



To: Texas Judges Hearing Child Protective Services Cases

From: Hon. John Specia (ret.), Jurist in Residence
Office of Court Administration

Date: March 28, 2012

RE: New Appellate Rules Applicable to Termination of
Parental Rights or State as Managing Conservator

House Bill 906, enacted by the 82nd Legislature, and effective September 1, 2011, amended Sections 107.013, 107.016, 109.002(a) and 263.405 of the Texas Family Code, regarding the appointment of attorneys to represent indigent litigants on appeal and providing for the accelerated disposition of appeals from orders terminating parental rights or appointing the State as the managing conservator.

In July 2011, the Supreme Court appointed a task force to advise on rules to be adopted or revised for post-trial proceedings in parental termination cases. Several new rules and rule amendments to the Texas Rules of Civil Procedure and the Texas Rules of Appellate Procedure will affect how trial courts handle parental termination and conservatorship appeals.

Q: What do trial judges need to know about the new rules?

A: There are several changes that affect the trial courts:

1. Texas Rule of Civil Procedure 306 requires the judge to state the specific grounds in the judgment supporting the termination or the appointment of the managing conservator.
2. Pursuant to Section 107.013(e), which was added by the 82nd Legislature, parents deemed indigent in the trial court are presumed indigent on appeal, subject to challenges laid out in amended TRAP 20.1.
3. Pursuant to Section 107.016(2), the attorney ad litem appointed to represent the parent at trial is required to remain on the case until the case is dismissed, the date all appeals in relation to any final order terminating parental rights are exhausted or waived, or until relieved of the duty or replaced by another attorney after a finding of good cause is rendered by the court on the record.
4. TRAP 25.1(d)(6) requires the notice of appeal to state whether it is a parental termination or child protection case subject to rules of acceleration under TRAP 28.4.
5. TRAP 25.1(f) requires the trial court clerk to immediately send a copy of the notice of appeal to the appellate court clerk and to the court reporter(s) responsible for preparing the record.
6. TRAP 28.4(b)(1) requires the trial court to direct the official or deputy reporter to commence the preparation of the reporter's record and arrange for a substitute reporter, if necessary. There are extensions of time available under certain circumstances.
7. TRAP 28.4(b)(3) prohibits the application of Section 13.003 of the Civil Practices and Remedies Code

(Free Transcript of Statement of Facts on Appeal) to an appeal from a parental termination or child protection case.

8. TRAP 32.1 requires the appellant to file in the appellate court a docketing statement upon filing the notice of appeal, and it must state whether the appeal of a parental termination or child protection case as defined in Rule 28.4.
9. TRAP 35.3 limits extensions to file the appellate record in an accelerated appeal to 10 days.
10. TRAP 28.4(c) requires, in the case of a remand, that the judgment from the appellate court instruct the trial court to commence the new trial no later than 180 days after the mandate is issued by the appellate court.

Q: What about changes to Rules of Judicial Administration?

A: Rule of Judicial Administration 6 was amended to add a disposition deadline for appeals of parental termination and child protection cases. Rule 6.2 now states the following:

In an appeal of a suit for termination of the parent-child relationship or a suit affecting the parent-child relationship filed by a governmental entity for managing conservatorship, appellate courts should, so far as reasonably possible, ensure that the appeal is brought to final disposition in conformity with the following time standards:

- (a) Courts of Appeals. **Within 180 days** of the date the notice of appeal is filed.
- (b) Supreme Court. **Within 180 days** of the date the petition for review is filed.
(emphasis added).