Caregiver Notice and Participation in Court Hearings

Background

Caregivers may have information about a child's physical, emotional, educational, developmental, and social well-being that may assist the court in making decisions regarding placement, visitation, services, and permanency.

Under Tex. Fam. Code § 263.0021(b)(2), a caregiver includes:

- the foster parent,
- preadoptive parent,
- relative of the child who is providing care, or
- director or director's designee of the group home or general residential operation where the child is residing.

Caregivers are entitled to notice of the hearing at least 10 days in advance and are entitled to present evidence and be heard at the hearing. Tex. Fam. Code § 263.0021(b).

Notice Requirements

Under Tex. Fam. Code § 263.0021(c), notice of a hearing may be given:

- as provided by Tex. R. Civ. Proc. 21a;
- in a temporary order following a full adversary hearing;
- in an order following a hearing under this chapter;
- in open court; or
- in any manner that would provide actual notice to a person entitled to notice.

Caregivers are entitled to notice of the hearing at least 10 days in advance and are entitled to present evidence and be heard at the hearing. Tex. Fam. Code § 263.0021(b).

> **Note:** *DFPS policy directs the caseworker to notify the caregiver of the hearing. See DFPS CPS Policy § 5534, Notice Requirements for All Hearings Before the Final Order.*

Court Actions

In a hearing under Tex. Fam. Code Ch. 263, the court shall:

- determine whether the child's caregiver is present at the hearing;
- determine if confidentiality is a concern and identify the caregiver for the record either by role ("caregiver") or by name;
- document the caregiver's presence;
- allow the caregiver to testify if the caregiver wishes to provide information about the child.

See Tex. Fam. Code §§ 102.009, 263.0021(f).

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Practice Tips

If a caregiver is not present, address the following questions:

- Was the caregiver provided notice?
  - If so, who provided the notice?
  - When was the notice provided?
  - How was the notice provided?
  - Were accommodations offered to facilitate participation? (i.e., virtual appearance, interpreter, work excuse letter)
  - Is there another reason the caregiver was unable to attend?

Determine if the caregiver wishes to testify as their appearance is not mandatory unless a party issued a subpoena.

Depending on the type of hearing, determine whether the caregiver will be sworn in to provide testimony, subject to cross-examination.

Clarify that testimony will be limited to information about the child.

Questions for the caregiver:

- From your personal experience and observations, do you have any information you want to share with the court about the child?
- Is the child in need of additional services or support (i.e., education, medical, mental health, normalcy)?
- As a caregiver, is there anything you need to help you care for the child (ex: daycare, transportation)?