

PUBLICATION UPDATE

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# Texas Family Law Practice and Procedure

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Publication 705

Release 89

May 2024

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## HIGHLIGHTS

### TEXAS FAMILY LAW RELEASE 89

- This release updates the set to incorporate recent case law developments and amendments to the Texas Rules of Civil Procedure.

**Characterization.** Language in a personal injury settlement agreement describing settlement funds as being “for the benefit of” an injured spouse, without allocating particular amounts as being for certain types of damages, is not enough to overcome the community presumption [Thornhill v. Thornhill, 666 S.W.3d 823, 827–830 (Tex. App.—Houston [14th Dist.] 2023, no pet. h.)]. See Task B5, Characterizing Property of Parties, § B5.05[8].

**Discovery.** Task E1, Conducting

Discovery, has been updated to reflect amendments to Texas Rules of Civil Procedure 190.2, 190.3, 192.1, 192.2, 192.7, 194.1, 194.4, 196.2, 196.7, 197.2, and 198.2, as well as new Rules 194a and 195a. The amendments implement Family Code Chapter 301, which went into effect September 1, 2023.

**Attorney’s fees.** A party seeking conditional appellate attorney’s fees must provide opinion testimony about both (1) the services the party reasonably believes will be necessary to defend the appeal, and (2) a reasonable hourly rate for those services [Jones-Hospod v. Hospod, 676 S.W.3d 709, 725–726 (Tex. App.—El Paso 2023, no pet. h.)]. See Task E7, Obtaining Court-Ordered Attorney’s Fees and Costs, § E7.01[3][c].

**Hague Convention.** An appellate

court’s reversal of a trial court’s grant of a petition for return of a child under the Hague Convention authorizes an order for the child’s return to the United States (a re-return order) [In Interest of A.H.S., 676 S.W.3d 355, 359–362 (Tex. App.—Tyler 2023, pet. filed)]. *See* Task K5, Obtaining Remedies Under Hague Convention, § K5.04[6].

**Termination of parental rights under Subsection (O).** The Texas Supreme Court has held that the concept of “the child’s removal from the parent under Chapter 262” in Subsection (O) of Family Code Section 161.001(b)(1) is far broader than DFPS taking physical possession of a child from a specific person or place. Removal is effectuated by a temporary court order that transfers not just the right to physical possession from

a parent to DFPS but also transfers from one or both parents to DFPS the entire bundle of conservatorship rights that the law gives to a parent by default [In Interest of A.A., 670 S.W.3d 520, 526–528 (Tex. 2023)]. *See* Task S3, Establishing Grounds for Termination, § S3.02[12][a].

When a parent has performed some but not all of the tasks required by the service plan, the parent’s partial compliance is insufficient to avoid termination. However, not all service plan requirements are created equal, and strict compliance with every aspect of every plan requirement is not always the standard [In Interest of R.J.G., 2023 Tex. LEXIS 1218, \*22–\*25 (Tex. 2023)]. *See* Task S3, Establishing Grounds for Termination, § S3.02[12][a].

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Publication 705 Release 89

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