

# The Parent Attorney

*It is good to have a lawyer helping you whenever CPS is involved with your family. A lawyer can answer your questions about what is going on and can help you make decisions about how best to help yourself and your child.*

*This section explains when and how you can get a lawyer to help you, what kinds of things you should expect (or not expect) your lawyer to be doing to help you try to get your child back home, and ways that you can help your lawyer too.*

## Can I Get a Lawyer To Help Me?

You can talk to and hire a lawyer at any time, including during the investigation stage, if you can afford one. But you are not entitled to a court appointed lawyer during a CPS investigation. What this means is that you can have a lawyer helping you if you pay for the lawyer yourself, but the court does not have to give you a free lawyer until later in the CPS process, and only then if you are determined to be indigent.

Paying for a lawyer is hard for many people – lawyers can be very expensive. Organizations that offer free legal advice may be able to help, but there are not many legal aid lawyers who work on CPS cases. You can also try to find a lawyer willing to give you limited advice for a lower fee – maybe you can call and talk to the lawyer for advice, even if the lawyer does not come to CPS meetings with you. Reading this Handbook is another way you can help yourself even if you are not able to pay for a lawyer yourself. (See page 157 for more information about lawyer referral services.)

## Do I Qualify For a Free Court-Appointed Lawyer?

You must meet all 3 requirements for a court to appoint you a free lawyer:

**INDIGENCY.** You must be “indigent” – this means that you have a low income and cannot afford to pay for a lawyer yourself.

**LAWSUIT.** CPS must have filed a lawsuit in court asking to be appointed the temporary managing conservator of your child or for your parental rights to be terminated.

**OPPOSE THE PETITION.** You must “respond in opposition” to the suit – this means you must go to court and show that you are going to fight the CPS petition.

Texas law is not specific about how much income you have to have to be considered indigent. Most courts give you a form to fill out where you will write down how much money you make each month and what your monthly expenses are like rent, utilities, daycare, and gas. You should fill out the form if you think there is any chance you might be able to have a free lawyer. One easy test, for example, is whether you get any other government benefits, like SNAP/food assistance. There is no penalty for filling out the form even if you do not end up receiving a court-appointed lawyer.

For parents who are under 18 years old, you are also entitled to a lawyer. You should make sure to ASK the court for a lawyer if one is not immediately appointed to your case. Your ability to pay for a lawyer will be based on your income, not that of your parents. For more information relevant to teenage parents, See page 110.

## **How Soon Will I Get a Court-Appointed Lawyer?**

If you are not able to pay for a lawyer yourself, the court should appoint a lawyer to represent you. All judges handle this differently because the county where your case is filed actually pays for the lawyer. Some judges will assume you are indigent and opposed to CPS taking your child. In this case, a lawyer will likely contact you to say he or she has been appointed to your case before you attend your first hearing. Other judges wait until that first hearing to meet you and determine whether you meet the three tests listed above. If you do not have a lawyer by the time that you show up for this first hearing, which happens within 14 days of CPS removing or asking for your child to be removed, then you should immediately ask the court to appoint you a lawyer.

How soon you hear from your lawyer once he or she is appointed varies, but it should only be a few days between the time the court appoints your lawyer and you hear from him or her.

## **What Should I Do If the Court Is Slow to Appoint a Lawyer?**

Even though the law says you're entitled to a court appointed lawyer if you are too poor to hire one and you are opposed to the CPS lawsuit filed against you, the law is not specific on exactly when the judge must appoint the lawyer. Many judges appoint lawyers right away because they believe it is important that everyone have a lawyer to help them with their case. Other judges wait until later in the case and there is sometimes not very much you can do about it except keep asking the judge for a lawyer to help you every chance you get.

## Do I Need To Tell My Lawyer Everything?

Your lawyer will ask you lots of questions about yourself, your children, and your situation. Some questions might seem too personal or you might feel too embarrassed to answer, but remember that your lawyer must keep everything that you tell her confidential. Unless you are telling about things that could put another person in danger, she is not allowed to tell anyone else what you say without your permission. (See page 29 for information about what lawyers can and cannot share.)

So be honest. The more your lawyer knows the better – especially if what you are telling her is something that CPS or other people are going to learn anyway. It is better for your lawyer be the first to know something, rather than be surprised by information that comes out in front of the judge!

### YOU ALWAYS WANT TO TELL YOUR LAWYER THE TRUTH ABOUT:

- Why CPS investigated you for child abuse or neglect
- Whether you've been investigated by CPS in Texas or any other state in the past
- Whether you have any history of drug use, excessive alcohol use, domestic violence or fighting in the home with your husband or wife or a boyfriend or girlfriend, or criminal charges of any kind, even if not related to why CPS investigated you in the first place
- Who your child's other parent is and where he or she can be contacted. If the other parent can take care of your child safely, that parent is likely able to take custody and your child can possibly avoid living in a foster home
- Whether you have a job or go to school, and your daily schedule
- Whether you have housing and transportation, including details about anyone with whom you share housing

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***“There was less and less room left for parental responsibilities.”***

*– Parent Collaboration Group Parent Liaisons*

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## YOU SHOULD ALSO TALK WITH YOUR LAWYER ABOUT:

- Your goals for your case
- Whether you have friends or relatives that you'd like your child to stay with while your case is open
- Whether you want a contested hearing where your lawyer and CPS have a trial with evidence about the allegations of abuse and neglect or you would rather agree to some of the CPS allegations or what CPS is asking you to do
- What services you think you need and what services you think you don't need
- What your visitation options are and how you would like to set up visitation
- Whether your children have any special needs that need to be addressed
- The timeline for your case, including your 12 month deadline (write this deadline down on page 133 of this book)

***If your lawyer doesn't ask you about some of these things and you think they are important for her to know, tell her!***

## Things My Lawyer Should Be Doing

All lawyers have certain obligations or duties that they must do to help their clients. Lawyers in CPS cases have a number of things they are required to do after they accept your case from the court. Here is a list of the most important things that your lawyer should be doing for you.

**MEET WITH YOU.** Your lawyer should call you to set up a meeting as soon as she is appointed by the court. Of course, you can help speed up the process by calling your lawyer first. If your lawyer does not answer, be sure to leave a message stating your name, that you are a new client, your phone number or other way to contact you, and the best time of day to reach you. It's a good idea to write down on your telephone log (page 135) every time that you call and leave a message.

It is best if you can meet with your lawyer a day or two before court. Often, however, lawyers like to save travel time by meeting clients just before the court hearing. Whatever you and your lawyer decide to do, make sure you have enough time to fully discuss your case. Let your lawyer know if you'd like to have a different meeting schedule or if you need more time to prepare.

## **INTERVIEW EVERYONE WITH “SIGNIFICANT KNOWLEDGE” OF YOUR**

**CASE.** This includes talking to the CPS caseworker who conducted the investigation, your child’s lawyer, the CASA volunteer, and any other person interviewed by CPS or who has knowledge about the abuse or neglect allegations.

**INVESTIGATE THE FACTS.** Your lawyer probably will talk with you first to get your side of the story and will talk later to the other people involved in the case to find out what they know. If your child has physical injuries, your lawyer probably will talk to your child’s doctor to learn more about the injuries and how your child is doing.

**SHOW YOU COPIES OF ANY COURT DOCUMENTS.** The first court filings will include the CPS worker’s affidavit explaining why CPS got involved with your family and why your child was removed, if that is what happened; it will also include the CPS petition, which is the basis of the lawsuit, setting out why CPS is asking to be appointed temporary managing conservator of your child and/or terminate your parental rights. Make sure your lawyer takes the time to explain these to you and ask questions if you are confused or do not understand what something means.

Your lawyer will continue to receive copies of any new documents filed in your case. You should be given copies of all of the documents and your lawyer should answer any questions you have about them.

## **TALK WITH YOU ABOUT ANY PROPOSED OR AGREED COURT ORDERS.**

At the end of each hearing, the judge will order certain things, which get written down in a court order that is signed by all the parties. The written order must reflect exactly what the judge said, so it is very important that everyone read the order before signing. Many times, the order will say that you are required to do certain things. Your lawyer must make sure that you understand exactly what you need to do so you don’t get in trouble with CPS or the court.

Sometimes, your lawyer may receive a draft of an order. A “draft” means it includes things that the other people in the case hope you will agree to, but it is not something that the judge has signed yet. Your lawyer must review these drafts with you and you must agree to the terms before your lawyer can sign them.

**REPRESENT YOU IN A WAY THAT IS CONSISTENT WITH YOUR STATED GOALS FOR THE CASE.** Your lawyer's job is to represent what you want to the court. Your lawyer should help you think of ways to reach your goals, but also tell you if she thinks your goals are unrealistic. Listen to your lawyer carefully before making decisions; she has more experience with how courts work, how CPS deals with these cases, and what the law allows. Sometimes, you and your lawyer may disagree about the best way to help you reach your goals, but the final decision should always be yours.

**TALK WITH YOU ABOUT WHETHER YOU WANT A CONTESTED HEARING OR A TRIAL.** If you want either of these things, your lawyer should request it for you. The only hearing that can be contested, besides your final hearing or trial, is the Adversary Hearing, discussed on page 64.

**KEEP YOU INFORMED ABOUT WHAT IS GOING ON IN YOUR CASE.** Your lawyer must be told whenever a hearing is scheduled in your case, and she should make sure you also know so that you can attend. Your lawyer should also tell you if anything important happens on your case between court hearings.

**HELP YOU TO AVOID SAYING THINGS THAT COULD HURT YOUR CASE.** Your lawyer will do most of the talking for you in court. If anyone wants to talk with you about the case, including the other lawyers (like your child's lawyer or the lawyer representing CPS), you should not talk to them without your lawyer's knowledge and permission. In general, it is not a good idea to talk to other lawyers unless your lawyer is there or she specifically tells you that you can talk to that person.

**GO WITH YOU TO ALL COURT HEARINGS AND OTHER IMPORTANT MEETINGS.** Your lawyer is allowed to come with you to any CPS meeting to which you are invited. Do not believe anyone who tells you that your lawyer cannot come with you. You are not entitled to attend every meeting CPS has about your child (such as an internal staffing), but if you are invited or entitled to attend, so is your lawyer. Some of the meetings your lawyer should definitely attend with you include a family service planning meeting, a family group conference, a permanency conference, and mediation.

Your lawyer must attend every court hearing! Sometimes your lawyer may have conflicts that prevent her from being in court with you and she may ask another attorney to “substitute” for her at the hearing. If this happens, your lawyer should let you know in advance and should also make sure that the “substitute” lawyer knows your case and is well prepared for the hearing.

Be sure to tell the judge if your lawyer is late for court. You should never go forward with a hearing without having a lawyer at your side.

### **UNDIVIDED LOYALTY, CONFIDENTIALITY, COMPETENT REPRESENTATION.**

All Texas lawyers owe their clients these three duties, which are based on the Texas rules of professional conduct. “Undivided loyalty” means that your lawyer cannot represent both you and someone whose goals for the case conflict with yours. “Confidentiality” (discussed on page 29) means that your lawyer must keep what you tell her between the two of you unless there is good reason to share the information. “Competent representation” means that your lawyer must know what she is doing, protect your interests, and listen to what you say. If your lawyer violates any of these duties, you can file a complaint and she can be disciplined. See page 88 for more information about filing a complaint against your lawyer.

## **How Can I Help My Lawyer?**

Your relationship with your lawyer is very important. You know your case better than anyone, so you should do everything you can to make sure your lawyer has all the tools she needs to represent you well. Here are some things you should do to help your lawyer.

**STAY IN CONTACT.** Your lawyer cannot represent you very well if she doesn’t know where you are. Always tell your lawyer if you get a new phone number or move to a new address. Your lawyer is probably very busy and has other clients so will not have time to hunt you down. It is your responsibility to let her know how to reach you at all times.

**THINK AHEAD.** Before each meeting with your lawyer, think about any questions or concerns you have. Write them down and be sure to ask at the meeting. Also write down any thoughts you have about services you need or problems you’d like your lawyer to help you with.

**KEEP TRACK OF YOUR CASE.** Every time you complete a service, get a letter or a certificate or some other proof of completion. Keep a copy for yourself (put it in the back of this handbook) and if possible, make a copy and give it to your lawyer. Get letters from your therapist or counselor to show how you are progressing, and give copies to your lawyer. Sometimes, it can be hard for a lawyer to remember all of the details from each of her cases (she will have more clients than just you), so if she has it in writing it will be easier for her to tell the court how well you are doing.

**TELL YOUR LAWYER WHAT YOU WANT.** If your lawyer doesn't know what you want, she won't be able to represent you very well. This includes letting her know if you feel like she doesn't return your calls or she doesn't explain things very well. Remember that your lawyer cannot read your mind – she only knows what is bothering you if you tell her. If you don't feel comfortable talking to your lawyer about something, you might try writing a letter instead.

**BE HONEST.** It may be tempting to lie about problems you are having because you think it will help you get your child back faster. But not talking about your problems will not help you or your child. The truth usually comes out anyway. So, be honest with your lawyer about what is going on in your life. The two of you can work together to get you the help you need.

**ASK QUESTIONS.** Your lawyer knows that being involved with CPS can be overwhelming. Don't feel embarrassed to ask questions. It will be easier for your lawyer to explain things to you at the beginning than it will be to go back to try and change something you agreed to because you didn't understand what was going on.

**BE PERSISTENT.** Your lawyer is busy and probably has other cases to worry about. You may have to call her a few times before she calls you back. There is no harm in being persistent as long as you are also respectful.

**BE REALISTIC.** There will be times that you feel frustrated – by CPS, by the court, by everything going on in your life. It can be easy to take out your frustration on your lawyer, but remember that she cannot solve all of your problems for you. There are many things that *only* you can do, like completing your services, staying free of drugs, and showing up for visits with your children. The last thing you want to do is to undermine your relationship with your lawyer who is trying to help you and your family.

**EXPRESS FRUSTRATION.** It is better to vent or express any anger and frustration you have about your case to your lawyer rather than your CPS caseworker or your child's lawyer or GAL. Your lawyer is on your case to help you and most lawyers understand you are scared, angry, frustrated, sad, or depressed. And most lawyers are ok with you expressing your sadness, anger, and frustration with them and would prefer that rather than have you lose your temper with your caseworker, the judge, or especially in front of your child.

## What If I Don't Like My Lawyer?

Although your lawyer is there to help guide you through the court system, she cannot do everything for you. So first you should ask yourself WHY you don't like your lawyer.

Is it because you don't think your case is moving fast enough? That is not your lawyer's fault; she does not schedule your court hearings. Is it because you don't think that CPS is treating you fairly? That is not your lawyer's fault either; she cannot control how your caseworker acts.

Instead of blaming your lawyer for these problems, try to work with her to make your case stronger. She is the expert who can answer your questions and try to help you address the problems you are having. In most cases, the two of you can work together to come up with solutions.

Of course, sometimes you may have good reason to be unhappy with your lawyer. Maybe she doesn't return your phone calls, doesn't meet with you before hearings, or doesn't explain what is going on. ***Those things are not OK and mean that your lawyer is not doing her job.*** In these cases, you will want to do the following:

**DOCUMENT WHAT IS GOING ON.** For example, if your lawyer is not good about returning your phone calls, start to write down every time you call and what you say in your voice message.

**WRITE YOUR LAWYER A LETTER.** Putting things in writing can help you communicate better. Make a copy of the letter. It can serve as proof that you tried to work out your problems with your lawyer.

**IF YOUR LAWYER STILL DOES NOT RESPOND OR TRY TO MAKE THINGS BETTER, YOU CAN ASK THE JUDGE TO APPOINT YOU A NEW LAWYER.**

Before you do this, make sure you have a good reason; there should be an ongoing problem and not one isolated mistake. Try to have evidence to support what you are saying – bring your phone log or copy of your letter to court. The judge does not have to give you a new lawyer so you want to make your request as strong as possible.

For the most serious examples of lawyer misconduct, you can file a formal grievance with the State Bar of Texas. But filing a grievance does *not* get you a new lawyer, so always try to work things out yourself before taking this step. For more information, call the Grievance Information Helpline at (800) 932-1900 or go online to <http://cdc.texasbar.com>.

 **IS THERE A “CONFLICT OF INTEREST?”**

*A lawyer is not allowed to represent two people at the same time who have different goals or opposite interests. When this happens, it is called a conflict of interest.*

*The most common way this happens in CPS cases is where a lawyer is appointed to represent both parents of a child (the mother and the father). At first, the parents may seem to have the same goals. However, as the lawyer learns more about the case, it may turn out that the parents want different things. Or, it may turn out that one parent is safe but the other one isn't.*

*If you think there is a conflict of interest for your lawyer, you should say something as soon as possible. You can talk to your lawyer about your concerns. If your lawyer doesn't address your concerns, you should talk to the judge.*