

PUBLICATION UPDATE

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Texas Family Law Practice and Procedure

Publication 705 Release 72 November 2015

HIGHLIGHTS

Pub Update

- This release updates the set to incorporate amendments to the Texas Family Code made by the 84th Texas Legislature as well as recent case law developments.

Same-sex marriage. Under the United States Supreme Court’s holding in *Obergefell v. Hodges* [576 U.S. ___, ___, 135 S. Ct. 2584, 2597–2611, 192 L. Ed. 2d 609 (2015)] , same-sex marriage is now legal in all 50 states. *See* Task B1, Establishing the Marriage Relationship, § B1.01[3].

Duty to notify. A conservator has a duty to notify the other conservator if he or she lives with a person who is the subject of a protective order or if he or she becomes the subject of a protective order. *See* Task B2, Determining Custody of Children, § B2.06[4B].

Standing. When a child is separated from a sibling as the result of DFPS action, the sibling has standing to file an original

suit requesting access to the child. *See* Task B2, Determining Custody of Children, § B2.07[2][c][ii].

Child support. The minimum wage presumption for calculating child support in the absence of income evidence does not apply to incarcerated individuals.. *See* Task B3, Calculating Child Support, § B3.02[2][a].

Dental support. The Family Code now requires courts to order dental support along with child support and medical support for a child.. *See* Task B3, Calculating Child Support, § B3.03.

Child custody evaluations. Child custody evaluations have replaced social studies, and a child custody evaluator must meet stringent new education and training requirements. Only a person who has conducted a child custody evaluation may offer an expert opinion relating to conservatorship, possession, or access.. *See* Task C3, Drafting the Petition and SAPCR, § C3.10A.

Temporary restraining order. Family

Code Section 6.501 has been amended to provide a more comprehensive list of the kinds of property and protections a TRO may address. *See* Task C3, Drafting the Petition and SAPCR, §§ C3.13, C3.14.

Transfer. When a SAPCR is transferred, the pleadings and orders must now be sent to the transferee court within 10 days after the transfer order is signed. *See* Task C5, Moving to Transfer SAPCR, § C5.05[3].

Proceedings before associate judge. A party may now seek de novo review of an associate judge's temporary orders. *See* Task E5, Pretrial Motions and Other Preliminary Matters, § E5.09[3][b][i].

SAPCR orders. A SAPCR order that provides for child support must now include a statutory notice describing when child support may be modified. *See* Task F1, Preparing the Final Decree, § F1.17[5].

Modification of conservatorship. When a person seeks a temporary order that has the effect of changing primary custody on the basis of impairing circumstances, the motion must include a supporting affidavit. *See* Task H3, Conducting SAPCR Modification Proceedings, § H3.02[1][b][ii].

UIFSA. The UIFSA statutes [Tex. Fam. Code § 159.001 et seq.] have been amended to clarify that, in addition to applying to out-of-state child support orders, they apply to child support orders from foreign countries that have not signed the 2007 Convention on the International Recovery of Child Support and Other Forms of Family Maintenance. Orders from countries that are signatories to the Convention may be recognized, enforced, and

modified in Texas as provided by new Family Code Chapter 159, Subchapter H [Tex. Fam. Code § 159.701 et seq.]. *See* Task M1, Interstate Enforcement or Modification of Decree, § M1.01[1][b]; Task M2, Processing UIFSA Litigation, § M2.07.

Termination of parental rights. An attorney ad litem may be appointed to represent a parent in a termination action before the court makes a determination as to the parent's indigence. The Family Code now requires a court to advise the parent of the right to an attorney and the right to a court-appointed attorney at the parent's first appearance in court. *See* Task S2, Conducting Termination Suit, §§ S2.03[2][b], S2.05[1][a].

Adoption evaluations. Adoption evaluations have replaced pre-adoptive and post-placement adoptive social studies. *See* Task S2, Conducting Termination Suit, § S2.04; Task T4, Conducting Child Adoption Proceedings, § T4.03[1].

Right to interpreter in termination proceedings. The Houston First Court of Appeals has held that a non-English-speaking parent in a termination proceeding is entitled to an interpreter [M.M.V. v. DFPS, 455 S.W.3d 186, 189–190 (Tex. App.—Houston [1st Dist.] 2014, no pet. h.)]. *See* Task S2, Conducting Termination Suit, § S2.05A.

Name change. Service of citation may be waived in a suit for change of name. *See* Task 1, Changing Name of Adult, § Z1.03[3]; Task Z2, Changing Name of Child, § Z2.02[3].

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Texas Family Law Practice and Procedure

Publication 705 Release 72

November 2015

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