

Prosecutor's Perspective on Case Solutions Short of Involuntary Termination

Speaker Information

James Teel
Assistant District Attorney's Office
Tarrant County District Attorney's Office
2700 Ben Avenue
Fort Worth, Texas 76103
(817) 255-8729
E-Mail: jteel@tarrantcounty.com

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Mediation and the Family Group Conference

Two tools often underutilized in the arena of termination litigation are the Family Group Conference and Mediation. While each process can attain similar goals, they are mechanically dissimilar.

I. The Family Group Conference

While not established in all counties, several counties have successfully incorporated the use of the Family Group Conference. Tarrant County is one of those counties. The concept of the Family Group Conference (FGC) is to establish a meeting between the parents, CPS, and as many family members that can be located. The model used in Tarrant County relies on a CPS Specialist whose job it is to arrange for this meeting which, in addition to the parents and family members, includes the CPS case worker(s) and CASA volunteer if applicable. Noticeably absent from this meeting are lawyers (we are not invited). While this is a frightening concept to many lawyers, the success of these conferences is remarkable, and should not be overlooked as an opportunity by any litigant. The importance of the CPS Specialist being the lead worker in this coordination is to have as neutral a person as possible to facilitate this meeting. Often times the CPS investigator or the CPS case worker is so disliked by the parent(s) that no level of cooperation can be expected by the parent(s)

Cost can often be a factor in determining whether mediation is an option. Availability of funds in your particular region may affect your ability to use this as an option. While low cost mediation services such as Dispute Resolution Services may be helpful, care must be used in choosing an appropriate mediator, as mentioned above.

Top List of Defense Attorney Mistakes

The attorney representing a parent in a parental rights termination case can play an important role in pursuing a resolution short of termination. While every lawyer has his/her own style and manner of advancing a client's theory, there are several areas that seem to be common complaints from parents and CPS attorneys relating to defense attorneys. The most common complaints include:

1. the defense lawyer not meeting the client;
2. the defense lawyer not returning the calls of the client;
3. the defense lawyer not requesting the CPS case file;
4. the defense lawyer telling the client to not cooperate with CPS;
5. the defense lawyer not understanding the purpose of a hearing;

These common sense areas can actually go a long way toward the possibility of resolving a case (sometimes short of a termination). If the defense lawyer obtains a copy of the case file he/she can become familiar with not only the services being requested but how the client is progressing (or not) on the requested services. It is not uncommon for a client to advise their attorney that the client "has done everything asked". If the attorney has obtained the file he/she can make an independent assessment. For example, a client may be attending therapy sessions regularly (and advise the defense attorney that all is well with the therapy), when the therapist is detailing grave concerns about the parent in the therapy notes. The defense attorney who is armed with these therapy notes can effectively communicate with the client to address what, if anything, can be done to remedy these "concerns". The flip-side could be equally true in a situation where the CPS case worker is declaring that the client is uncooperative, when the case file reflects otherwise. An attorney informed of the facts as presented by the client, as well as the case file, can play an important role in the progression of the case.

The defense lawyer should have a clear understanding of what the purpose of a particular hearing is. Oftentimes a defense lawyer will be heard attempting to seek a modification of a prior order at a Status Review hearing or a Permanency Review hearing. While a defense attorney's voice should certainly be heard at such a hearing, the attorney should understand that such hearings are for the purpose of reviewing placement of the children, service plans, and service of process. If an attorney wants to effect a change in a prior order, an appropriate Motion to Modify should be filed and set for hearing.

- I. Education for the parent:
A well informed defense attorney can often be the best educational source for the parent. Areas of potential education include:
 - a) Cooperation with CPS;
 - b) Attending all court hearings;
 - c) Attending all Permanency Planning Team meetings (PPT)

Searching For Relatives

Once a removal has occurred CPS is required to pursue the following path of permanency goals, in this order:

1. Family Reunification.
2. Placement with a relative.
This includes placing with siblings when possible.
3. Termination/adoption outside the family.

Oftentimes CPS is pursuing what is known as concurrent planning, such as Termination/Adoption as the primary plan, with Family Reunification as a backup plan. The attorney for a parent should always be aware of the real possibility that a parent will not successfully complete his/her services, and termination will loom as the likely result. It is therefore critical to be on the constant lookout for potential relative placements. The CPS workers will likely not be as interested in this process as you are. By attending PPT meetings, having an open line of communication with your client, talking to the case worker and CASA volunteers, you should be able to locate some relative who might work out as a placement option.

When and if found, a placement will not be permitted unless a home study is conducted on the proposed relative. To achieve this be aware of the following steps:

- a) Request the CPS case worker to conduct the home study if the relative lives locally;
- b) Request the CPS case worker to request that an out of county worker conduct the home study if the relative lives in another county in Texas;
- c) Request that the CPS case worker start an ICPC home study if the relative lives outside of the State of Texas.

The out-of-state home study must occur through a compact recognized by all states, the Interstate Compact for the Placement of Children (ICPC). Practitioners in this area of litigation know that this process can take weeks or months to complete. It is therefore critical to locate potential placement options as early as possible.

Kinship Placements: Don't overlook the potential placement of "Kinship Placements". Kinship Placements are not relative placements, but are placements with people who have had substantial contact with the child(ren) in the past. This category of people can include close friends of the family.

Locating a relative or a kinship placement can be your best bet for avoiding termination of parental rights.

What does the practitioner do if he/she finds a potential relative or kinship placement, but CPS will not agree to conduct a home study? Try one of the following:

1. Seek a court order for CPS to conduct the home study. This can usually be accomplished at any hearing such as a Status or a Permanency Review.
2. File and set for hearing a Motion for Temporary Orders, at which a request is made for the court to order a home study.
3. Pay for your own home study by a Court approved entity for conducting home studies. While your clients are often indigent, they can usually come up with this small amount of money with help from family and friends.

What can you do if a home study is completed but is not favorable to the proposed placement? A family group conference, or mediation might be considered at this point to discuss why the proposed placement is not being approved. The process can also be used to determine what can be done to remove the concerns of CPS regarding the placement.

Top List of Attorney/Guardian Ad Litem Mistakes

Attorneys who are appointed to represent the children have a critical role to play. These attorneys should understand the importance of all of the above mentioned goals, including watching for relative or kinship placements, and understanding to what degree the parents are completing their services. They **must** develop an opinion as to what

The One Year Dismissal Date

As the CPS case will dismiss after one year, or eighteen months if an extension is granted, Texas Family Code. Sections 263.401 and 263.402, time is clearly of the essence. As a practical matter, a parent has far less than one year to "get their act together". While the statute allows for one year before dismissal most courts, to avoid a dismissal, set the cases for trial one or two months before the dismissal; thereby making the "practical" dismissal date of a case more like 10 months. In addition, as the date for a termination trial approaches, the chances of a parent completing their services grow slimmer. Therefore, the attorney for a parent should aggressively pursue all of the tools available as quickly as possible to avoid a potential of termination of parental rights.

The Philosophy of CPS

As the defense attorney approaches a CPS case he/she should constantly be aware that CPS is always going to pursue a permanency plan that will err on the side of protecting the child. This may well work against your client. In pursuing the ultimate safety of the children, termination of parental rights will almost always be an attractive option for CPS. The defense attorney should also be aware that CPS will often oppose taking Managing Conservatorship of a child without termination of parental rights. The placement of a child, especially a young child, in the Managing Conservatorship of CPS without termination of parental rights, places the child in long term foster care (years) with no hope for real permanency. A current foster home, which may be ideal for a child today, may not be available two or more years down the road. A break down in a foster home placement, years down the road can be extremely damaging for the child, who will then be uprooted yet again in the search for a proper placement. Achieving termination of parental rights will make the child available for adoption, thereby reducing the likelihood that the child will be placed for years in foster care placements.

The defense attorney who recognizes this can assist in educating the parents on the importance of pursuing a final disposition short of termination. While parents might not prefer alternative options, such as placing a child with a relative or with a kinship placement, the parent is far better off with that option as opposed to termination. If an alternative to termination can satisfy the goal of CPS to protect the child(ren), the parent is not completely excluded as an entity. The future may well assist a parent in their quest for becoming better parents. If this occurs, they at least have options available to them that would be forever taken away if rights have been terminated. A defense attorney who can convey this importance to a client, and pursue alternative options, is serving the client far better than the attorney who disregards the alternatives.