

**PUBLICATION UPDATE**

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# Texas Family Law Practice and Procedure

Publication 705

Release 56

November 2007

## HIGHLIGHTS

### Pub Update

- This release updates *Texas Family Law Practice and Procedure* in light of the Family Code amendments passed by the 80th Texas Legislature as well as recent case law developments.

### Ad Litem Representation

- Included with this release at no additional charge to subscribers is the 2007–2008 edition of *Court-Appointed Legal Representation of Children in Texas Family Law Cases* by the Honorable Debra H. Lehrmann. This coverage originally appeared as a special supplement but is now a separate pamphlet.

### Selected Recent Developments

- See summaries of analysis below.

#### **Electronic communication with child.**

Under new Family Code Section 153.015, a parent may have e-mail access to, and other electronic communication with, his or her child while the child is with the other

parent. *See* Task B2, Determining Custody of Children; Task F1, Preparing the Final Decree.

**Obligor's death does not end child support.** The death of a parent who has been ordered to pay child support no longer terminates the support obligation. Now, any remaining unpaid future obligation accelerates and becomes payable on the date of death. The court must determine the amount of unpaid support and, if the obligation has not been satisfied, render a money judgment in the obligee's favor. *See* Task B3, Calculating Child Support.

**Standard possession order.** The provision for holiday possession in the standard possession order now specifies that possession shifts to the other parent on December 28, rather than on December 26. The weekend possession provision has been amended to clarify that, if the possessory conservator elects to have weekend possession begin at the time the child's school is dismissed, this election applies only during the regular school term. *See* Task B2, Determining Custody of Children; Task F1,

Preparing the Final Decree.

**Life insurance to cover child support.** Under new Family Code Section 154.016, the court may order a child support obligor to obtain and maintain a life insurance policy to pay child support if the obligor dies before his or her duty of support ends. *See* Task B3, Calculating Child Support; Task F1, Preparing the Final Decree.

**Statutory cap for support guidelines.** The statutory cap for application of the child support guidelines has been increased from \$6,000 to \$7,500. *See* Task B3, Calculating Child Support; Task F1, Preparing the Final Decree.

**Health coverage for child.** The provisions for determining which parent will be required to provide the child's health insurance coverage have been amended. If private health insurance is not available at a reasonable cost, the obligor must pay cash medical support. *See* Task B3, Calculating Child Support; Task F1, Preparing the Final Decree.

**Spousal maintenance.** Under a recent Texas Supreme Court decision, a spousal maintenance obligation, whether contractual or court-imposed, is punishable by contempt only if it meets the other requirements applicable to spousal maintenance under Family Code Chapter Eight. *See* Task B4, Determining Spousal Support and Maintenance.

**Reimbursement.** The party seeking an offset to a claim for reimbursement has the burden of proof with respect to the offset. *See* Task B7, Dividing Community Property.

**Social study.** New Family Code Section 107.051(d) requires an individual who conducts a social study to be qualified, and new Section 107.0511 sets out the minimum qualifications for a social study evaluator.

New Section 107.0513 explains how a social study should be conducted, and new Section 107.0514 sets out the basic elements of a social study. *See* Task C3, Drafting the Petition.

**Parenting plan and parenting coordinator.** Family Code Section 153.601 et seq., governing parenting plans and parenting coordinators, have been substantially revised. Temporary orders are no longer required to include a temporary parenting plan. Proposed parenting plans are no longer required in modification suits. The amendments have deleted the language allowing the trial court to adopt one party's proposed parenting plan if the other party fails to submit one. Parenting plans are no longer required to include ADR provisions. If a parenting plan does include an ADR provision, the requirement does not apply to an action to modify child support, an action to enforce, or certain other actions. *See* Task C8, Establishing Parenting Plans.

**Associate judges.** Many of the provisions covering referrals to an associate judge have been adjusted to clarify terms and procedural matters. All references to "an appeal" of an associate judge's report to the referring court have been replaced with references to "a request for a de novo hearing" before the referring court to eliminate any possible confusion between the two-tier trial court proceedings and appellate proceedings. *See* Task E5, Making Pretrial Motions and Other Preliminary Matters.

**Standing to file modification suit.** When parental rights have been terminated in a DFPS suit, the child's adult sibling and the child's grandparents, aunts, and uncles have standing for 90 days to file a suit for modification requesting managing conservatorship. *See* Task H2, Initiating SAPCR Modification Proceedings.

**Modifying child support based on possession.** This statute, which gives the person who has the child the right to receive child support if the custodial parent voluntarily relinquished possession, has been expanded to include other situations. *See* Task H5, Establishing Grounds for Modification of Child Support.

**Support enforcement.** The statute of limitation for contempt enforcement of child support orders has been expanded from six months to two years after the child becomes an adult or the support obligation terminates. *See* Task J1, Choosing Which Remedies To Seek in Motion To Enforce Child Support.

**Contempt proceedings.** A child support obligor who has been taken into custody under a *capias* must be brought before the court on or before the third working day after the arrest. If the obligor remains in custody, a contempt hearing must be held by the seventh day after the obligor was taken into custody. *See* Task J2, Bringing Motion for Contempt and Other Remedies.

**Income withholding.** Income withholding now applies to severance pay. *See* Task J4, Enforcing Child Support Through Writ of Withholding.

**Annulment.** A marriage is now voidable based on a party's mental incapacity if the application to declare the marriage void was either pending on the date of a spouse's death or the decedent had been married for less than three years and the application is filed within one year of the death. *See* Task Q1, Determining Grounds for Annulment.

**Retroactive child support.** After September 1, 2007, a petition requesting retroactive child support must be filed no later

than the fourth anniversary of the child's 18th birthday. *See* Task R2, Making Preliminary Determinations Regarding Parentage Suit

**Assisted reproduction.** The assisted reproduction statutes that require consent "in a record" have been amended to require that the record of the consent be kept by a licensed physician. *See* Task R1, Understanding Legal Relationship Between Father and Child.

**Sperm donor as father.** If an unmarried man, with the intent to be the father of a resulting child, provides sperm to a licensed physician and consents to the use of that sperm for assisted reproduction by an unmarried woman, he is the father of a resulting child. *See* Task R3, Initiating Parentage Suit.

**Termination of alleged father's rights.** The notice requirements for a suit to terminate the parental rights of an alleged father have been amended to facilitate termination vis-a-vis a man who has not registered with the paternity registry. *See* TaskS14, Initiating Termination Suit.

**Affidavits of status and waiver of interest.** Affidavits of status of child have been eliminated. All affidavits of waiver of interest in a child are now irrevocable. *See* Task S1, Initiating Termination Suit.

**Adoption.** New Family Code Section 162.0025 provides that neither the court nor the person performing a pre-adoptive social study may consider the fact that a petitioner is a member of the military as a negative factor in determining whether the adoption is in the child's best interest or whether the petitioner would be a suitable parent. *See* Task T4, Conducting Child Adoption Proceedings.

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Publication 705 Release 56

November 2007

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