiatric examination of any child in the home.*
- (d) *If, before an investigation is completed, the investigating agency believes that the immediate removal of a child from the child’s home is necessary to protect the child from further abuse or neglect, the investigating agency shall file a petition or take other action under Chapter 262 to provide for the temporary care and protection of the child.*

(e) *An interview with a child alleged to be a victim of physical or sexual abuse shall be audio taped or videotaped unless the investigating agency finds that good cause exists for not audio taping or videotaping the interview in accordance with the rules of the agency. Good cause may include, but is not limited to such considerations as the age of the child and the nature and seriousness of the allegations under investigation. Nothing in this subsection shall be construed as prohibiting the investigating agency from audio taping or videotaping an interview of a child on any case for which such audio taping or videotaping is not required under this subsection. **The fact that the investigating agency failed to audio tape or videotapes an interview is admissible at the trial of the offense that is the subject of the interview.***

B. Interference with Investigations.

TEXAS FAMILY CODE § 261.303.

- (a) *A person may not interfere with an investigation of a report of abuse or neglect conducted by the department or designated agency.*
- (b) *If admission to the home, school, or any place where the child may be cannot be obtained, then for good cause shown the court having family law jurisdiction shall order the parent, the person responsible for the care of the children, or the person in charge of any place where the child may be to allow entrance for the interview, examination, and investigation.*
- (c) *If a parent or person responsible for the child’s care does not consent to release the child’s prior medical, psychological, or psychiatric records or to a medical, psychological or psychiatric examination of the child that is requested by the department or designated agency, the court having family law jurisdiction shall, for good cause shown, order the records to be released or the examination to be made at the times and places designated by the court.*
- (d) *A person, including a medical facility, that makes a report under Subchapter B shall release to the department or designated agency, as part of the required report under § 261.103, records that directly relate to the suspected abuse or neglect without requiring parental consent or a court order.*

V. CPS INVESTIGATORS USUALLY CONDUCT THE INVESTIGATION IN THE FOLLOWING ORDER:

A. Preliminary Considerations

1. Review Report/Referral;
2. Contact reporting party;
3. Contact the family/alleged perpetrator to set up an Interview; they do not tell the family the nature of the report/referral;
4. Forward report to law enforcement.

B. Setting of the Interview

1. Neutral, not at scene of alleged abuse;
2. Specific room for interview (usually caseworker's office);
3. Select tools/props.

C. Order of the Interview

1. Child victim first (video if sexual); parent(s) and alleged perpetrator waits in CPS lobby;
2. All other siblings, (video if sexual);
3. Non-offending parent (do not reunite with alleged perpetrator); ask for 3 references; obtain background information;
4. Alleged perpetrator; ask for 3 references; obtain background information.

D. Follow-up

1. Apprise the family and alleged perpetrator of the nature of the referral;
2. If warranted, obtain consents for medical and therapy from family;
3. Protection issues:
 - offender moves out; and
 - safety plan; or
 - foster or out-of-family care.
4. Referrals for Follow-up: medical, if needed; and/or therapy.
5. Interview collaterals (others who may have pertinent information) such as teachers, child care providers, neighbors, relatives, etc.
6. Contact referrals provided by non-offending parent and alleged perpetrator;
7. Meet with supervisor to assign disposition;
8. Write up investigation narrative;
9. Forward investigation to law enforcement;
10. Forward to alleged perpetrator the disposition of the report and provide the alleged perpetrator information on how to appeal the disposition.

VI. DEFENSE OF AN ALLEGED PERPETRATOR DURING THE INVESTIGATIVE STAGE.

A. With advance notice. If you and your client have advance notice of CPS's involvement before CPS races to the alleged victims school or daycare:

[This is in situations where your client has been contacted by CPS who wants your client and the alleged child victim to come in to "discuss" allegations. Sometimes CPS goes to the school or day care provider without notifying your client].

B. Representation letter. Immediately send a letter to the legal entity in your jurisdiction that represents CPS. Cc: The Program Director, Supervisor, and Investigator. [See appendix for sample letter]. This letter is very important. Many jurisdictions have local rules that prohibit ANY ex parte communications. This way you receive advanced notice of CPS's plan to file a motion and seek an order compelling your client's participation in the investigation process.

C. Make it difficult for CPS. A client not allowing CPS access to the alleged victim is not a law violation. It is contrary to the family code and puts CPS into a tizzy. If your client does not allow access to the alleged victim, CPS will present the situation to their legal representative (District or County Attorney). The attorney will then, if circumstances warrant, file a Motion to Investigate with the proper court. If you have sent your representation letter, you should get advance notice of this hearing. NOTE: In CPS's world, advance notice of an Ex Parte may mean they are presenting the Motion in 15 minutes. This is okay, you can now contact the judge and ask that the Ex Parte wait until you get to court or if CPS moves forward without you, you may contact the judge and explain your facts (Ex Parte).

Advise your client it is okay to keep their child out of school or day care if the child seems "sick" or advise them that it is not a law violation to home-school their children. This way CPS must go through the court process to obtain access to the child.

D. Motion to Investigate. Pushing CPS into filing the Motion to Investigate is an ideal way to have complete advance notice of EVERYTHING in the intake referral, short of the complainant's name, prior to your client ever being interviewed by anyone, including law enforcement. This also allows you access to the plethora of discovery allowed by the Texas Rules of Civil Procedure.

E. If the court grants the Motion to Investigate. CPS will have a court order, usually with an expiring date, that gives them access to the alleged victim and siblings. Now your client must comply. If the order is

granted CPS will respond in a variety of ways. If you have advance notice, CPS will probably arrange with you a time for your client to bring in the alleged victim for an interview. Or, CPS may respond to your client's home armed with the court order and law enforcement.

F. Appeal of Order to Investigate. If the court grants that grants the Motion to Investigate is a Master's Court, you may appeal this decision to the District Court. An appeal must be filed within three days of the date the Master heard the motion. Tex. Fam. Code § 201.015. "Notice of Appeal." The appeal is a mandatory re-hearing to the District Judge. Next, you need to file a Motion for Temporary Restraining Order to restrain CPS from taking action on the Master's Recommendation.

G. Other considerations. A person who does not provide CPS access to their child or home is NOT interfering with the CPS Investigation system. They are merely exerting their legal rights. One is incapable of being in contempt without a court order directing that persons' behavior.

VII. DEFENSE OF A PARENT DURING THE POST REMOVAL STAGE.

A. Attend EVERY court hearing; Ask questions during placement reviews of the caseworker such as "What else does my client need to do to have her child returned to her?" "Is there anything else?" Get a transcript of this review hearing.

B. Meet your client & Return client's phone calls – These clients can be the most annoying. But remember, their children have been whisked away by the Government. They are usually naive, and have limited education. Thoroughly explain the CPS process with them. If they call you all the time, arrange a specified day on which to call your office.

A. Send Discovery (attached). (1) Do this in all cases where it looks like the case is going to trial. (2) Do this in all cases where CPS is delaying movement. (3) Do this in cases where the worker/supervisor is being either an idiot or mean.

C. Depositions – Consider taking depositions:

1. Case workers and/or CPS Investigator – take this deposition VERY early in the case when the CPS worker believes everything the child says. The CPS worker will stretch the truth to make the facts conform to the allegations. Two years later when you are trying your criminal case, the story has changed, more people have talked to the child, and the worker's story will change too. The prosecutor cannot use the

deposition to enhance testimony, but you can use it to impeach the witness.

2. police officer;
3. child(ren) – take this deposition early;
4. outcry witness;
5. medical doctor who did the

examination – **remember Daubert!** Set the Daubert predicate in your deposition so that the State's expert will fail at trial.

D. Attend Permanency Planning Team Meetings ("PPT"). Clients of CPS are invited and encouraged to attend these. PPT Meetings are every 3-5 months for a child in CPS's custody. Those in attendance are: investigator, on-going worker, supervisor, program director, therapist, foster parent, school teachers, etc. The people at these meetings have no clue that they are giving their case away. They talk and talk and talk, even about how little Johnny is now saying it was his Uncle Bob, not Daddy Stevey who abused him. You are welcome to attend PPT's just send a letter to the DA, Program Director, etc. requesting notification. Also ask your client to inform you of these meetings. CPS MUST inform the client of the meeting, they do not have to inform you.

E. Request your own hearings. Don't wait for CPS to get up off their *** to file a motion. If your client has done everything on their service plan, file a Motion to Modify. If there is a suitable relative, file a Motion to Modify or a Motion for Home-study.

F. Appeal of Associate Judge's Orders – you may appeal any decision made by an Associate Judge to the District Court. An appeal must be filed within three days of the date the Master rendered a decision heard the motion. Tex. Fam. Code § 201.015. "Notice of Appeal." The appeal is a mandatory re-hearing to the District Judge.

G. Motions to extend case. Either party may request the court to extend the case by six months. In many jurisdictions, the state presents this motion and order ex-parte. If this happens, jump up and down and cause a scene (unless you agree). File appropriate motions with the court requesting that evidence be heard on why the case should or should not be extended. Argument is not evidence. You must have real live witnesses.

VIII. JURY TRIALS

A. Do all of the tactics mentioned above.

B. Motion in Limine. File a Motion in Limine to keep out the fact that your client exerted all of his legal rights as opposed to being obstinate.

C. Voir Dire Considerations. Utilize the old “traffic ticket example” and “Ms. J, how much evidence would you need to hear to terminate the rights of the prospective juror to your left?”

D. Motion to Equalize Strikes. File a motion to equalize strikes. The Ad item and CPS are usually aligned. Do this in writing. Raise the motion again during pre-trial hearings. Most Important: Raise the Motion on the Record after Voir Dire and before exercise of strikes, or else it is waived.

E. The Charge. Make sure the charge is not disjunctive.

F. Request a Jury Shuffle. If requested, the Court MUST shuffle the jury. This throws the prosecutors, because they already prepared their pretty charts.

G. Remember Batson Applies.

H. Clean your client up. You may have to buy your client some clothes. Court's usually don't provide them in CPS Cases. Tell your client to brush their hair, take a bath and be quiet during the proceeding. Tell them not to leave the court room when the Jury is present. Tell them not to chew gum or eat. It is a shame that I have to include this paragraph.

IX. SPECIAL CONSIDERATIONS

A. What if the Court appoints one attorney to represent both parents? Beg the court not to do this. It rarely works. Often you get to the week of trial and your client's conflict becomes evident. You must then withdraw and new counsel must be appointed to represent each parent.

B. Prisoner Client.

C. Is the parent a minor? Consider whether or not the minor herself should be in foster care. Has there been abuse or neglect of your client? If so, you must report this to the CPS hotline. Reporting it to the caseworker is not enough.

D. What if one parent is a risk factor and the other is not? Consider whether or not the parents should separate. File for divorce, in the larger counties, this gets your case moved out of juvenile court and into a Family Court.

E. Does the Indian Child Welfare Act Apply? An Indian child is defined as “any unmarried person who is under age 18 and is either (a) a member or an Indian Tribe

or (b) is eligible for membership in an Indian Tribe and is the biological child of a member of an Indian Tribe. ICWA, Title 25 USC §1901, et. seq.

Each tribe has different requirements for membership.

There is a higher burden of proof in an ICWA case. It is beyond a reasonable doubt. Other strict requirements apply. The state must notify the Indian nation timely. The state must proffer a qualified expert at the initial hearing or within 90 days of removal. The child must be placed with a member or that tribe or another Indian tribe.

F. Alleged Biological Fathers. Consider legitimation. File a statement of paternity or a counterclaim for paternity immediately. Failure to do so is an independent ground for termination. T.F.C. §161.002. It is not necessary to apply the “involuntary grounds” nor is it necessary to show “best interest.”

G. Is your client mentally ill or mentally retarded? Ask the Court to appoint a Guardian Ad Litem for your client. You will continue as the Attorney Ad Litem. Consider raising a Title VII claim “American's with Disabilities Act” for failure to provide services to your client.

H. Home Studies. If CPS will not do a home study on a proposed relative or kinship, then do a Motion to Require CPS to do the study or to request the court pay for an independent social worker to study this proposed placement. If a home study comes back negative don't give up. Consider filing a Placement Motion or Motion to Modify. Make CPS explain to the judge why a 14 year old theft conviction is reason to deny a home study.

I. Motion for Monitored Return / Motion to Modify Temporary Orders . File this once your client completes all of or most of her services. Don't wait for CPS to file the motion.

J. Motion to transfer venue. Make sure CPS has filed the case in the correct county.

- K. Drug Test Experts.** Please look at *In the Interest of KCP and JDP*, 142 S.W.3d 574 (Texarkana 2004), no pet.
- L. Client contact with CASA or GAL.** Consider whether or not to allow your client to have contact outside your presence with CASA or the GAL.
- M. 14 day Show Cause Hearing.** ALWAYS ask for a contested hearing if the medical evidence is questionable.
- N. Services.** Advise your client to all of the services CPS requests. Instruct your client on how to access other services such as through Volunteers of America, Parenting Centers, or Catholic Charities. Make sure your client gives you the certificates of completion.
- O. Photographs.** Provide your client with a disposable camera to take pictures of visitations and pictures of their present living environment (only if it is acceptable). When it comes time for the termination hearing, CPS will probably not have EVER been to your client's home.

Appendix "A"

Sample letter to send to CPS attorney prior to removal of a child

June 1, 2004

Mr. _____
Assistant District Attorney
Tarrant County District Attorney's Office
2700 Ben Avenue
Fort Worth, TX 76018

Re: Peter Pervert Investigation

Dear Mr. _____:

I have been retained by Peter Pervert in reference to a C.P.S. Investigation. Please direct all inquiries on this matter to my office. It is my understanding that Sally Whohasissues has been assigned to this investigation. Please advise CPS not to contact my client without my consent. Also, in accordance with Tarrant County Local Rule 3.30(b), please let this letter serve as my request to be notified of any "ex parte" or emergency hearings in this matter.

Should you have questions or desire additional information, please do not hesitate to contact me.

Sincerely yours,

Kellye A. Swanda

Cc: Sally Whohasissues, CPS Investigator
Diane QueenBee, CPS Supervisor
Jane Doe, Court Coordinator, 323rd Judicial District Court
Peter Pervert (client)

Appendix "B"

Request for Production

CAUSE NO. 99-928-X

IN THE INTEREST OF

A CHILD

§
§
§
§
§

IN THE 305 DISTRICT COURT

DALLAS COUNTY, TEXAS

SITTING AS A JUVENILE COURT

RESPONDENT'S REQUEST FOR PRODUCTION OF DOCUMENTS

To: The Texas Department of Protective and Regulatory Services, by and through their attorney of record, _____, Assistant District Attorney, 2600 Lone Star Drive, LB22, Dallas, Texas 75212.

_____, Respondent, requests that Petitioner, The Texas Department of Protective and Regulatory Services, produce for inspection and copying the items described below, at the time and place set out below.

Definitions

"TDFPS" means the Texas Department of Protective and Regulatory Services.

"Relating to" means in whole or in part constituting, containing, concerning, embodying, relating, analyzing, identifying, stating, referring to, dealing with, or in any way pertaining to.

"Parties" means the Texas Department of Protective and Regulatory Services and _____ and the child, subject to this case.

Instructions

All information that is not privileged that is in the possession of Petitioner, his attorney, investigators, agents, consulting experts, as defined in the Texas Rules of Civil Procedure, employees, or other representatives of Petitioner is to be divulged.

You must produce any document of which you have possession, custody, or control. Possession, custody, or control includes constructive possession such that you need not have actual physical

Defending the CPS Case – How to Level the Playing Field

possession. As long as you have a superior right to compel production from a third party (including an agency, authority, or representative), you have possession, custody, or control.

The documents must either be produced as they are kept in the usual course of business or be organized and labeled to correspond with the categories in the request.

Any and all data or information which is in electronic or magnetic form should be produced in the following form: reduced to writing.

Documents to Be Produced

The documents set forth in Exhibit A, which include any and all documents, things, and recordings that constitute, mention, or in any way, directly or indirectly, relate or refer to this request, are to be produced for inspection, examination, and copying within thirty days following service of this request at Swanda & Swanda at 901 W. Bardin Rd., Suite 306, Arlington, TX 76017

Respectfully submitted:

Swanda & Swanda, P.C.
Attorneys At Law
901 W. Bardin Rd., Suite 306
Arlington, TX 76017
(817) 465-4664
fax (817) 465-3779
e-mail: KellyeSwanda@yahoo.com

By: _____
Kellye A. Swanda
State Bar No. 00792864
Attorney for Respondent

Certificate of Service

I certify that a true copy of the above was served on each attorney of record or party in accordance with the Texas Rules of Civil Procedure on _____.

Kellye A. Swanda

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The entire Texas Department of Protective and Regulatory Services case file on _____ and her child, including but not limited to:

1. 2054's and other payment vouchers as it relates to this case and services received by any party, collateral, or child in this case.
2. CORRESPONDENCE: between TDFPS and _____, between TDFPS and service providers; between TDFPS and foster parents (de-identified, of course), between TDFPS and educational facilities/providers (de-identified, of course), between TDFPS and medical providers; between TDFPS and complainants of referrals (de-identified, of course).
3. INVESTIGATION FILE: including but not limited to each and every CPS referral, intake report, CAPS report, photographs taken during investigation, investigation narrative, risk assessment, safety plan(s), medical evaluations, psychological evaluations or assessments.
4. PHOTOGRAPHS: produce photocopies of all photographs in TDFPS's possession regarding this case.
5. SCHOOL RECORDS: produce copies of all records from the children's Early Childhood Intervention file. Note it is not a proper objection to state that TDFPS is not the "holder" of these records. Since TDFPS is the Temporary Managing Conservator of the children, TDFPS has a superior right to these records. If it is too much of a hardship for TDFPS to produce these records, then please provide Respondent's counsel with a release for these records.
6. MEDICAL RECORDS: produce copies of all medical records and psychological records in your possession for _____.
7. ASSESSEMENTS: produce copies of all assessments on the children including but not limited to placement assessments, educational, speech, cognitive, psychological, psychiatric, and medical assessments.
8. PSYCHOLOGICAL EVALUATIONS: produce copies of all psychological or psychiatric evaluations on _____.

4. 6TJ9(CASEION FILE: produce copies of a4(c(es))T0.7978607 0 TD0.5003 Tc1535469 Twv

Defending the CPS Case – How to Level the Playing Field

12. CRIMINAL HISTORIES and ARREST REPORTS: Produce copies of any criminal histories (done by TDFPS, not NCIC) and copies of any arrest reports regarding _____ or anyone on whom a home study was done or requested.
13. CAPS: Produce CAPS background information and referral history and disposition information on anyone of whom a home study was done or requested.
14. VIDEO or AUDIO TAPES: Produced any and all video or audio tapes made of the child or _____ either parent.
15. PLACEMENT FILE: Produce a de-identified copy of all documents relating to the placement(s) of _____ the children.
16. EXPERTS: Produce all reports of narratives, memos, and notes an any information obtained by any expert witness or prepared by any expert witness retained by you or on your behalf who will testify at trial. Produce all expert witness's curriculum vita / resume.
17. STATEMENTS: Produce any and all statements made by persons with knowledge of relevant facts.

Appendix "C"

Request for Disclosure

CAUSE NO. 99-928-X

IN THE INTEREST OF

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IN THE 305 DISTRICT COURT

DALLAS COUNTY, TEXAS

A CHILD

SITTING AS A JUVENILE COURT

REQUEST FOR DISCLOSURE/ RULE 194 REQUEST

To: TEXAS DEPARTMENT OF PROTECTIVE AND REGULATORY SERVICES, by and through its attorney of record, _____, Assistant District Attorney, 2600 Lone Star Drive, LB22, Dallas, Texas 75212.

1. State the correct names of the parties to the lawsuit.
2. State the names, addresses, and telephone numbers of any potential parties.
3. State the legal theories and, in general, the factual bases of the claims or defenses of TDFPS. (TDFPS need not marshal all evidence that may be offered at trial.)
4. State the names, addresses, and telephone numbers of persons having knowledge of relevant facts, and give a brief statement of each identified person's connection with the case.
5. For any testifying expert -
 - a. state the expert's name, address, and telephone number;
 - b. state the subject matter on which the expert will testify;
 - c. state the general substance of the expert's mental impressions and opinions and a brief summary of the basis for them, or if the expert is not retained by, employed by, or otherwise subject to the control of TDFPS, documents reflecting such information;
 - d. if the expert is retained by, employed by, or otherwise subject to the control of TDFPS, produce the originals or copies of the following:
 - i. all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony; and
 - ii. the expert's current resume and bibliography.

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6. Produce the originals or copies of any witness statements described in rule 192.3(h) of the Texas Rules of Civil Procedure. Rule 192.3(h) provides as follows.

Statements of Persons with Knowledge of Relevant Facts. A party may obtain discovery or the statement of any person with knowledge of relevant facts - a "witness statement" - regardless of when the statement was made. A witness statement is (1) a written statement signed or otherwise adopted or approved in writing by the person making it, or (2) a stenographic, mechanical, electrical, or other type of recording of a witness's oral statement, or any substantially verbatim transcription of such a recording. Notes taken during a conversation or interview with a witness is not a witness statement. Any person may obtain, upon written request, his or her own statement concerning the lawsuit, which is in the possession, custody or control of any party.

The disclosures must be signed in accordance with Texas Rules of Civil Procedure, Rule 191.3, and delivered to the undersigned attorney.

Pursuant to Rule 194 of the Texas Rules of Civil Procedure, you are requested to disclose within 30 days of service of this request, the information or materials as set forth above.

Respectfully submitted:

Swanda & Swanda, P.C.
Attorneys At Law
901 W. Bardin Rd., Suite 306
Arlington, TX 76017
(817) 465-4664
fax (817) 465-3779
e-mail: KellyeSwanda@yahoo.com

By: _____
Kellye A. Swanda
State Bar No. 00792864
Attorney for Respondent

Certificate of Service

I certify that a true copy of the above was served on each attorney of record or party in accordance with the Texas Rules of Civil Procedure on _____.

Kellye A. Swanda

Appendix "D" Interrogatories

CAUSE NO. 99-928-X

IN THE INTEREST OF

A CHILD

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IN THE 305 DISTRICT COURT

DALLAS COUNTY, TEXAS

SITTING AS A JUVENILE COURT

RESPONDENTS FIRST SET OF INTERROGATORIES TO PETITIONER

To: TEXAS DEPARTMENT OF PROTECTIVE AND REGULATORY SERVICES, by and through its attorney of record, _____, Assistant District Attorney, 2600 Lone Star Drive, LB22, Dallas, Texas 75212.

_____, Respondent mother in the above-entitled and numbered cause, and hereby serves upon Petitioner, Texas Department of Protective and Regulatory Services ("CPS") the following First Set of Interrogatories to Petitioner, pursuant to Texas Rules of Civil Procedure, Rule 197, which, in compliance with such Rules, are directed to and shall be answered by Petitioner. Petitioner shall serve a copy of the answers on counsel for Respondent at the address below within thirty (30) days from the date of receipt of these written interrogatories. You are reminded that under the provisions of the Texas Rules of Civil Procedure, you are under a duty to reasonably amend your answers and responses if you obtain information upon the basis of which (a) you know that the answers / responses are incorrect when made, or (b) you know that the answers / responses, though correct when made, are no longer true and the circumstances are such that failure to amend your answers is in substance a knowing concealment.

Respectfully submitted:

Swanda & Swanda, P.C.
Attorneys At Law
901 W. Bardin Rd., Suite 306
Arlington, TX 76017
(817) 465-4664
fax (817) 465-3779
e-mail: KellyeSwanda@yahoo.com

Defending the CPS Case – How to Level the Playing Field

By: _____
Kellye A. Swanda
State Bar No. 00792864
Attorney for Respondent

Certificate of Service

I certify that a true copy of the above was served on each attorney of record or party in accordance with the Texas Rules of Civil Procedure on _____.

Kellye A. Swanda

I. DEFINITIONS

The following terms are defined and used in these Interrogatories as follows:

A. “PETITIONER” or “YOU” means and includes the TEXAS DEPARTMENT OF PROTECTIVE AND REGULATORY SERVICES (“CPS”), in this cause of action, and each of its affiliates, predecessors, successors, employees, agents representatives, investigators, consultants, and all persons formerly holding such positions and all persons who have acted or purported to act on behalf of Petitioner.

B. “RESPONDENT” means _____ and her agents or representatives and all persons formerly holding such positions and all persons who have acted or purported to act on behalf of Respondent.

C. “CHILD” or “CHILDREN” mean _____ and _____, the subjects of this suit.

D. “PERSON” means any individual, corporation, partnership, joint venture, association, business, trust, municipality or any other organization or entity.

E. “DOCUMENT,” “DOCUMENTS” or “TANGIBLE THINGS” may be used in their broadest sense and shall include all written, printed, typed, recorded or graphic matter of every kind and description, both original and non-identical copies, and all attachments and appendices thereto. Without limiting the foregoing, the terms document, documents, and tangible things shall include all court records and pleadings, agreements, contracts, deeds, deeds of trust, mortgage instruments, quotations, bids, communications, correspondence, letters, telegrams, telexes, messages, memorandums, records, reports, accident reports, medical logs or records, books, summaries, or other records of telephone conversations of interviews, summaries or other records of telephone conversations of interview, summaries or other records of negotiations, other summaries, diaries, diary entries, calendars, appointment books, time records, instructions, work assignments, visitor records, forecasts, statistical data, statistical statements, financial statements, work sheets, work papers, drafts, graphs, maps, charts, surveys, plats, whether recorded or unrecorded, instruments filed for records, field records, field notes, abstracts or ground drawings, renderings, diagrams, tables, accounts, analytical records, consultants’ reports, appraisals, bulletins, brochures, pamphlets, circulars, trade letters, press releases, notes, notices, marginal notations, notebooks, telephone bills or records, bills, statements, records of obligation and expenditures, invoices, lists, journals advertising, recommendations, files, print-outs, compilations, tabulations, purchase orders, receipts, selling orders, confirmations, checks, canceled checks, letters of credit, envelopes or folders or similar containers, vouchers, analysis, studies, surveys, transcripts of hearings, transcripts of testimony,

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expense reports, microfilm, microfiche, articles, speeches, tape or disc records, sound recordings, video recordings, film, tape, photographs, aerial or ground, punch cards, programs, data compilations from which information can be obtained (including matter used in data processing and other printed, written, handwritten, typewritten, recorded, stenographic, computer-generated, computer-stored, or electronically stored matter), however and by whomever produced, identical copies thereof which do not contain any markings, additions, or deletions different from the original need not be separately produced

F. “IDENTIFY” means with respect to the following:

(1) **INDIVIDUALS:**

- (a) The full name, current home and business address, and home and business telephone number(s) of each individual;
- (b) The company, firm or organization with which such person is affiliated or by whom such person is employed;

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- (c) The address and principal place of business of any such entity; and
 - (d) The person's position, title or job capacity. All such information shall include both the present time and the time covered by these interrogatories to Petitioner.
- (2) **OTHER ENTITIES** (Including corporations, partnerships, joint ventures, associations, business trusts, municipalities or any other organizations or entities).
- (a) The full name of such entity;
 - (b) The address of its principal place of business; and
 - (c) The address of its office or offices in Texas, if different from b. above.
- (3) **DOCUMENTS:**
- (a) The date of preparation;
 - (b) The person who prepared them;
 - (c) The present location(s) of originals, including identification (as defined in Sub-Paragraphs 1 and 2 above) of present custodian; and
 - (d) The substance of each document.

Every document to be so identified may be produced for inspection and copying at the time of response to these Interrogatories to Petitioner in lieu of such identification.

The above information shall be given in sufficient detail to enable a party or person to whom a subpoena or Request for Production is directed to identify fully the documents sought to be produced and to enable counsel to determine that such document, when produced, is, in fact, the document so described.

G. The pronouns "he" and "his" refer to both males and females. "You", "yours" and like terms refer to individual as well as other entities.

H. "Relating to" means, when used in connection with Request for Production, all documents which refer to, relate to, reflect, or in any manner describe the subject matter of the Request.

II. INSTRUCTIONS

A. If a privilege not to answer is claimed, identify each matter as to which the privilege is claimed, the nature of the privilege and the legal and factual basis for each such claim.

B. If a refusal to answer an Interrogatory is stated on the grounds of burdensomeness, identify the number and nature of documents needed to be searched, the location of the documents and the number of person hours and costs required to conduct the search.

C. Answer each Interrogatory on the basis of the entire knowledge of Petitioner, including information in the possession of Petitioner, its employees, consultants, representatives, agents and subsidiaries.

D. If an Interrogatory cannot be answered in full, answer to the extent possible and specify reasons for inability to answer.

INTERROGATORIES

INTERROGATORY NUMBER 1: Please identify each person who assisted in answering these Interrogatories, and for each such individual, state specifically the Interrogatory he/she assisted in answering.

ANSWER:

INTERROGATORY NUMBER 2: Please identify each and every person who has given a statement to you concerning any matter relevant to this case and provide the date the statement was taken, the identify of the person taking the statement and all persons or entities who possess the original statement or a copy of the original.

ANSWER:

INTERROGATORY NUMBER 3: Please state the names, addresses and telephone numbers of all health care providers who have seen the children the subject of this suit and the parents/parties for examination, evaluation, diagnosis, or treatment of any physical or mental condition and the reasons for each appointment, and the date(s) seen.

ANSWER:

INTERROGATORY NUMBER 4: Identify (as the word is defined in these Interrogatories) and indicate the relation to the case of all caseworkers and supervisors, CPS, foster or placement unit workers, etc., who have been assigned to this case or have personal knowledge of the case.

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ANSWER:

INTERROGATORY NUMBER 5: State whether or not CPS has a written policy as it relates to § 261.302(e) of the Texas Family Code. If so, what is that policy? Have any audio or video tapes as required by § 261.302(e) of the Texas Family Code been made on this case?

ANSWER:

INTERROGATORY NUMBER 6: If you have any knowledge, either directly or indirectly, of any relevant admission against interest, statement, oral or written, made by Respondent _____, please state:

- a. The substance of the admission, communication or statement;
- b. The identity of all persons who heard or read the admission, communication or statement or who might be in a position to testify concerning the admission or statement;
- c. The date of the admission, communication or statement; and
- d. The circumstances surrounding the giving of the admission, communication or statement.

ANSWER:

INTERROGATORY NUMBER 7: Do you allege that _____ has physically, emotionally or psychologically abused the child the subject of this suit? If so, state the general factual basis for the allegation of the abuse, the date(s) it occurred, and whether any treatment was sought.

ANSWER:

INTERROGATORY NUMBER 8: Describe in detail (factual circumstances, giving dates and locale) each specific event you believe would constitute “Negligent Supervision” or “Neglect” or “Physical Abuse” or “Sexual Abuse” or “Emotional Abuse” by (parent) _____ of child _____.

ANSWER:

INTERROGATORY NUMBER 9: With reference to your Original Petition in Suit Affecting the Parent-Child Relationship in which you petition for termination, what actions, if any, would you consider or would you want Respondent to take to cause you to reconsider your position?

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ANSWER:

INTERROGATORY NUMBER 10: Please state the general factual basis for your decision to seek termination against Respondent.

ANSWER:

INTERROGATORY NUMBER 11: On what date and why did TDFPS permanency plan change to "Termination of Parental Rights."?

ANSWER:

INTERROGATORY NUMBER 12: Describe in detail (factual circumstances, giving dates and locale) each specific event you believe would constitute "endangerment" by parent of child as defined in Texas Family Code § 161.001(D) and (E).

ANSWER:

INTERROGATORY NUMBER 13: If you will contend at trial that Respondent has failed to comply with your requests and/or the Court's orders for attending counseling, classes, treatment or any other matter related to Respondent, then please describe each such failure, if any.

ANSWER:

INTERROGATORY NUMBER 14: Please state whether or not you or your agency has had any past adversarial or other type relationship with the Respondent regarding the child the subject of this lawsuit, or any other child or child not the subject of this lawsuit. If your answer is in the affirmative, please state the following:

- a. the nature and extent of the relationship;
- b. the dates involved; and

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c. the disposition, if any.

ANSWER:

INTERROGATORY NUMBER 15: State from whom the child the subject of this suit was removed and what efforts, if any, you have taken to prevent or eliminate the need for the removal of the child from that person.

ANSWER:

INTERROGATORY NUMBER 16: State the number of foster parents or other persons who have or have had custody or possession of the child since her removal by you and the dates of placement in each facility and/or home.

ANSWER:

INTERROGATORY NUMBER 17: State the names and address of all such persons, *other than foster parents*, responsive to the foregoing Interrogatory.

ANSWER:

INTERROGATORY NUMBER 18: State each and every requirement that you have established for Respondent to meet in order for her to obtain conservatorship, managing and/or possessory conservatorship of the child. State how these requirements are relevant to Respondent obtaining such conservatorship.

ANSWER:

INTERROGATORY NUMBER 19: With respect to the preceding Interrogatory, state which of your requirements Respondent _____ has completed and state which requirements she has failed to complete.

ANSWER:

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INTERROGATORY NUMBER 20: State what services were offered to Respondent _____ in order for her to meet your requirements to have her children returned to her care.

ANSWER:

INTERROGATORY NUMBER 21: With respect to Interrogatories 18, 19 and 20, please state:

- (A) When were those services initiated by or arranged by TDFPS?
- (B) When did those services actually began?
- (C) Whether Respondent _____ cooperated with these services.

ANSWER:

INTERROGATORY NUMBER 22: What, if anything, on Respondent's Service Plan has not been completed by _____.

ANSWER:

INTERROGATORY NUMBER 23: State your future plans (permanency plans) for the children.

ANSWER:

INTERROGATORY NUMBER 24: Regarding visitation between Respondent and her child(ren):

- (A) How often is it offered?
- (B) What visitation has Respondent exercised and missed (dates and time, e.g., 1 hour)?
- (C) What visitation has been canceled or postponed as a result of TDFPS or PACE or the foster home having a conflict?
- (D) Who supervised the visitation and who else besides Respondent and her children were present during the visitation?

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ANSWER:

INTERROGATORY NUMBER 25: If a psychological evaluation was performed on Respondent, then answer. As a result of the recommendations made by the psychologists, did TDFPS arrange the recommended services? If so, when?

ANSWER:

INTERROGATORY NUMBER 26: If you or someone from Child Protective Services has forwarded a copy of the intake or investigation to the District or County Attorney or any law enforcement agency, please describe what was sent, to whom it was sent, and when it was sent.

ANSWER:

INTERROGATORY NUMBER 27: Identify each person who has observed an indication of sexual acting out behavior of the child _____. State the date observed and what was observed.

ANSWER:

Appendix "E"

INTAKE ASSIGNMENT GUIDELINES

- * The numbered intake examples are not all inclusive or exhaustive.
- * Ages, time frames and time of day references are approximate rather than exact.

PHYSICAL ABUSE

Situational factors to consider:

- * Age of Child
- * Degree of Injury
- * Location of Injury
- * History of abuse
- * Presence of Family Violence
- * Mental or emotional illness

Almost Always Assigned	Rarely Assigned
1. Fracture with explanations inconsistent with injury. 2. Young child with old healed fractures due to unexplained injuries. 3. Recent non-accidental burns. 4. Recent non-accidental, unexplained or inconsistent bruises or injuries. 5. Drug babies when mother and child test positive and/or child has symptoms of withdrawal. 6. Infant diagnosed with Fetal Alcohol Syndrome/effect. 7. Pre-school/young child given alcohol/drugs with observable effects. 8. Hair pulling resulting in bald spots. 9. Parent or caretaker bites child resulting in serious injury.	1. Medical condition professionally diagnosed. 2. Parent/teen conflict not resulting in serious injury. 3. Cultural folk remedies not resulting in serious injury. 4. Mongolian spots reliably corroborated. 5. Teenagers with old scars from past abuse but expressing no fear of recurrence. 6. Children aged 7 years old and over with minor injuries to non-vital bodily areas as a result of over-discipline. 7. Children aged 7 years and over who is afraid of going home with no substantial history of PHAB or current injures, bruises or scars.

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<p>10. Confined or locked in area.</p> <p>11. Tied or chained up.</p> <p>12. Presence of scars indicating serious abuse incidents not previously investigated and current risk factors are present.</p> <p>13. Parent demonstrates a lack of control that results in behaviors which place the child at risk of substantial harm; i.e., throwing child across room, throwing objects at child, striking others when child is likely to become the target, etc.</p>	
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MEDICAL NEGLECT

Situational Factors to Consider:

- * Age of child
- * Child's ability to care for self
- * Impact of non-treatment
- * Severity of condition
- * Knowledge of parent about source and type of treatment needed
- * Statement of need from medical professional

Almost Always Assigned	Rarely Assigned
<p>1. Critical negative consequences to missed medical/counseling appointments</p> <p>2. Parents not learning what to do with high-risk newborn requiring special care.</p> <p>3. Child is suicidal, <i>clinical professional has made parents aware</i>, and parents have demonstrated that they will not respond appropriately.</p> <p>4. Lack of medical treatment that poses a substantial risk of serious harm; including illness, optical or dental needs.</p>	<p>1. No blood transfusions due to religious beliefs but hospital agrees to provide treatment.</p> <p>2. Drug prescribed for ADD/ADHD, parents refuse to administer.</p> <p>3. Lack of immunizations.</p> <p>4. Lack of medical treatment does not pose a substantial risk of serious harm; including illness, optical or dental needs.</p> <p>5. Developmental delays.</p> <p>6. Sending child for visit without medications.</p>

SEXUAL ABUSE

Situational Factors to Consider:

- * Date of last incident
- * Age of children
- * Parent with history of sexual victimization
- * AP with history of sexual abuse
- * AP's access to child
- * Presence of protecting factor
- * Child makes an outcry

Almost Always Assigned	Rarely Assigned
<p>1. Child, aged 11 or younger, with any sexually transmitted disease or is pregnant.</p> <p>2. Child, aged 9 or younger, exhibiting inappropriate sexually acting out behavior including, but not limited to attempts to engage others in oral/anal sex acts, insertion of objects in vagina or rectum.</p> <p>3. Child of any age is alleged to have been sexually abused or sexually exploited within a year. AP still has access.</p> <p>4. Failure of parent to make reasonable efforts to prevent a child aged 13 or younger from having sexual relationships (even if alleged to be consensual).</p>	<p>1. Masturbation.</p> <p>2. Child "smells like sex."</p> <p>3. Parent of child walking around house nude or bathing with child or sleeping with the child.</p> <p>4. Child, aged 9 years or older made to keep the bathroom door open.</p> <p>5. Young child complaining of pain during urination that has not been checked for a bladder infection.</p> <p>6. Sexual abuse referral with only behavioral indicators (i.e., runaways, dropping grades, etc.) AND child is verbal and has made no outcry and child's sexual behavior is age appropriate.</p> <p>7. Sexual abuse referral, except from medical staff, where the vaginal opening is "too large" anal or vaginal irritation. And child has made no outcry and there is no substantiating evidence from laboratory report.</p> <p>8. Dr. or medical staff makes referral that parent has brought child in for SXAB exam. Dr. found no medical or other evidence. Child has made no outcry, but reporter is fulfilling statutory obligation to report.</p> <p>9. Sexual exploration is alleged between children who are less than two years apart and no violence or intimidation is alleged.</p> <p>10. Parent has made reasonable efforts to prevent</p>

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	<p>child from having sexual relationship but child continues to have sex anyway (i.e., 13 year old with 15 year old boyfriend, despite parents efforts to prevent it.)</p> <p>11. A child 12 years or older is pregnant.</p>
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NEGLECTFUL SUPERVISION

Situational Factors to Consider

- * Age of child
- * Maturity of child
- * Length of time left alone
- * Overall safety of surrounding
- * Child's knowledge of parent's whereabouts
- * Child's ability to respond to a crisis
- * Number of children left alone
- * Accessibility to other responsible adults
- * Child's emotional state
- * Behavior, activity child engages in while unsupervised
- * Arrangements parents have made to ensure child's safety during parental absence
- * Child has a mental, physical, or medical disability
- * Frequency of parent's inattention

Almost Always Assigned	Rarely Assigned
1. Parent knows child is at risk of abuse and continues to allow access.	1. Young children walking home from school across busy streets.
2. A child aged 5 or younger, left alone.	2. A child is kept out of school to baby sit.
3. A child, aged 5 or younger, left with caretaker who is mentally or physically unable to protect.	3. Latchkey children, aged 6 or older, left alone after school.
4. A child, aged 9 or younger left to baby sit children aged 5 and younger.	4. A child, aged 10 or older, left alone or out "running the streets" after 10 PM.
5. A child, aged 9 or younger left alone or running the streets after 10 PM.	5. A child, aged 6 or older, is sick and home alone during school.
6. A child, aged 13 or younger, is drinking or using drugs with parental approval or encouragement.	6. A child, aged 10 or older, using drugs or alcohol.
7. Parents or caretakers leaving a child aged 15 or younger to live without any adult supervision.	7. Children committing delinquent acts.
8. A parent or caretaker who is using a substance which may result in an inability to provide supervision for a child aged 5 or younger.	8. A child is at school or day care and parent cannot be reached.
9. Risk of SXAB for substantial / credible reason	9. A child, aged 15 or older, left to live without any adult supervision.

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<p>(e.g., parent exposes child to a know sexual abuser).</p>	<p>10. Young children playing unsupervised in the yard or street where caretaker is actually on the property.</p> <p>11. Situations related to children riding without restraints or in the back of a pick-up truck.</p>
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PHYSICAL NEGLECT

Situational Factors to Consider:

- * Time of year
- * Weather
- * Age of child
- * Resources available to family
- * Effects on child
- * History with CPS
- * Child's health
- * Mental or emotional functioning of parent/child

Almost Always Assigned	Rarely Assigned
<p>1. Household with bug or rodent infestation to the point a child 6 or younger is impacted (i.e., rat bites on child).</p> <p>2. Significant weight loss indicting malnourishment (unrelated to a medical condition).</p> <p>3. Child is not receiving adequate food which appears to be leading to malnourishment.</p> <p>4. Non-organic failure to thrive.</p> <p>5. Home presents a health or safety hazard that endangers a child age 6 or younger (i.e., broken glass, exposed wire, feces, etc.).</p>	<p>1. Routine lice infestations.</p> <p>2. Dirty cluttered house with no apparent impact on child.</p> <p>3. Street beggars with no apparent danger to child.</p> <p>4. Limited or no operating utilities.</p> <p>5. Presence of allegedly dangerous animals, no history of injury.</p> <p>6. Educational neglect.</p> <p>7. Parents selling or using drugs.</p> <p>8. Children begging for food.</p> <p>9. Children are inappropriately fed or poorly clothed, and there is no obvious impairment of functioning.</p> <p>10. Family living in cars, tents, etc.</p>

EMOTIONAL ABUSE

Situational Factors to Consider:

- * Rarely occurs in isolation, usually combined with other allegations.
- * Statement of impact from medical or clinical professional.
- * Behavior of parent/caretaker
- * Specificity of information provided.

Almost Always Assigned	Rarely Assigned
1. Parental behaviors causes measurable and severe detrimental effects on the child including isolated child (not allowed to eat/live /interact with rest of family) and scapegoated child (treated very differently form other children in the household).	1. Name calling by the caretaker. 2. Parent/Adolescent conflict 3. Allegations of parental insensitivity to school aged child emotional needs that have not required professional assessment.

Appendix "F"

Appeal of Associate Judge's Ruling

CAUSE NO. 99-928-X

*IN THE INTEREST OF
COURT*

§

IN THE 305 DISTRICT

§

DALLAS COUNTY, TEXAS

§

§

SITTING AS A JUVENILE

*A CHILD
COURT*

§

NOTICE OF APPEAL FROM THE ASSOCIATE JUDGE'S HEARING

This Notice of Appeal from the Associate Judge's Hearing is filed by _____,
Respondent herein.

1. A hearing was held before Associate Judge _____ on _____, 2004.
2. This appeal is timely filed.
3. The Orders of the Associate Judge are not in the best interest of the child.
4. _____ specifically objects to the findings and conclusions of the Associate Judge as follows:
 - a. Objection to the finding an conclusion that _____
_____.
 - b. Objection to the finding an conclusion that _____
_____.
5. _____ prays that this Court set this matter on the docket for hearing.

Respectfully submitted:

Swanda & Swanda, P.C.
Attorneys At Law
901 W. Bardin Rd., Suite 306
Arlington, TX 76017
(817) 465-4664
fax (817) 465-3779

Defending the CPS Case – How to Level the Playing Field

Order Setting Hearing

IT IS ORDRED that a hearing on the Appeal of the Associate Judge's Hearing be set for

_____ a.m. / p.m. on _____, 2004.

JUDGE PRESIDING

Certificate of Service

I certify that a true copy of the above was served on each attorney of record or party in accordance with the Texas Rules of Civil Procedure on _____.

Kellye A. Swanda

APPENDIX "G"

Time-Line in a CPS Case

First Court appearance – Emergency hearings are held within 24 hours. It may be two days if the removal took place on a weekend or a holiday.

Show Cause Hearing – by Day 14, may be extended 14 additional days.

First Permanency Planning Team Meeting – by Day 45

Status Hearing – Day 60

Family Plan of Service implementation – by Day 60

Second Permanency Planning Team Meeting – Month 5

First Permanency Hearing – Month 6

Second Permanency Hearing – Month 9
(Six-extension is requested here)

Final Hearing – Month 12 (365 days from removal date)

If extension is granted, the final hearing can take place anytime up through Month 18.

APPENDIX "H"

Motion in Liminie

CAUSE NO. 99-928-X

<i>IN THE INTEREST OF</i>	§	<i>IN THE 305 DISTRICT COURT</i>
_____	§	
	§	<i>DALLAS COUNTY, TEXAS</i>
	§	
<i>A CHILD</i>	§	<i>SITTING AS A JUVENILE COURT</i>

RESPONDENT'S MOTION IN LIMINIE

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, _____, Respondent and moves this Court for an Order in Liminie, restricting opposing counsel, guardian ad litem, counsel for other respondents and witnesses called on behalf of opposing counsel, guardian ad litem, or counsel for other respondents from mention of, allusion to, or suggestion of certain matters in the presence or hearing of jurors or prospective jurors, and in support thereof would respectfully show the Court the following:

I.

The matters described in Paragraph III below are not admissible in evidence for any purpose and have no bearing on the issues or the rights of the parties in this case.

II.

Permitting interrogation of witnesses, comments to jurors or prospective jurors, or offers or suggestions of evidence concerning any of these matters would prejudice the jury, and sustaining objections to such questions, statements, or evidence will not prevent prejudice but will reinforce the development of questionable defense.

III.

The matters of information made the subject of this motion are as follows:

Defending the CPS Case – How to Level the Playing Field

- a. Any comment, argument or speculation with regard to any criminal offense which _____ is alleged to have committed which did not result or has not resulted in a final conviction.
- b. Any comment, argument or speculation with regard to any criminal offense which _____ was charged and convicted and was alleged to have occurred more than ten years prior to the trial of this case.
- c. Any comment, argument or speculation with regard to any CPS investigation that did not result in a “Reason to believe” finding.
- d. Any testimony, comment, argument or speculation regarding the testimony of any “expert witness” whose qualifications have been challenged and have been found by the Court to be insufficient to permit said witness to testify as an expert.
- e. Any comment or argument regarding _____ having filed this motion in liminie or regarding any ruling by the Court in response to this motion. Such references are inherently prejudicial in that they suggest or imply the movant has sought to exclude proof of matters damaging Respondent’s case.

IV.

Movant further requests that, if opposing counsel, guardian ad litem, or counsel for other respondents, proposes a theory of admissibility concerning the matters set out in Paragraph III, the Court order that opposing counsel, guardian ad litem, or counsel for other respondents first request a ruling from the Court outside the presence and hearing of all prospective jurors and jurors ultimately selected in this case.

WHEREFORE, PREMISES CONSIDERED, _____, Respondent requests that this Court order that counsel for TDFPS, the Guardian Ad Litem, and counsel for all other respondents, and any and all witnesses called on their behalf be instructed to refrain from any mention or suggestion or interrogation, directly or indirectly, in any manner whatsoever, including any offer of documentary evidence, regarding any of the matters set forth in this motion.

Respectfully submitted:

Swanda & Swanda, P.C.
Attorneys At Law
901 W. Bardin Rd., Suite 306
Arlington, TX 76017
(817) 465-4664
fax (817) 465-3779

By: _____
Kellye A. Swanda
State Bar No. 00792864
Attorney for Respondent

Order Setting Hearing

IT IS ORDRED that a hearing on the Appeal of the Associate Judge's Hearing be set for

_____ a.m. / p.m. on _____, 2004.

JUDGE PRESIDING

Certificate of Service

I certify that a true copy of the above was served on each attorney of record or party in accordance with the Texas Rules of Civil Procedure on _____.

Kellye A. Swanda

APPENDIX "H"

Motion to Modify

CAUSE NO. 99-928-X

IN THE INTEREST OF

A CHILD

§
§
§
§
§

IN THE 305 DISTRICT COURT

DALLAS COUNTY, TEXAS

SITTING AS A JUVENILE COURT

MOTION TO MODIFY TEMPORARY ORDERS

This Motion to Modify Temporary Orders is brought jointly by Respondent,

_____ who shows in support:

The present orders relating to possession of and access to the child have become unworkable and are no longer in the best interest of the child because

_____ has significantly completed recommendations and requirements of the TEXAS DEPARTMENT OF FAMILY & PROTECTIVE SERVICES (TDFPS), Temporary Managing Conservator. _____ has undergone a psychological evaluation that indicates she is not a threat to the well-being of the child and is capable of a monitored return or in the alternative having unsupervised visits with her child.

_____ request the Court to issue Modify the current Temporary Order and name Respondent _____ as the Temporary Joint Managing Conservator of the child along with TDFPS.

In the alternative, _____ request the Court to issue Temporary Orders permitting _____ unsupervised visitation with the child the subject of this suit in accordance with the Standard Possession Order set forth in the Family Code or issue a visitation schedule that the Court deems is in the best interest of the child.

Defending the CPS Case – How to Level the Playing Field

Such modification would be in the child's best interest.

Respectfully submitted:

Swanda & Swanda, P.C.
Attorneys At Law
901 W. Bardin Rd., Suite 306
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(817) 465-4664
fax (817) 465-3779

By: _____
Kellye A. Swanda
State Bar No. 00792864
Attorney for Respondent

Order Setting Hearing

IT IS ORDRED that a hearing on the Appeal of the Associate Judge's Hearing be set for

_____ a.m. / p.m. on _____, 2004.

JUDGE PRESIDING

Certificate of Service

I certify that a true copy of the above was served on each attorney of record or party in accordance with the Texas Rules of Civil Procedure on _____.

Kellye A. Swanda