

Trial Preparation



TEXASCASA
Court Appointed Special Advocates
FOR CHILDREN

Trial Preparation

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Please refer to your program's guidance for trial preparation. Below is some general information to assist you in preparing for trial, but this might not apply to all programs.

Unfortunately, there are times when families cannot alleviate the original issues that brought them into the CPS system. When we feel it's in the best interest of kids not to return home, we may have to advocate for the termination of parental rights. This often starts with mediation, but if the parents are not in a place to voluntarily relinquish their rights, sometimes cases do go to trial.

The attorney representing CPS has to have legal grounds to take the case to trial. The most common termination grounds you will hear referenced are **D**, **E**, and **O** grounds. D and E are often referenced together.

- D** – Knowingly placed or knowingly allowed the child to remain in conditions or surroundings that endanger the physical or emotional well-being of the child.
- E** – Engaged in conduct or knowingly placed the child with persons who engaged in conduct that endangers the physical or emotional well-being of the child.
- O** – Failed to comply with the provisions of a court order that specifically established the actions necessary for the parent to obtain the return of the child who has been in the permanent or temporary managing conservatorship of the Department of Family and Protective Services for not less than nine months as a result of the child's removal from the parent under Chapter 262 for the abuse or neglect of the child.

Your supervisor will be able to provide you further information as it relates to your specific case and which termination grounds might be applied.

You should work your case from day one as if you're going to trial. This will ensure you stay up to date with necessary documentation and help you be prepared should trial happen.

As a CASA volunteer, if you've done your work consistently and documented everything thoroughly, you will be fine to prep for trial. You will use your documentation to develop a timeline for trial, and your supervisor will support you in all preparation

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needed for trial. You will also meet with any other parties on the case that CASA is in agreement with to prep with them and review the types of questions you might be asked on the stand.

Generally, CASA is used to paint a picture of the children during a trial. We are often the ones with the most contact. The attorneys will be looking for descriptions of the children, especially over time. CASA will often testify to the children's emotional and psychological well-being. How do we expect the final decision will impact them? If we do not win, what will be the impact on the kids?

Our job is simply to answer questions honestly. The only exceptions are the identity of the person who made the initial call to CPS and any discussion that took place during mediation. These are always kept confidential. The attorneys know this and should not lead to you answer these types of questions.

TESTIFYING

CASA volunteers should be ready to testify regarding the following information:

CASA Related

- Your general background
- Description of CASA training
- Date you were sworn in
- The definition of guardian ad litem, if applicable
- Components of best interest

Legal Information

- What we are asking for, why we're asking for it, and the impact it will have on the children
- The legal alternatives
- How long a case lasts
- How long we will be appointed

Case Related

- When CASA was appointed
- Description of the children at beginning of case
- Changes in the children over time
- Specific conversations with the children about their wishes (to go home or not)
- Any other specifics from conversations with the children (outcries, stories about abuse) and when those conversations took place
- What is in the best interest of each child and why
- General description of contact with the parents
- Recommendations received from the parents' service providers
- Recommendations from children's therapists
- Educational information on each child
- Current needs of all children
- General description of contact with the caregivers
- Information from any other services the children are receiving
- General description of meetings (FGC, PC, Mediation)

Permanency Options

- Reunification
- Adoption
- Permanent Managing Conservatorship (PMC) to the Department
- PMC to another person
- Joint Managing Conservatorship (JMC)
- Possessory Conservatorship

Sample Trial Questions

1. Please state your name for the record.
2. What is your occupation?
3. How are you involved with this case?
4. What is the purpose of CASA?
5. What training did you receive with CASA?
6. What other experience do you have with children?
7. When were you appointed to this case?
8. How old were the children when you were appointed?
9. How old are they now?
10. What are the children's likes and dislikes?
11. How do the children perform in school?
12. Do the children have any significant behavioral, medical, or therapeutic issues?
13. How are the children doing today compared to when they were first brought into care?
14. What responsibilities have you had as the children's CASA?
15. How often have you seen the children?
16. Have you maintained contact with the parents?
17. To your knowledge, have the parents completed all of their court-ordered services?
18. Have the parents had regular visitation with their children?
19. How do the parents interact with the children?
20. How do the children react to the parents?

21. Do you think the parents are capable of providing a safe and stable environment for their children?
22. What other professionals or family members have you contacted regarding this case?
23. What other placement options have been considered during the course of the case?
24. What is your definition of permanency?
25. What is CASA's proposed permanency plan for the children?
26. Why do you believe this is in the children's best interest?

Sample Timeline

Part of your prep for trial might be to develop a timeline of your work. If you have been consistent about thoroughly documenting your work, you will easily be able to build this timeline. The timeline is generally shared with the AAL and the attorney representing CPS to give a clear picture of our work on a case and to help guide the types of questions they might ask us on the stand. This is what a trial timeline might look like.

DATE	ACTION
9/10/2015	Referral alleging physical neglect of all five children; Disposition of Reason to Believe, family fled area.
9/13/2015	The Department went out to investigate and found Reason to Believe of physical neglect of all 5 children.
9/15/2015	CASA appointed.
9/16/2015	CASA supervisor met the children and the family. CASA visits with the children in the home and shares the same concerns as the Department. There is glass and empty beer bottles on the floor. One of the children is 1.5 years old and was picking up cigarette butts off of the carpet. No food was in home available for the children.

Sample Timeline

DATE	ACTION
9/20/2015	The Department requested Temporary Managing Conservatorship (TMC) of the children. CASA is in agreement with the Department's request. Court granted TMC of all 5 children to the Department.
9/21/2015	Children removed and placed in emergency shelter.
10/20/2015	CASA supervisor observed a supervised family visit at the Department.
10/21/2015	CASA Volunteer is assigned to the case.
10/23/2015	CASA (Sup and Vol) visited at emergency shelter. Children are adjusting. Shelter shared some concerns about the children's behavior. Therapy is recommended for all children except the 1.5-year-old.
10/25/2015	Family Group Conference held. CASA Sup and volunteer attend the meeting. Parents had a neighbor attend the meeting. Neighbor is not able to be a placement at the moment.
11/9/2015	Status Hearing: (CASA Sup and Vol attend) TMC continues. CASA requested play therapy for the oldest 4 children (court granted it). Parents have registered for protective parenting, psychological, individual therapy and have submitted a UA.
11/16/2015	Family visit attended by CASA Sup and Vol (parents arrived 10 min late). Parents did not engage with the children. They were on their phones most of the visit.
11/20/2015	Children are all placed together in basic foster home.
11/20/15– 4/5/16	CASA maintained monthly phone contact with foster parents and children.
11/20/2015	Family visit was cancelled due to conflicts of schedules around Thanksgiving.
12/5/2015	Family visit attended by CASA Vol. Parents continue to be on their phones during the visit. Youngest child was crying and parents ignored him until the visit supervisor stepped in.
12/8/2015	Permanency Conference meeting held. Parents did not show up.
12/13/2015	Family Visit. Parents are a No Show for their visit. Children are very upset and have a hard time back at the foster home.

DATE	ACTION
12/18/2015	CASA Vol visited the children in their foster home and dropped off presents.
12/20/2015	Family visit, parents were inappropriate with the children. Yelled at them for being loud, threatened them. Dad fell asleep the last hour.
12/27/2015	Outcries from 3 oldest children reported by foster mom to the child advocates.
1/2/2016	CAC Interview (Jenny)
1/3/2016	CAC Interview (Fran, Sara)
1/10/2016	Met children and foster parents after therapy sessions,
1/12/2016	FA arrested for sexual assault of a child on the way to the family visit, MO too upset to attend family visit.
1/13/2016	Special review hearing to suspend visitation for parents. Judge granted the suspension of visits for both parents. Concerns about mom knowing of the abuse and not doing anything about it.
1/20/2016	Met children and foster parents to provide coats.
1/28/2016	CAC Interview (Evan, Fran, Jenny)
2/13/2016	Met children and foster parents. All children had a great time. Foster parents informed they were overwhelmed.
2/15/2016	Lengthy phone discussion with children's therapist.
2/20/2016	Foster parents put a notice on the children. They cannot handle their behaviors.
3/10/2016	Children placed together in new therapeutic foster home.
3/11/2016	1st Permanency Hearing: parents did not show up. Mom has not been in touch with parties or her attorney. Dad continues to be incarcerated. Trial Dates are announced and Mediation is authorized. Next hearing is set as merits.
3/15/2016	Visit with the children at their new foster home. They seem to be doing well.
3/22/2016	Mom is arrested for possession of a controlled substance.

Sample Timeline

DATE	ACTION
3/29/2016	Permanency Conference is cancelled due to both parents being incarcerated.
4/5/2016	CASA visited children at foster home. Children are all doing well. None of them asked about their parents. Foster parents report that they are all great and have no concerns.
4/20/2016	CASA visited principal at Evan, Fran, and Jenny's school. They are struggling at school and receiving services. Grades are slowly improving.
4/25/2016	Conversation with the children's therapist. Children have experienced a significant amount of trauma while in their biological parents' home. Does not recommend contact with parents by phone at the moment.
5/12/2016	Visit with the children at foster home. Children continue to do great.
5/20/2016	Mediation takes place. Parents were brought in for mediation. Neither parent signed a relinquishment of parental rights.
6/2/2016	Visit with the children at their foster home. Conversation with foster family about adoption. Foster parents are willing to adopt all 5 children.
6/20/2016	CASA visit with the children. Oldest 3 children tell CASA they want to stay with their foster parents forever.
7/13/2016	Trial Begins

Addendum 1

Updated Texas Family Code: Definition of Abuse

Title 5. The Parent-Child Relationship and the Suit Affecting the Parent-Child Relationship

Subtitle E. Protection of the Child

Chapter 261. Investigation of Report of Child Abuse or Neglect

Subchapter A. General Provisions

- (1) "Abuse" includes the following acts or omissions by a person:
 - (A) mental or emotional injury to a child that results in an observable and material impairment in the child's growth, development, or psychological functioning;
 - (B) causing or permitting the child to be in a situation in which the child sustains a mental or emotional injury that results in an observable and material impairment in the child's growth, development, or psychological functioning;
 - (C) physical injury that results in substantial harm to the child, or the genuine threat of substantial harm from physical injury to the child, including an injury that is at variance with the history or explanation given and excluding an accident or reasonable discipline by a parent, guardian, or managing or possessory conservator that does not expose the child to a substantial risk of harm;
 - (D) failure to make a reasonable effort to prevent an action by another person that results in physical injury that results in substantial harm to the child;
 - (E) sexual conduct harmful to a child's mental, emotional, or physical welfare, including conduct that constitutes the offense of continuous sexual abuse of young child or children under Section 21.02, Penal Code, indecency with a child under Section 21.11, Penal Code, sexual assault under Section 22.011, Penal Code, or aggravated sexual assault under Section 22.021, Penal Code;
 - (F) failure to make a reasonable effort to prevent sexual conduct harmful to a child;

- (G) compelling or encouraging the child to engage in sexual conduct as defined by Section 43.01, Penal Code, including compelling or encouraging the child in a manner that constitutes an offense of trafficking of persons under Section 20A.02(a)(7) or (8), Penal Code, prostitution under Section 43.02(b) 43.02(a)(2), Penal Code, or compelling prostitution under Section 43.05(a)(2), Penal Code;
- (H) causing, permitting, encouraging, engaging in, or allowing the photographing, filming, or depicting of the child if the person knew or should have known that the resulting photograph, film, or depiction of the child is obscene as defined by Section 43.21, Penal Code, or pornographic;
- (I) the current use by a person of a controlled substance as defined by Chapter 481, Health and Safety Code, in a manner or to the extent that the use results in physical, mental, or emotional injury to a child;
- (J) causing, expressly permitting, or encouraging a child to use a controlled substance as defined by Chapter 481, Health and Safety Code;
- (K) causing, permitting, encouraging, engaging in, or allowing a sexual performance by a child as defined by Section 43.25, Penal Code; or
- (L) knowingly causing, permitting, encouraging, engaging in, or allowing a child to be trafficked in a manner punishable as an offense under Section 20A.02(a)(5), (6), (7), or (8), Penal Code, or the failure to make a reasonable effort to prevent a child from being trafficked in a manner punishable as an offense under any of those sections.

(2) "Department" means the Department of Family and Protective Services.

(3) Repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 1.203(4).

(4) "Neglect":

(A) includes:

the leaving of a child in a situation where the child would be exposed to a substantial risk of physical or mental harm, without arranging for necessary care for the child, and the demonstration of an intent not to return by a parent, guardian, or managing or possessory conservator of the child;

(ii) the following acts or omissions by a person:

- (a) placing a child in or failing to remove a child from a situation that a reasonable person would realize requires judgment or actions beyond the child's level of maturity, physical condition, or mental abilities and that results in bodily injury or a substantial risk of immediate harm to the child;
- (b) failing to seek, obtain, or follow through with medical care for a child, with the failure resulting in or presenting a substantial risk of death, disfigurement, or bodily injury or with the failure resulting in an observable and material impairment to the growth, development, or functioning of the child;
- (c) the failure to provide a child with food, clothing, or shelter necessary to sustain the life or health of the child, excluding failure caused primarily by financial inability unless relief services had been offered and refused;
- (d) placing a child in or failing to remove the child from a situation in which the child would be exposed to a substantial risk of sexual conduct harmful to the child; or
- (e) placing a child in or failing to remove the child from a situation in which the child would be exposed to acts or omissions that constitute abuse under Subdivision (1)(E), (F), (G), (H), or

(iii) committed against another child; or

- (a) the failure by the person responsible for a child's care, custody, or welfare to permit the child to return to the child's home without arranging for the necessary care for the child after the child has been absent from the home for any reason, including having been in residential placement or having run away; and

(B) does not include the refusal by a person responsible for a child's care, custody, or welfare to permit the child to remain in or return to the child's home resulting in the placement of the child in the conservatorship of the department if:

- (i) the child has a severe emotional disturbance
- (ii) the person's refusal is based solely on the person's inability to obtain mental health services necessary to protect the safety and well-being of the child; and
- (iii) the person has exhausted all reasonable means available to the person to obtain the mental health services described by Subparagraph (ii).

(5) "Person responsible for a child's care, custody, or welfare" means a person who traditionally is responsible for a child's care, custody, or welfare, including:

- (A) a parent, guardian, managing or possessory conservator, or foster parent of the child;
- (B) a member of the child's family or household as defined by Chapter 71;
- (C) a person with whom the child's parent cohabits;
- (D) school personnel or a volunteer at the child's school; or
- (E) personnel or a volunteer at a public or private child-care facility that provides services for the child or at a public or private residential institution or facility where the child resides.

(6) "Report" means a report that alleged or suspected abuse or neglect of a child has occurred or may occur.

(7) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(8) Repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 1.203(4).

(9) "Severe emotional disturbance" means a mental, behavioral, or emotional disorder of sufficient duration to result in functional impairment that substantially interferes with or limits a person's role or ability to function in family, school, or community activities.

