



## POLICY BRIEF

Center for Public Policy Priorities

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### LAWYERS AND CHILD PROTECTION

#### INTRODUCTION

In 2005, the Texas Department of Family and Protective Services (DFPS) received more than 234,000 reports of child abuse and neglect.<sup>1</sup> Some of these reports prompted DFPS to file child protection cases requesting that a Texas judge order services to prevent further child abuse or neglect or remove children from unsafe homes.<sup>2</sup>

Either a local prosecutor or a DFPS regional attorney represents DFPS in such cases. A parent has the right to hire a lawyer; or if the parent is unable to afford a lawyer, and DFPS seeks legal custody of the child, the parent has the right to a court-appointed lawyer. In every DFPS case, the court appoints a lawyer to represent the child.

As the Pew Commission on Children in Foster Care, a national blue-ribbon panel of child welfare experts, has found, in order to “safeguard children’s best interests . . . children and their parents must have a direct voice in court, *effective legal representation*, and the timely input of those who care about them.” A good lawyer for all parties ensures that the court hears all the facts and perspectives.

Yet for years, many have complained about the quality of legal representation in child protection cases. In 2005, the Texas legislature addressed these longtime criticisms through Senate Bill 6 (SB 6), which reformed many aspects of the child welfare system, including representation of children and parents. Much remains to be done, however.

The good news is that unlike many challenges facing the state, it is possible to significantly strengthen legal representation in child protection cases in a short period with limited funds. This policy brief provides an overview of the issues, discusses the new provisions of Senate Bill 6, and recommends additional ways to make representation more effective for DFPS, parents, and children.

## THE ISSUES

### LAWYERS REPRESENTING DFPS

#### *DFPS Has Patchwork Representation*

Most discussions of lawyers in child protection cases begin and end with lawyers for children, but effective representation for DFPS is as important as effective representation for a child or parent.

DFPS drives a case, deciding when to file and when to dismiss. A good DFPS lawyer guiding the case may protect a child from a parent who is unsafe or protect a parent from a social worker who does not know the law. The single biggest problem in providing effective representation for DFPS is that no one person is in charge. No one person has the authority to coordinate the cases and the resources.

The American Bar Association (ABA) has adopted standards for lawyers representing child welfare agencies. See *American Bar Association Standards of Practice for Lawyers Representing Child Welfare Agencies* at <http://www.abanet.org/child/restandwhole.pdf>.

One might naturally assume that the Attorney General of Texas is the lawyer for the state and would have this authority. In fact, the attorney general is not the default lawyer for the state. Under the Texas Constitution, the default lawyer for the state is the county or district attorney in each county; thus, the local prosecutor is primarily responsible for representing DFPS.<sup>3</sup> While the Attorney General has represented DFPS in the past, the Attorney General currently provides no direct representation of DFPS in child protection cases.

Some county or district attorneys resist the idea of representing DFPS. Many local prosecutors focus on criminal cases. DFPS cases are civil cases and often county or district attorneys lack experience in this area. Counties with smaller populations often lack money for personnel specifically designated to handle DFPS litigation. In general, the smaller the county, the more burdensome it is for the prosecutor to handle these cases. In some of the least populated counties, the prosecutors have private law practices as county responsibilities amount to less than a full-time job or county funds allow for less than full-time pay.

State law, however, designates local prosecutors to represent DFPS for three reasons. First, historically, local prosecutors undertook this task through juvenile or family courts long before the state became involved in child protection. Second, DFPS needs to move on child protection cases quickly in distant counties throughout the state, making the local prosecutor a more practical choice, since the Attorney General's lawyers are in Austin. Finally, representing DFPS costs money, and shifting responsibility from local prosecutors to the state would mean shifting the cost to the state.

Texas Family Code § 264.009 provides that DFPS will be represented by the local prosecutor in the county in which DFPS must bring the case. However, if a conflict of interest or special circumstances exist, an assistant attorney general or a person deputized by or contracted with the Attorney General of Texas must provide representation. DFPS may

also employ attorneys to provide representation. DFPS has 47 lawyers on its own staff who are located in regional offices and represent the agency in its child welfare cases; two others represent the agency when these cases are appealed.

Approximately 50 percent of all child abuse and neglect cases in Texas arise in Bexar, Dallas, El Paso, Harris, Tarrant, and Travis counties.<sup>4</sup> Local prosecutors in these counties have specialized units to represent DFPS. In rare cases, a DFPS regional attorney represents the agency in child protection cases in the six big urban counties, usually because of a conflict of interest by the local prosecutor.

However, no criteria or authority determines when a local prosecutor may decline to represent DFPS. Local prosecutors are independent, elected officials, and if a local prosecutor refuses to represent DFPS, DFPS can do nothing about it. Unfortunately, an increasing number of prosecutors across the state are electing not to represent DFPS. When a local prosecutor refuses to represent DFPS, DFPS adds the additional workload to the regional attorneys, without additional funding.

### *Senate Bill 6 Addresses Some Challenges but Presents New Complications*

One of the hallmarks of SB 6 was an increase in the number of caseworkers who investigate reports of child abuse and neglect. With more capacity for investigations, the state may see an increase in the number of legal cases. Prosecutors and DFPS regional attorneys, already feeling the pinch from overwhelming caseloads, would only see their caseloads grow.

Moreover, while the legislature increased the number of investigators, it did not increase the number of ongoing caseworkers. This has increased turnover and vacancies. Caseworkers have more cases and those who are newly hired lack experience. Representation of DFPS is much more challenging when caseworkers are overworked or inexperienced.

Under Senate Bill 6, DFPS regional attorneys are more overworked because they are also responsible for training DFPS employees, especially caseworkers and other field personnel, and providing technical assistance to prosecutors handling DFPS cases. Senate Bill 6 required the hiring and training of more DFPS caseworkers and increased the training period, including legal-related education, from six to twelve weeks, thus exponentially increasing the training responsibilities of DFPS attorneys.

At the same time, DFPS is in a state of turmoil due to a state plan to privatize or outsource many casework responsibilities to private agencies beginning in 2007. The scope of this change is far-reaching. Currently, a DFPS caseworker attends every court hearing to present information and recommendations regarding a family. A caseworker must have personal knowledge of the client family in order to testify. Under the privatized plan, the contract providers, rather than DFPS, will have most, if not all, contact with family members. Largely, most contract providers lack sufficient experience and knowledge of the legal side of DFPS cases—for example, preparing for hearings, responding to discovery, and testifying. This will make representation even more difficult for prosecutors and DFPS regional attorneys.

Finally, it is unclear who will be in charge of litigation in a privatized system. A single person must have the authority to make the legal decisions and interface with a local prosecutor or DFPS attorney prosecuting the case. At present, the DFPS caseworker is driving the case, testifying as an expert witness, and making recommendations. DFPS will have insufficient staff to do this in a privatized system. Even if it had the staff, DFPS would not have the necessary personal knowledge to testify. With so much rapid change occurring within DFPS, it is essential that DFPS' legal representation be strengthened.

### *Ideas to Explore*

#### *1. Additional Funding*

Despite the increase in workload among existing regional attorney positions, the state made no additional appropriations during the last legislative session to increase the number of attorneys. DFPS needs more regional attorneys to address the rising number of cases and the increased amount of time the regional attorneys spend training new caseworkers. Additionally, DFPS needs more funding for training for regional attorneys and prosecutors. Additional attorneys and training would encourage more prosecutors to begin or to continue to represent the agency.

#### *2. DFPS Representation*

The state should determine whether the way DFPS is represented should be overhauled, particularly in light of the increased challenges of representing DFPS in a privatized system. Should patchwork representation be replaced? If so, with what?

#### *3. Cluster Court Prosecutors*

Unlike the urban areas of Texas, most prosecutor offices in rural areas often lack prosecutors who specialize in DFPS cases. Because of the complex nature of child abuse and neglect law, a prosecutor who has specialized knowledge of this area of law usually provides better DFPS representation. A pilot project began in 2004 for a specialized prosecutor, also referred to as a cluster court prosecutor, to represent DFPS in 23 counties in the Texas Panhandle where the local prosecutors requested assistance in representing the agency.

Although the pilot project is due to wrap up in early 2007 due to lack of continued funding, a study is merited to determine whether cluster court prosecutors might improve representation of DFPS.<sup>5</sup> The primary benefit of a cluster court prosecutor is that the agency receives specialized and consistent representation across a large geographical region, improving the quality of representation and securing better outcomes for children.

However, the cluster court prosecutor project illustrated some problems with creating such a position. Without state assistance, it will be unrealistic to fund these projects long term. Already financially burdened, these rural counties could not afford to pay more for a special prosecutor.

Additionally, it is difficult to adequately manage and supervise the cluster court prosecutor. Because the cluster court prosecutor was not an employee of a local prosecutor or a staff

member at DFPS, only the appointing judge had any oversight, and that was very limited. Ultimately, it may be more useful to provide additional funding to local prosecutors or DFPS for more attorneys to represent the agency.

#### *4. Loan Forgiveness Programs*

Many attorneys, saddled by large law school debt, cannot afford to enter into the low-paying field of child welfare law. A recent national study found that more than two-thirds of lawyers surveyed owe at least \$50,000 in student-loan debt, and nearly a quarter owe \$75,000 or more. More than two in three reported that their current debt would be a factor in their future decisions to seek higher-paying employment--despite the fact that most would prefer to work as advocates for foster children.<sup>6</sup> Texas should consider creating loan forgiveness programs to attract attorneys to the child protection arena and to keep them there. Loan forgiveness could also be used to strengthen representation for parents and children.

## LAWYERS REPRESENTING PARENTS

### *Lawyers for Parents are Extremely Important*

The Pew Commission on Children in Foster Care has recommended securing effective representation for parents as a key to improving outcomes for children.<sup>8</sup> Effective parental representation is important not only to protect the parent's rights, but also to protect the child-parent bond. Often the best thing a lawyer can do for a child is effectively represent the child's parent.

### *Parents Have a Limited Constitutional Right to a Lawyer*

When the state brings a civil case against a parent for child maltreatment, the constitution does not guarantee parents a right to appointed counsel in every parental rights proceeding. An indigent parent's constitutional right to counsel under the Fourteenth Amendment Due Process Clause is made on a case-by-case basis when the state seeks to terminate parental rights.<sup>9</sup> Although the U.S. Supreme Court does not require that a lawyer be appointed in every termination case where the parent is unable to afford counsel, the Texas Family Code mandates it. In fact, a finding of termination of parental rights can be overturned on appeal if the trial court fails to appoint an attorney for an indigent parent.<sup>10</sup> Most agree that when the state attempts to take a child from a parent, common decency requires the state to provide a lawyer at public expense to a parent too poor to afford one. In the past, the Texas Family Code implemented this sense of decency very imperfectly.

The ABA has adopted standards for lawyers representing parents in child abuse and neglect cases. See *American Bar Association Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases* at [www.abanet.org](http://www.abanet.org).

From 1979, the Texas Family Code allowed courts to appoint lawyers for indigent parents, but only if the parent was opposed to the termination of parental rights. Under this provision, courts were able to delay appointing lawyers.

Historically, DFPS began a case asking for only temporary custody instead of termination. Since DFPS did not start by asking for termination, a parent was not entitled to a court-appointed lawyer at the start of a case. Later, if a parent did not make satisfactory progress, DFPS would ask for termination, making the parent eligible for a lawyer for the first time far into the case.

Even then, however, courts would often delay appointing a lawyer until shortly before the actual trial. The courts of appeals upheld this practice, holding that it was in the trial court's discretion as to when counsel was appointed, even when the appointment occurred merely in time for the lawyer to prepare for the trial.<sup>11</sup> By that point, however, it was often too late for the lawyer to be of much assistance to a parent.

Beginning in 1998, the legislature required DFPS to complete cases more quickly, so DFPS began asking for termination at the onset of each case. Still, many courts waited until some point before the trial to appoint a lawyer to the parent, giving the lawyer only time to prepare for the trial. In the meantime, the child may have been in the custody of the state for months, and the parent's opportunity to make positive changes and regain custody may have been lost.

### *Changes Made by Senate Bill 6*

In SB 6, the legislature changed the rules so courts would appoint a lawyer to represent a parent sooner. Now, courts must appoint a lawyer for a parent whenever DFPS requests temporary conservatorship and the parent opposes the request and is unable to afford a lawyer.<sup>12</sup> DFPS generally makes this request at the beginning of most cases. In response to this legislation, some courts report that they are appointing counsel for parents earlier in the case. Other courts, however, are continuing to delay. Counties are resistant to this change, as it increases their costs, as discussed below. Nonetheless, this provision is a big step forward.

### *Reasons for Delay*

Courts do not delay appointing lawyers because of any prejudice but rather because they lack the money to pay for all the necessary lawyers. Courts must use their limited funds carefully.

Before 1980, Texas did not have a large number of child abuse and neglect cases. Courts relied upon volunteer attorneys or local arrangements to pay for lawyers when necessary. By 1980, however, the number of cases began increasing, putting pressure on this informal system.

In 1981, under Texas Family Code § 107.015, the legislature addressed payment of an indigent parent's attorney's fees. Under subsection (b), parents must pay as much as they can. Under subsection (c), the court then orders the remainder paid by the county's general fund. As a practical matter, parents are almost never able to pay any part of the attorney's

fees.<sup>13</sup> While some might label the requirement that counties pay an “unfunded mandate,” in fact, historically counties have paid for the cost of child abuse and neglect litigation.

Relying upon each county’s general fund, however, means that payment varies dramatically across the state as determined by a county’s wealth and local custom. Currently, some counties pay a flat fee per case, which in at least one county is only \$60. A few counties pay by court appearance, with fees ranging from \$100 to \$350 per court appearance. These counties do not pay for out of court work, which can be substantial. Other counties pay by the hour, the same rates for in or out of court. Depending on the county, rates vary from \$55 hourly to \$100 hourly. Still other counties vary their rate depending on the task. Rates range from \$40 to \$90 for out-of-court work and from \$55 to \$100 for in-court work.

The state has no uniform standard for payment. Under Texas Family Code § 107.015 (c), courts must pay a fee based on the same fee schedule the court has adopted for paying lawyers for defending children in juvenile cases.<sup>14</sup> However, the short, quasi-criminal juvenile proceeding is not an appropriate model for the longer, civil child abuse case. By calling for the same fee schedule for both, the code does not provide for adequate compensation for civil child abuse lawyers.

### *Parents Often Receive Ineffective Representation*

As common sense suggests, the quality of legal representation generally relates to how much the lawyer is paid. For example, how much time a lawyer spends on a case is related to payment. Attorneys representing parents frequently report that courts do not pay adequately. Attorneys in family law cases not involving DFPS can easily earn \$150 an hour; yet, few, if any, courts pay that much per hour in a civil child abuse case.

Moreover, court fee structures create various disincentives. A low amount flat fee is a disincentive for an attorney to do more than give a cursory glance at the court report provided by a DFPS caseworker and show up in court, severely disadvantaging the attorney’s parent client. When courts only pay attorneys for court appearances, the attorney has little incentive to do any work outside of court, such as attending the permanency planning team meetings, family group conferences, or other case-related meetings, participating in mediation, interviewing witnesses, or preparing for court hearings or trials. Even if a court pays an hourly rate for both in-court and out-of-court time, if the rate is low or the court imposes a low total fee cap, attorneys will be unable to afford to put in the hours necessary for effective representation.

Adequately paying attorneys and developing an appropriate fee schedule is critical to ensuring effective representation for all.

### *Effectively Representing Parents Saves Money*

Providing effective lawyers for parents would hasten a child’s reunification with a parent or placement in a permanent home with kin or through adoption, thereby shortening the length of time that the child remains in paid foster care. It would also reduce appeals by parents claiming ineffective assistance of legal counsel. Such appeals often substantially delay adoption by years, during which a child must linger in paid foster care. Reducing the time

children are in foster care would save money for the state. Effective representation for parents would more than pay for itself. Unfortunately, under the present system, the county pays the cost of lawyers and the state gets the savings from operations, leaving the county with little incentive to increase effective representation. The state, however, has ample incentive and should look for ways to increase effectiveness of lawyers for parents.

### *Ideas to Explore*

#### *1. Advising Parents of Their Right to Counsel*

The simplest way the state can strengthen representation for parents is by requiring courts to inform parents of their right to counsel. While written materials from DFPS will inform a parent about the right to hire counsel, nothing requires the judge to tell a parent about this right.<sup>15</sup> If parents do not ask for a lawyer, some courts do not appoint lawyers. Considering how many parents in child protection cases are mentally impaired, it might be best to require courts to appoint an attorney unless the parent affirmatively refuses counsel.

#### *2. Better Pay*

At the county level, local budgets are growing tighter. Indeed, many counties already lack the fiscal capacity to pay lawyers adequately. To make adequate compensation possible, Texas could appropriate funds to help pay lawyers just as it now does for indigent criminal defense.<sup>16</sup>

To ensure that the counties do not merely shift costs to the state, the state could require counties to spend as much from the general fund per attorney as they normally would before drawing state dollars. State dollars would then be available to pay lawyers, making possible earlier appointments and higher fees.

This method of cost sharing is not unprecedented. For example, Texas requires counties to pay up to \$30,000 per client per year for the health care of uninsured people whose annual income is at or below 21 percent of the federal poverty level.<sup>17</sup> Under the County Indigent Care Program, after a county spends eight percent of its general revenue tax levy on indigent care, the state begins reimbursing 90 percent of the counties' additional health care costs.<sup>18</sup>

Under a similar program, the state could require counties to continue paying fees at the present amount per case, with the state paying the increase. A rough calculation suggests an annual cost of \$24 million to the state (12,000 removals, 6,000 families, 12,000 parents, \$2,000 per case over and above the current county costs, equals \$24 million).

#### *3. An Appointment of Counsel Plan*

The Texas Fair Defense Act requires judges to develop public plans for the qualifications and appointments of lawyers in criminal cases and juvenile cases. Texas Code of Criminal Procedure Article 1.051 sets forth the requirements in criminal cases and Texas Family Code § 51.102 sets forth the requirement in juvenile cases. Unfortunately, there is no parallel in civil child abuse cases. Customarily, courts use a panel of attorneys who express interest or



simply appoint attorneys from the local legal community. Not only does the Texas Family Code fail to require training for child welfare attorneys, it lacks standards for competence, practice, and continuing legal education. The state could strengthen representation by requiring each county to develop an appointment of counsel plan.

#### *4. Training*

In most cases, attorneys are given few resources—financial or otherwise—to aid in representation of their clients. Continuing legal education is an important component of any plan to strengthen representation for parents. Federal and state funds currently train prosecutors, attorneys for children, and volunteer advocates, but there are no funds to train lawyers for parents. A small amount of training money could go a long way. To ensure adequate training for attorneys for parents, the Texas needs to appropriate grants to provide continuing legal education to such groups as the State Bar’s Committee on Child Abuse and Neglect. Although the Texas Family Code requires that attorneys representing children receive special training, special training for parents’ attorneys is essentially non-existent.

## LAWYERS REPRESENTING CHILDREN

### *Judges must appoint attorneys for children in all DFPS cases*

Since 1979, the Texas Family Code has required that a judge appoint an attorney for each child in a DFPS case.

### *Responsibilities of Children’s Lawyers*

Historically, the quality of representation of children has been inconsistent.<sup>19</sup> While some children’s attorneys take it upon themselves to advocate zealously for their clients, others fail to provide even a minimal level of advocacy.

For example, attorneys for children often do not meet with their clients and discuss their cases or conduct independent investigations into the facts. Instead, many children’s attorneys rely on DFPS caseworkers’ statements and court reports. In some counties, attorneys never see to speak to the children they represent.

The Pew Commission on Children in Foster Care recommends: “Courts should be organized to enable children . . . to participate in a meaningful way in their own court proceedings.” Yet, attorneys often neglect to ensure that their child clients are in court to speak to the judges presiding over their cases. The Pew Commission also recommends: “States should adopt standards of practice, preparation, [and] education in [child abuse cases].”

### *Improvements in Senate Bill 6*

In SB 6, the legislature made three changes to the Texas Family Code in order to adopted standards of practice, preparation, and education in child abuse cases. First, to guarantee a minimum level of legal representation, the Texas Family Code now requires that a child’s

attorney speak to the child in a way that the child understands to determine how the child wants the attorney to represent the child in court.<sup>20</sup> Second, before each hearing, children's attorneys must now meet with each child, if the child is four years of age or older, or the child's caretaker, if younger than four years,<sup>21</sup> unless the meeting is infeasible or not in the child's best interest.<sup>22</sup> (The Texas Attorney General has ruled that this meeting must be in person rather than over the telephone, significantly increasing the cost.<sup>23</sup>) Finally, the Family Code now requires that attorneys representing children in DFPS cases be familiar with the American Bar Association (ABA) Standards.<sup>24</sup>

### *Ideas to Explore*

#### *1. Better Pay*

The state should adequately pay lawyers representing children. Children's attorneys must do the same tasks as other lawyers; for example, discussing the cases with their clients, undertaking independent investigations, and zealously representing their clients. The new DFPS reforms will require more of children's attorneys, making it even more difficult for many attorneys to continue representing child-clients at current rates, especially in counties that only pay a flat fee per case or for courtroom appearances.

#### *2. Additional Training*

SB 6 also amended the Family Code to require attorneys who represent children to complete at least three hours of continuing legal education relating to child advocacy, including duties of child's attorney, legal procedures, and best practices in DFPS cases.<sup>25</sup> However, DFPS cases involve a myriad of issues—such as substance abuse, domestic violence, mental health, physical, mental, and emotional development—that most lawyers have not studied. Attorneys representing children need more training on the multi-disciplinary aspects of DFPS cases, as well as the legal ones.

The ABA has standards for lawyers representing children. See *American Bar Association Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases* at [www.abanet.org/family/reports/standards\\_abuseneglect.pdf](http://www.abanet.org/family/reports/standards_abuseneglect.pdf).

The National Association of Counsel for Children also has standards of practice. See *NACC Recommendations for Representation of Children in Abuse and Neglect Cases*. NACC has “revised” the ABA standards to show where NACC and ABA have differences. See *ABA/NACC Revised Standards of Practice for Lawyers Who Represent Children in Child Abuse and Neglect Cases*. See <http://www.naccchildlaw.org/training/standards.html>.

## CONCLUSION

Senate Bill 6 is a step toward improving legal representation for parents and children. Now, we need to focus our attention on legal representation for DFPS, as well as finding additional ways to strengthen representation for parents and children. Ultimately, effective legal representation helps all the parties and is less expensive for the state.



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<sup>1</sup> Texas Department of Family and Protective Services, 2005 Data Book, page 52.

<sup>2</sup> Currently, Texas lacks a uniform system of case tracking, so the total number of DFPS lawsuits filed in 2005 is unknown. The Texas Supreme Court, in part to address this issue, recently appointed a task force to investigate data tracking and case management reporting in DFPS legal cases.

<sup>3</sup> Texas Constitution, Article 5, Section 21.

<sup>4</sup> Fabelo, Dr. Tony, Gunter, Angela, and Austin, Dr. James, *Study of State Representation in Legal Proceedings Related to Child Removal Cases: Final Report*, Report to the Texas District and County Attorneys Association, December 2004.

<sup>5</sup> Since 2000, approximately 15 child protection cluster courts dedicated exclusively to hearing DFPS cases have been created. These cluster courts cover the more rural areas of the state and have been very successful at making timely decisions regarding the well-being of children within their jurisdictions.

<sup>6</sup> *Foster Children May be Paying a Price for Attorneys' Overwhelming Student Loan Debt* (October 2005), survey conducted by Home at Last. See at <http://fostercarehomeatlast.org/reports/LoanForgiveness.pdf>.

<sup>7</sup> *Pew Commission on Children in Foster Care, Fostering the Future: Safety, Permanence and Well-Being for Children in Foster Care* (May 2004), available at [www.pewfostercare.org](http://www.pewfostercare.org).

<sup>8</sup> *Pew Commission on Children in Foster Care, Fostering the Future: Safety, Permanence and Well-Being for Children in Foster Care* (May 2004), available at [www.pewfostercare.org](http://www.pewfostercare.org).

<sup>9</sup> *Lassiter v. Department of Social Services*, 452 U.S. 18, 68 L.Ed.2d 640, 101 S.Ct. 2153 (1981) (no constitutional right to appointed counsel for parents in every termination case).

<sup>10</sup> *In the Interest of C.D.S., A Child*, 172 S.W.3d 179 (Tex.App.—Fort Worth 2005).

<sup>11</sup> *In re M.J.M.L.*, 31 S.W.3d 347, 355-356 (Tex.App.—San Antonio 2000, pet. denied).

<sup>12</sup> Texas Family Code § 107.013 (c).

<sup>13</sup> More than 60 percent of removals in Texas CPS involve families with [annual] incomes of about \$10,000 or less. *Disproportionality in Child Protective Services, Statewide Reform Effort Begins with Examination of the Problem*, Joint Report by the Texas Health and Human Services Commission and Texas Department of Family and Protective Services, January 2, 2006, page 12.

<sup>14</sup> Texas Family Code § 107.015(c) incorporates Texas Family Code § 51.10, which incorporates Texas Code of Criminal Procedure, Article 26.05.

<sup>15</sup> Texas Family Code § 262.109(c)(4) requires DFPS to state in the notice of removal that the parent may hire an attorney, but does not mandate that a parent be told that he may request an attorney if he is too poor to pay for one.

<sup>16</sup> See the *Texas Fair Defense Act*, Vernon's Ann.Tex.C.C.P., Article 1.051.

<sup>17</sup> See the *Indigent Health Care and Treatment Act*, Tex. Health and Safety Code Ann., §§ 61.001 *et seq.*, which establishes responsibilities of counties, hospital districts, and public hospitals in providing health care to eligible residents who are considered indigent.

<sup>18</sup> See the *County Indigent Health Care Program*, established by the Tex. Administrative Code, Title 25, Part 1, Chapter 14, which sets forth rules regarding program administration, determining eligibility, and providing services.

<sup>19</sup> The Texas Family Code expressly states that a child's attorney who does not adequately do his job faces discipline. See Texas Family Code, § 107.0045.

<sup>20</sup> Texas Family Code, §107.003.

<sup>21</sup> Texas Family Code, §107.004(d).

<sup>22</sup> Texas Family Code, §107.004(e).

<sup>23</sup> Tx. Atty. Gen. Op. No. GA-0406 (2006).

<sup>24</sup> Texas Family Code, §107.004(a)(3).

<sup>25</sup> Texas Family Code, §107.004(b) and (c).