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## STRENGTHENING THE VOICES OF CASA STATEWIDE

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### LEGAL GLOSSARY

**262 HEARING** See *Show Cause Hearing*.

**ACKNOWLEDGMENT OF PATERNITY** The mother of a child and a man claiming to be the biological father of the child may sign an acknowledgment of paternity with the intent to establish the man's paternity. Texas Family Code Sec. 160.301.

**ADVERSARY HEARING** Also called 14-day or show cause hearing. An evidentiary hearing that must be held within 14 days after the emergency hearing to determine whether there is a continuing danger to the physical health or safety of the child and that release to the parents would not be in the best interests of the child. Texas Family Code Sec. 262.201 (a) and (b).

**AGREED ORDER** An agreed order refers to a written agreement between the parties resolving the issues between them.

**AFFIDAVIT OF VOLUNTARY RELINQUISHMENT** A parent can voluntarily give up their rights to a child. Texas Family Code 161.103.

**AFFIDAVIT OF WAIVER OF INTEREST** A written declaration made under oath to a notary or other authorized official.

**ALLEGED FATHER** "Alleged father" means a man who is alleged to be, the genetic father or a possible genetic father of a child, but whose paternity has not been determined. The term does not include: a presumed father; a man whose parental rights have been terminated or declared to not exist; or a male donor. Texas Family Code Sec.101.0015.

**ALTERNATIVE FORMS OF DISPUTE RESOLUTION** A Guardian ad litem may encourage settlement and the use of alternative forms of dispute resolution under Texas Family Code Sec. 107.002(b)(4). Alternative dispute resolution, or ADR, refers to ways of addressing and settling disputes outside of court and its traditional, adversarial atmosphere. Types of ADR include arbitration, mediation and negotiation.



**APPEAL** A request to a Court of Appeals or to the Supreme Court to review and change the decision of a lower court. A reviewing court can reverse, affirm, reverse in part or remand back to the trial court to make other evidentiary findings. An appeal of the termination of parental rights is expedited under the Rules of Appellate Procedure and must be filed within 20 days of the Final Order. Texas Family Code Sec. 109.002(a).

**BAILIFF** The person responsible for maintaining decorum in the Court.

**BENCH** The place where the judge sits during trial.

**BENCH TRIAL** A trial where the judge determines all fact issues and there is no jury.

**BEST INTERESTS** “Best interests of the child” is the primary consideration in determining conservatorship, possession, and access to a child. The factors the judge must consider are set out in Texas Family Code Sec. 263.307. Further explanation of the statutory factors is set out in the “Holley Factors”.

**BURDEN OF PROOF** There are different standards of how much evidence is needed to make findings under the Texas Family Code in SAPCRs (Suits Affecting the Parent Child Relationship). The standard of proof in order of least to most evidence is: sufficient to satisfy a person of ordinary prudence and caution; preponderance of the evidence; clear and convincing evidence; and beyond a reasonable doubt.

**CHAMBERS** The judge's office.

**CASE-IN-CHIEF** The testimony and evidence offered by one side in support of that side's positions.

**CLEAR AND CONVINCING EVIDENCE** Clear and convincing proof means that the evidence presented by a party during the trial must be highly and substantially more probable to be true than not and the trier of fact must have a firm belief or conviction in its factuality. In this standard, a greater degree of believability must be met than the common standard of proof in civil actions, preponderance of the evidence, which tips the balance to be more likely than not to prove the issue.

**CLERK** One of the persons who handles the paperwork of the Court.

**CLOSING STATEMENTS** Final statements by each attorney at the end of the trial when they argue to the Court the evidence and law.



**CONSERVATORSHIP** Conservatorship is the legal term for custody. To obtain a conservatorship order, a person or DFPS must file a Suit Affecting the Parent Child Relationship (SAPCR). If DFPS asks for a legal removal of a child, that means they will be asking a court to name DFPS the Temporary Managing Conservator of a child. Generally, a managing conservator has the right to decide where and with whom a child will live.

**CONTESTED CASE** In a case in which the parents are in opposition to the Department, the Guardian ad Litem shall timely provide copies of the GAL report. Texas Family Code sec. 107.002 (g).

**CONTESTED HEARING** A contested hearing is a formal court hearing, with witnesses and evidence, during which the judge listens to both sides and then issues an order.

**CONTINUANCE** The postponement of a hearing or trial.

**COURT OF CONTINUING AND EXCLUSIVE JURISDICTION** Texas Family Code Sec. 155.001. A court that issues a final order in a SAPCR maintains jurisdiction over any continuing or new matters.

**COURT ORDER** Legal document that embodies what happens at each hearing, including findings of the judge regarding certain parties and activities. The order will tell parties what to do and what not to do, and everyone must follow the court's order or the judge can find them in contempt of the court order.

**COURT REPORTER** The person who records the testimony and court proceedings. The court reporter produces the RECORD.

**CROSS EXAMINATION** Questions, including leading questions, asked of witnesses called by the opposing attorney. In a non-jury trial, a party may call a GAL as a witness for purpose of cross examination even if the GAL was not listed as a witness by a party. Texas Family Code Sec. 1007.002 (f).

**CUSTODY TYPES** Custody is the term that describes which adult or who has the authority to decide where a child will live.

**DEPOSITION** A deposition is a way for an attorney to learn about the facts and evidence a witness will testify about. It is not a court proceeding but the witness is under oath and may be videotaped.



**DILIGENT SEARCH** Texas courts require a good faith effort by the Petitioner to prove that he or she has made a genuine search for a missing parent. This search entails:

- Determining whether the missing parent lives at his or her last known address and checking the post office for a forwarding address;
- Asking the missing parent's friend, relatives and former employers for information about a current address;
- Checking the telephone book and directory assistance in the area where the missing parent may live;
- Searching for the missing parent at these Internet sites:
  - [www.addresses.com](http://www.addresses.com)
  - [www.anywho.com](http://www.anywho.com)
  - [www accurini.com](http://www accurini.com)
  - [www.infobel.com](http://www.infobel.com)
- Contacting the Texas Department of Criminal Justice to see if the missing parent is in prison by calling 512-406-5202 or search online; and
- Checking military records by contacting <https://www.dmdc.osd.mil/appj/scra/scraHome.do>.

In order to be eligible for service by Publication, the Petitioner must complete and submit an Affidavit for Citation by Publication which will include factors outlining a diligent search to the court.

**DIRECT EXAMINATION** The lawyer that calls a person as a witness engages in direct examination and cannot ask the witness leading questions that direct or suggest an answer.

**DISCOVERY** Discovery is the process that requires parties to turn over, upon request, the list of witnesses who will testify and documents, photos, or videos that may be used in evidence and allows deposition of witnesses. Some documents requesting discovery include interrogatories, requests for production of documents, requests for admission. The number of questions, time and deadlines for discovery are set by the judge. Any objections to discovery must be made by filing a Motion for Protective Order or a Motion to Quash. If a person does not comply with a discovery request, the requestor may file a Motion to Compel and a Motion for Sanctions. Confidential information such as the identity of the reporter of abuse and neglect must always be redacted prior to the release of any documents.

**DISMISSAL OF PETITION** Subsection 263.401(a) of the Texas Family Code requires a trial court to dismiss a SAPCR filed by the Department if a Final Order has not been rendered by



the first Monday after the one-year anniversary of the date when the trial court appointed the Department temporary managing conservator. The statute allows a maximum extension of 180 days. Texas Family Code Sec. 263.401(b), (c). If the trial court has not rendered a final order at the expiration of the additional 180 days, the court must dismiss the SAPCR. Id. 263.401(c).

**DOCKET** A docket is a list of cases awaiting action in court.

**DUE PROCESS** Because termination of parental rights is a significant infringement on a person's constitutional rights, due process of the law is required. A parent is entitled to a full trial before a jury, legal representation, and the right to cross-examine all witnesses.

**EMERGENCY HEARING** At the Emergency hearing, the Court decides the need for emergency out-of-home placement for a child. Texas Family Code Sec. 262.101.

**EX PARTE HEARING** Usually an emergency hearing with only one side appearing before a judge without giving notice to the other parties that usually results in temporary orders.

**EX PARTE REMOVAL HEARING** A suit filed to take possession of a child without prior notice supported by facts sufficient to satisfy a person of ordinary prudence and caution that there is an immediate danger to the physical health or safety of the child or the child has been a victim of neglect or sexual abuse. Texas Family Code Sec. 262.101.

**FINAL ORDER** The final order which is signed by the judge disposing of all issues. The court must issue a Final Order in each case within 12 to 18 months from the date a child is removed from his/her home and placed in foster care. The Final Order usually determines the status of parents' rights, conservatorship of the child, and the rights, duties, and responsibilities of any parent whose rights are not terminated.

**FINDINGS** Findings are determinations that the court makes about certain activities in the case based on the evidence presented by the parties.

**FOSTER CHILDREN RIGHTS** All children in foster care have specified rights. Texas Family Code Sec. 263.008. A GAL has a duty to insure compliance with such rights. Texas Family Code Sec. 107.002(c)(9).

**GROUND FOR TERMINATION** Texas Family Code Sec. 161.001 and 161.003 list the grounds for involuntary termination of parental rights. For an alleged biological father, the grounds for termination are found in Texas Family Code Sec. 161.002.



**HEARSAY** Hearsay is an out-of-court statement that is offered to prove a fact, but because the statement is second hand and may be reliable, the courts favor more direct evidence. There are many exceptions.

**HEARSAY EXCEPTION OF CHILD ABUSE VICTIM** Texas Family Code Sec. 104.006. In a Suit Affecting the Parent-Child Relationship (SAPCR), a statement made by a child 12 years of age or younger that describes alleged abuse against the child, without regard to whether the statement is otherwise inadmissible as hearsay, is admissible as evidence if, in a hearing conducted outside the presence of the jury, the court finds that the time, content, and circumstances of the statement provide sufficient indications of the statement's reliability and: the child testifies or is available to testify at the proceeding in court or in any other manner provided for by law; or the court determines that the use of the statement in lieu of the child's testimony is necessary to protect the welfare of the child.

**HOSTILE WITNESS** A lawyer can call a witness and ask the judge to allow her to treat the witness as "hostile". If the judge grants the request, the lawyer can cross examine the witness. CPS often makes these requests to question parents.

**INDIGENT FINDING FOR COURT APPOINTED ATTORNEY** Texas law is not specific about how much income a person lacks to be considered indigent. Courts have a form to fill out to stating monthly income, expenses like rent, utilities, daycare, and gas and whether the person receives public benefits like food stamps. There are three requirements to receive a court appointed attorney: a finding of indigency; CPS has filed a suit to terminate parental rights or take custody; and a parent must have filed an answer to oppose the suit.

**INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN** (ICPC) is a contract among all 50 U.S. states, the District of Columbia and the Virgin Islands providing for protection and support services for children moved between U.S. states for birth parent unification or reunification when the court has jurisdiction over the child. The ICPC ensures that when children are placed out of state, they receive the protections and services that would have been provided by the home state.

**INVOKING THE RULE** The process of requiring witnesses, other than parties to leave the courtroom prior to their testimony and not discuss the case with anyone but attorneys involved. Texas Rules of Evidence 614.

**INVOKING THE RULE-CASA EXCEPTION** The Texas Family Code Sec. 107.002(c)(4) and (6) state that a guardian ad litem is entitled to attend all legal proceedings in a case and to testify in court regarding the guardian's recommendation. A Texas judge ruled in the



case *In re K.C.P.* 142 S.W. 3d 574, 585 (Tex. App. 2004) that the Texas Government Code Sec. 311.026 provides that where general provisions of Rules of Evidence conflict with special provision, the specific provisions of the Texas Family Code prevail and a CASA appointed as GAL was not subject to the Rule.

**JUDGMENT** A judgment is a formal decision made by a court following a lawsuit.

**JURISDICTION** Jurisdiction is the authority given by law to a court to try cases and rule on legal matters within a particular geographic area and/or over certain types of legal cases. Generally, the court with jurisdiction in a SAPCR is in the county where the child has resided for the last six months. Texas Family Code Sec. 155.001 et seq.

**KINSHIP CARE** Refers to relatives of fictive kin (friends of the family who act like relatives) who agree to serve as caretakers to children in CPS conservatorship. The law encourages these placements. Texas Family Code Sec. 264.751-759. GALs have a right to be consulted regarding a kinship placement. Texas Family Code Sec. 107.002(G)(8).

**MEDIATION** A meeting that is court ordered where all the parties (CPS, parents, and attorney for child) come together and try to reach an agreement about what should happen with the child and family instead of going to trial, which GALs have a right to attend. Texas Family Code Sec. 107.002(C)(11).

**MERITS** Trial on merits is a trial based on the pertinent facts of the case rather than on any technical rule of practice like failure of proper service or a question of law.

**MODIFICATION** A hearing to decide if the court should change a court order for a good reason.

**MOTION TO PARTICIPATE** The Texas Family Code allows the Department to request a judge to order a parent, managing conservator, guardian, or other member of the child's household to participate in services the department provides or pays for that will alleviate effects of abuse or reduce the likelihood of future abuse and to permit the child and any of their siblings to receive services.

**MOTION FOR PROTECTIVE ORDER** A protective order is an order that prevents the disclosure of certain information, usually requested during discovery, under certain circumstances.



**MOTION FOR PROTECTIVE ORDER -FAMILY CODE** A judge may enter a protective order under Texas Family Code Sec. 85.001 et seq. if he or she makes a finding that family violence has occurred. See *Protective Order*.

**MOTION TO REVOKE PROBATION** This motion is filed in a criminal court if the District Attorney feels or believes that the probationer has violated the terms and conditions of the probation order.

**MOTION TO QUASH** A motion to quash requests the judge to find that something filed by one side, typically a subpoena, is invalid.

**NON-JURY TRIAL** A non-jury trial is a trial in which a judge decides both questions of law and fact. In a jury trial, the jury weighs the facts and the judge decides the laws that apply.

**NON-OFFENDING PARENT** The parent who has not committed abuse or neglect of a child. If the non-offending parent is living with the abuser (rather than separated or divorced), the Texas Family Code give the Department the right to remove the perpetrator of abuse or neglect from the home. Texas Family Code. Sec. 262.1015.

**NON-RESPONSIVE** An objection to testimony. When referring to the answer to a question, the answer goes beyond the question and the witness has volunteered information.

**OBJECTION** A complaint to the judge that some part of the testimony or evidence is objectionable and the attorney should request a ruling from the judge. Overruled means the judge disagrees with the objecting attorney. Sustained means the judge agrees with the objecting attorney. To raise the issue on appeal, the attorney must object at trial court.

**OPENING STATEMENT** A brief statement by an attorney explaining the client's position on the issues and applicable law.

**ORDER** A ruling by the court.

**PARTIES TO THE SUIT** In a SAPCR, the parties are generally the DFPS and both parents.

**PATERNITY REGISTRY** A registry maintained by the Bureau of Vital Statistics that allows a man to register as a parent for a child he may have fathered. The registry does not establish paternity but allows the registrant to receive notice of any adoption or suit for termination of parental rights involving the child. Texas Family Code Sec.160.402.



**PERMANENT MANAGING CONSERVATORSHIP (PMC)** Permanent custody given to the state or another adult. PMC to the state continues until the child exits the foster care system. PMC can be awarded to the state regardless of whether parental rights are terminated.

**PERMANENCY HEARING** A court hearing held to review how the family is doing with its service plan and in making the changes needed to have the children returned home or to fulfill the alternative or concurrent plan. Texas Family Code Sec. 263.302.

**PETITION** The document that begins the Suit Affecting the Parent-Child Relationship (SAPCR). Petitioner is the party who filed the suit, generally the Department. Opposing party is the Respondent, often the parent.

**PLEADINGS** Pleadings are formal statements served by each party to a lawsuit to one another, which contains their respective positions in the matter, such as allegations, claims, defenses or denials.

**PREPONDERANCE OF THE EVIDENCE** This burden of proof is met when the party with the burden convinces the fact finder that there is a greater than 50% chance that the claim is true, the claim is more likely than not, or the scales are tipped in favor of that party.

**PRESUMED FATHER** Texas Family Code Sec. 160.204. A man is presumed to be the father of a child if he is married to the mother and the child is born during the marriage; he was married to the mother of the child and the child was born before the 301st day after the date the marriage was terminated (The marriage must be terminated by death, annulment, declaration of invalidity, or divorce); he married the mother of the child before the birth of the child in agreement with the law. If the attempted marriage is declared invalid or is invalid but the child is born during the invalid marriage or before the 301st day after the date the marriage is ended by divorce, death, annulment, declaration of invalidity; he married the mother of the child after the birth of the child in total compliance with the law. It doesn't matter if the marriage is or could be declared invalid. What matters is that he voluntarily took over his paternity of the child, and: the attempt is in a record filed with the vital statistics unit; the father is voluntarily named as the child's father on the child's birth certificate; or he promised in a recording to support the child as his own; or during the first two years of the child's life, he lived continuously in the household in which the child also lived. Furthermore, he declared to others that the child was his own and acting as if the child were his own. The Federal Constitution Equal Protection Clause would make this provision gender neutral for same-sex parents.



**PROTECTIVE CUSTODY** An order of protective custody may be issued by a judge upon the request of a county or district attorney in order to continue to hold a patient in a mental health facility pending hearing on an application for court-ordered temporary mental health services.

**PROTECTIVE ORDER** If a person is physically violent or threatens another person with physical harm, a prosecuting attorney or private attorney can apply for a court order to keep the abuser away. This order is called a Protective Order ("PO"). There are different kinds of PO's for victims of domestic abuse, dating violence, sexual assault, stalking and human trafficking. A PO may order an abuser:

- Not to hurt, threaten, or harass the person or their family either directly or through another person;
- To stay away from a person, their family, home, workplace, and children's day care or school; and
- Not to carry a gun, even with a license.

The judge can also:

- Order payment of child support and medical support,
- Set terms and conditions for visitation with the children,
- Order the abuser to attend anger management classes,
- Order drug testing,
- Order the abuser to attend a substance abuse treatment program, or
- Order the offender out of the home ("kick out order").

**PROTECTIVE ORDER-DISCOVERY** See *Motion for Protective Order*.

**REBUTTAL** Testimony which rebuts or refutes prior testimony.

**RECESS** A period of time when court is not in session.

**RECORD** The pleadings, motions, orders, evidence, and trial transcript of what has occurred will be included in the record, which will be sent by the clerk of the court to an appellate court if a request for the record is filed in an appeal.

**RELINQUISHMENT** A legal action where the parent voluntarily gives up their parental rights to the child. Texas Family Code Sec. 161.103

**RENDER** To render a judgment is to state the decision of the judge in a particular matter.



**RESPONDENT** The party against whom the SAPCR is initially filed. Opposite party to Petitioner.

**REVIEW HEARING** See *Status Review Hearing*.

**SAPCR** The acronym for Suit Affecting the Parent-Child Relationship.

**SERVICE OF PROCESS TYPES** The Respondent in a SAPCR may be served in person by a constable or process server-no signature necessary; by registered or certified mail-signature required; by substituted service if the process server has tried and been unsuccessful-court order required; service by posting if whereabouts of respondent unknown after diligent search and no children; service by publication if whereabouts of respondent unknown after diligent search and children.

**SHOW CAUSE HEARING (262 HEARING)** This hearing generally takes place two weeks after the Ex-Parte Hearing. Texas Family Code Sec. 262.201.

**SPECIAL IMMIGRANT JUVENILE STATUS** A federal law that allows an eligible undocumented foster child who is unable to reunite with one or both parents to obtain Permanent Resident status by applying prior to their 18<sup>th</sup> birthday.

**STANDARD POSSESSION ORDER** The guidelines established in the standard possession order are intended to guide the courts in ordering the terms and conditions for possession of a child by a parent named as a possessory conservator or as the minimum possession for a joint managing conservator. It is the policy of this state to encourage frequent contact between a child and each parent for periods of possession that optimize the development of a close and continuing relationship between each parent and child. It is preferable for all children in a family to be together during periods of possession. The standard possession order is designed to apply to a child three years of age or older. Texas Family Code Sec. 153.310 et seq.

**STATUS HEARING** The judge must review the placement of the child. Texas Family Code Sec. 263.201. A Guardian ad Litem is entitled to 10 days' notice of the hearing. Texas Family Code Sec. 263.0021.

**STIPULATIONS** Agreements made between the parties and/or their attorneys which are binding, once read into the record. Often called Rule 11.

**SUBPOENA** A document served on a witness ordering that person to appear at a certain time and place to testify and/or bring designated documents.



**SWEARING IN** When a witness affirms or takes an oath to tell the truth.

**TENDER** “(To) tender evidence” simply means to offer, submit or give evidence in a judicial proceeding.

**TERMINATION OF PARENTAL RIGHTS** This means that a parent no longer has any legal rights to the child. A parent may still have a duty to support the child until the child is adopted. The child may also inherit from the parent. The burden of proof is “Clear and Convincing Evidence”. Texas Family Code Sec. 161.001.

**TESTIMONY IN THE NARRATIVE** Testimony in which the witness relates his or her account of facts in full instead of responding to a series of questions posed by lawyers. In a nonjury trial, if the guardian ad litem is not called as a witness, the court shall permit the guardian ad litem to testify in the narrative. Texas Family Code Sec. 107.002(f).

**TRIAL** Hearings in which evidence is presented, including the adversary, status or permanency hearings.

**UNDER ADVISEMENT** A period of time after the trial when the judge considers the testimony, evidence, and law before making a final decision about the case and issues.

**VOIR DIRE** The process through which potential jurors from the jury panel are questioned by either the judge or a lawyer to determine their suitability for jury service.

**WAIVER OF APPEARANCE** A parent can waive the right to appear in Court in writing.

**WAIVER OF SERVICE** A party may waive service of notice by in writing or by voluntary appearance at a hearing.

**WARNING TO PARENTS** At the status hearing and at each permanency hearing under held after the court has rendered a temporary order appointing the department as temporary managing conservator, the court shall inform each parent in open court that parental and custodial rights and duties may be subject to restriction or to termination unless the parent or parents are willing and able to provide the child with a safe environment. Texas Family Code Sec. 26.006.