

**EFFECTIVE REPRESENTATION OF THE CHILD CLIENT IN THE
PERMANENT MANAGING CONSERVATORSHIP OF CPS**

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CHAPTER 3

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EFFECTIVE REPRESENTATION OF THE CHILD CLIENT IN THE PERMANENT MANAGING CONSERVATORSHIP OF CPS

I. WHAT IS PERMANENCE?

To advocate effectively for permanency for a child who is in the Permanent Managing Conservatorship of the Department of Family Protective Services (hereafter, the “Department”), it is essential to understand a working definition of what “permanence” means as applied to children who have been separated from their parents. These children, without exception, have endured a fundamental -- usually life-long -- trauma. To work to heal that trauma and restore their clients’ sense of belonging, attorneys representing these children should adopt a sense of urgency to find permanency for these children as swiftly as possible.

So, what is permanence? A child in the permanent managing conservatorship of the Department has someone “permanently” in charge of their legal well-being, but clearly, that is not the “permanence” we want for our clients or that our clients need. Saying that the child should be given a “forever home” is likewise an insufficient description of permanence. Permanence is multi-faceted and complex.

For children who have been separated from their parents, permanence is obtaining an enduring family relationship that is safe and meant to last a lifetime. That relationship should include the legal rights and status of full family membership. Moreover, the relationship should provide for physical, emotional, social, and cognitive and spiritual well-being. Ideally, this permanent relationship should include an assurance of lifelong connections to extended family, siblings, other significant adults, family history and traditions, race and ethnic heritage, culture, religion, and language. [AECF-AnIntegratedApproachtYouthPermanency-2005.pdf](#)

Although as attorneys for children we may not be able to achieve every element of permanence described above, we should use our legal skills and knowledge to try to get that child as close as possible to experiencing all of the elements.

While we work to find that relationship, attorneys for children in the permanent managing conservatorship of the Department also need to ensure that their clients’ needs – physical, emotional, social, and more – are being met. The road to permanency, at times, can be a long one. In the meantime, our clients are living their lives without the enduring fundamental family relationship they deserve to have. As such, attorneys should keep in touch with the clients and caregivers, be knowledgeable about their clients’ desires and needs, and seek to have those needs met through advocacy in and outside of the courtroom.

This paper is meant to be only an introduction to the child’s attorney’s role during the permanency phase of a CPS case. The statutory framework for the permanency phase of a CPS case is primarily set out in Chapters 263 and 264 of the Texas Family Code. But, like other areas of child welfare practice, many other pieces of legislation, both state and federal, as well as administrative code sections may bear on issues that arise during the permanency phase. This paper can only touch on issues that arise most often, but every child and every situation is unique, and the attorney needs to be open to addressing and researching issues as they arise.

II. THE PERMANENCY PHASE

The case enters the “Permanency Phase” after the court enters a final order resolving the Department’s original suit affecting the parent child relationship in which the Department is named as the Permanent Managing Conservator of the child. When children are in the Permanent Managing Conservatorship of the Department, the legal case involving them remains open. During this time, the Court is charged with oversight of the efforts to achieve permanency while also reviewing the placement of the children in substitute care and monitoring the Department’s care for the children in terms of meeting their needs.

As the attorney for the child, you may have already represented the child in the “Temporary Managing Conservatorship Phase” (“TMC Phase”) of the case and are now continuing to represent that child to protect her, pursue her directives, and achieve permanency for her. In the alternative, you may be newly appointed to represent the client in the Permanency Phase. If you are in the latter position, you will need to become familiar with what came before – review the file from the TMC Phase of the case and at the very least, carefully review the order that concluded that phase of the case.

The Department’s Rights and Duties During the Permanency Phase

The first order of business is to understand what rights and duties the Department has over your child client and what rights and duties your child’s parents may retain.

The Department can be the PMC of the child in situations where the parents’ rights have been terminated or where the parents’ parental rights have not been terminated. In a case where the Department is the Permanent Managing

Conservator of the Child without the parents' rights being terminated, the parents may retain possessory conservatorship rights that allow specific contact with the child, although the parent does not retain the primary decision-making rights and duties with respect to the children, such as where they will live, go to school, or see a doctor. The parents may still have child support obligations, or not. Be sure you understand who has what rights.

Generally, if the Department has PMC of the child, the Department is charged with the rights and duties of a parent. *See* Tex. Fam. Code § 151.001. All of those rights and duties are important, but the most significant ones are the right to have physical possession of the child and determine where a child lives. The most critical duties the Department has are the duties of care, control, protection, and to support the child, including providing the child with clothing, food, shelter, medical and dental care, and education. As the child's attorney, among other things, you should actively work to ensure that the Department is satisfying its duties to your client.

The Parents' Rights and Duties During the Permanency Phase

Even where the Department has been granted PMC of a child, the child's parents may still have rights and duties toward the child and remain involved in the child's life. Generally, such rights and duties may be as a Possessory Conservator of the child. *See* Tex. Fam. Code § 153.006. Be sure you understand the parameters of those rights and duties as they may be important to your child client.

The Court's Role

The court is required to conduct permanency hearings at least once every six months until the Department is no longer the child's managing conservator. Tex. Fam. Code § 263.501. In cases where a parent's parental rights have been terminated, an additional hearing is required 90 days after entry of the final order terminating parental rights and naming the Department as PMC. *Id.* at § 263.501(b). The existence of these statutorily mandated hearings does not prevent the court from setting other hearings or the attorney for the child from seeking interim hearings as needed.

The Department is required to file a permanency progress report not later than the 10th day before each permanency hearing setting described above. The report must contain the information necessary for the court to properly conduct its permanency hearing, information on significant events, and additional information the Department deems appropriate or that the court requests to assist it in making the findings and determinations required of it. Tex. Fam. Code § 263.502.

The court is required to make a wide range of determinations and findings at the hearing. They are set out in Tex. Fam. Code § 263.5031. The following list is not exhaustive because the statute provides for findings in some specific circumstances due to the child's age or placement, but the most common concerns and determinations include:

1. If the child is placed with a relative, has the relative been informed of the option to become verified by a child placement agency?
2. Is the child safe and are the child's needs, including medical or special needs being addressed?
3. Has the child been given the chance to identify an adult they believe could be a caregiver?
4. Is the placement of the child (whether with a relative or otherwise) necessary, appropriate, and in the child's best interest?
5. Is the child placed in the least restrictive environment if in institutional care?
6. Are the primary and alternate permanency goals for the child appropriate and has the Department made reasonable efforts to finalize the plan?
7. If parental rights have been terminated, has the Department exercised due diligence in placing the child for adoption or another permanent placement (including a relative as PMC or a return to the parent)?
8. With respect to a child prescribed psychotropic medications, were there appropriate non-pharmacological interventions or have they been seen by the prescribing physician at least once every 90 days?

Id.

The Child's Attorney's Role in Permanency Hearings

The attorney for the child should review Tex. Fam. Code § 263.5031 far enough in advance of every hearing to be prepared to know whether these findings and determinations can be made and to question appropriate witnesses regarding the findings. Because the permanency progress report is required to set out the information necessary to make determinations on these issues, it is critical that the attorney for the child: (1) calendar the date for the progress report to be filed/received; (2) follow up with the Department if it is not received by that date; (3) carefully review that report for accuracy and any needed follow up; (4) conduct needed follow up in a timely manner to address the issues during the hearing that should be highlighted.

Because the permanency progress reports become a part of the child’s “file” and will be available for review by potential adoptive parents, it is critical for the child’s attorney to ensure that the information in the report about the child is accurate. If, for instance, the report incorrectly attributes a troubling psychological diagnosis for this child, it is essential that the attorney for the child seeks to have the report amended/corrected. Otherwise, an inapplicable diagnosis may follow the child, inappropriately affect the child’s care, and, ultimately, delay achievement of permanency.

The Child’s Participation in Permanency Hearings

Pursuant to Tex. Fam. Code § 263.302, “the child shall attend each permanency hearing unless the court specifically excuses the child’s attendance.” Moreover, if the child is four years of age or older, the court may consult with the child about her permanency plan in a developmentally appropriate manner if the court determines it is in the child’s best interest to do so. *Id.* You should explain this to your child client and prepare her for this contingency.

III. PERMANENCY GOALS

The Department is charged with devising a permanency plan for children in its Permanent Managing Conservatorship, and that plan should be directed toward a specific permanency goal. The Department may have “concurrent” permanency goals for at the outset of the Permanency Phase and even well into that phase.

The Family Code specifies four permanency goals for the Department to consider: (1) Reunification; (2) Termination of Parental Rights with adoption by a relative or other suitable individual; (3) Award of PMC (not adoption) to a relative or other suitable individual; (4) Another Permanent Planned Living Arrangement (APPLA). Tex. Fam. Code § 263.3026. Each of these goals is discussed in turn. Remember, although the Department may set one or more of these outcomes as goals, your child client may not agree with the goal – and it will be your job to inform the court of your child’s position and to work to influence the Department to change its approach.

Reunification

During the TMC Phase of a case, reunification is generally the primary permanency goal at the outset of the case. This can change over time depending on the parents’ response to services they are provided to enable them to prepare for the safe and healthy return of their children. But even in the PMC Phase of a case, and even after the involuntary termination of parental rights, reunification is an option.

For a child who is languishing in care without achieving permanence, a parent who has taken steps toward rehabilitation or otherwise has now developed the capacity and willingness to perform parental duties may be the appropriate placement for the child. Indeed, that parents’ rights may be reinstated and the attorney ad litem for the child has standing to bring a petition for such reinstatement. *See* Fam. Code §§ 161.301-161.304.

Moreover, the Department’s own policies state that in cases in which the Department has been awarded permanent managing conservatorship of the child, the caseworker must re-evaluate family reunification as a permanency option as appropriate to the circumstances of the case.

Adoption

Adoption is the legal and permanent transfer of all parental rights and responsibilities to the adoptive parents (although the child retains right to inherit from her biological parent). A fundamental prerequisite to adoption is that the rights of child’s parents – all parents – have been terminated. Accordingly, adoption cannot be an option in the PMC phase of a case if the parents retain any parental rights. Even where the parents’ rights have been terminated, adoption is effectively not an option until the time period for any appeal of the termination decision has passed and/or an appeal has occurred and the termination order withstands that challenge.

Permanent Managing Conservatorship (PMC)

To a Relative

Searching for suitable relatives is a critical piece of the quest for permanency. A case can proceed for a year or more before parents disclose the names of relatives who may be appropriate and willing caregivers for your child client. There are many reasons that a parent will not provide this critical information. The shame associated with having their child removed, the underlying problem that created the need for removal, family disputes or strife are just a few of the reasons that parents may be hesitant to provide relative’s names. But when the case has reached the PMC Phase, the reality that the parent is not going to be reunified with their child can sometimes provide the impetus for that parent to finally reveal relatives who may be available to give the child a permanent home and family. The advantage of relatives is that, as long as they are protective, they may be able to keep the parents in the child’s life while keeping the child safe from the problems that caused the parent-child separation.

Even though the Department is charged with seeking relatives who may be willing to care for the child, as the child's attorney, you should use any resources available to you to do the same, *e.g.*, Lexis-Nexis, Westlaw, and other "people finder" databases. CASA has access to robust databases as well to conduct searches for relatives. Do not forget that your child client is also a potential resource for this information.

A relative can become the permanent managing conservator of the child and exercise virtually all parental rights and duties. The parent may retain certain rights, as possessory conservator, such as supervised visitation or other contact with the child/continued involvement in the child's life. This situation can be a very desirable permanency arrangement for the child. The child does not "lose" her parent forever and can maintain that relationship to the extent it is safe and appropriate. The relative already has a familial connection with the child that is innate and lasting. In general, a relative may be more willing to contend with behavioral issues that a child manifests from her past trauma and time in care than would a "stranger" who does not have the bio-emotional connection to the child.

To a Non-Relative

A close family friend (sometimes called fictive kin), a foster parent, or another person with whom your child client has developed a close relationship and bond may also be appointed as the child's permanent managing conservator. In these situations, the parent may still retain certain rights that help maintain a connection with their child and vice versa, though non-relatives may not be as motivated to keep the parent-child relationship as robust as a relative might.

Although there are advantages to a relative taking PMC due to the family connection discussed above, each situation must be taken on its own facts. A child who has been in the home and raised by a foster parent for a significant amount of time may be better placed permanently with that foster parent over a relative who shows up "at the last minute" and with whom the child may have no relationship whatsoever.

APPLA

The fourth permanency option, Another Planned Permanent Living Arrangement ("APPLA") is disfavored under Texas (and federal) law. Family Code § 263.3026 specifies that if APPLA is the permanency goal, the Department must have a "compelling reason" why the other permanency goals are not in the best interests of the child.

As a practical matter, APPLA means the child will be in long-term foster care, in a group/residential home, or in an institution. The end product of APPLA almost invariably is for the child to "age out" of care without achieving a permanent loving family-like relationship. No wonder it is disfavored.

As the attorney for the youth in the PMC Phase of the case, APPLA may well be an appropriate goal if aging out of care is what your client wants. For instance, some clients simply do not have an interest in being adopted or taken into a new family in some other way. In such an instance, it is critical to counsel your client on the difficulties that she is likely to encounter aging out of care without that support network but, ultimately, as the child's attorney, you need to follow her directive.

APPLA may also be appropriate for a youth who is severely disabled and will likely transfer from foster care to an HSC home – essentially a home for adults who are found to have a disability that indicates they likely will never be able to care for themselves but will need assistance.

When APPLA is the permanency goal, the Department is required to take steps to create a transition plan for a child who is 14 years of age or older. At permanency hearings, the Court will need to verify that these steps have been taken, and you, as the child's attorney, should ensure that they have as well. A transition plan for a child with a permanency goal of APPLA requires the following actions:

- (1) The Department must conduct an independent living skills assessment for the child;
- (2) The Department must address the goals in the child's permanency plan, including the child's housing plan and the results of the independent living skills assessment;
- (3) If the youth is 16 or older, the Department must provide the youth with a copy and a certified copy of the youth's birth certificate, a social security card or replacement social security card, and a personal identification certificate; and
- (4) If the youth is 18 or older, the Department must provide the youth with documents and information listed in Section 264.121 (e-1) (birth certificate, immunization records, information contained in the youth's health passport, personal identification certificate, social security card or replacement social security card, and a Medicaid card or other proof of health insurance coverage).

Tex. Fam. Code § 263.4041. For additional information about transition planning and transitional living services, *see* Tex. Fam. Code § 264.121.

IV. FINANCIAL ASSISTANCE TO SUPPORT PERMANENCY

Children in foster care have suffered emotionally and often physically in a manner that can affect their long-term health, developmental needs, and overall well-being. Often these children need extra help that can be costly. To prevent costs of care from creating a barrier to families' willingness and ability to accept permanent caregiving responsibilities – whether by adoption or becoming a child's permanent managing conservator -- important subsidy programs have been established to assist with those costs and remove costs as an obstacle to permanency. The attorney for the child in the PMC phase must understand these important programs and ensure they are utilized where appropriate.

Fostering Connections to Success and Increasing Adoptions Act

The Fostering Connections to Success and Increasing Adoptions Act, 42 U.S. C. Section 1305 (2008) (hereafter, "Fostering Connections") is federal legislation that covers a wide range of issues to benefit youth in the child welfare system. A major feature of the legislation is its provision for federal funds for each state to establish subsidies for kin who take on the caregiving of the children in the system to whom they are related. Under this program, grandparents and other relatives who have taken on a caregiving role for the child in the nature of a foster parent relationship and who are willing to accept a permanent commitment to be the caregivers for the child until they reach the age of 18 may receive funding to help them support the child.

For a kinship family to receive Fostering Connections funding, Permanent Managing Conservatorship Assistance (PMCA), the following elements must be established:

1. DFPS and the courts must rule out returning children to their birth families;
2. DFPS rules out adoption as an option; and
3. Placing the child with the Kinship family is approved following a homestudy;
4. Kinship caregivers then:
 - a. complete the verification process through a child placing agency to become foster parents for their related child;
 - b. serve as the child's foster parents for at least six months;
 - c. negotiate and sign a Permanency Care Assistance Agreement with DFPS; and
 - d. go into court and receive PMC.

It is critical that all of the above-referenced steps be completed before PMC is transferred from the Department to the relative. If PMC is transferred prematurely, the relative loses the ability to receive the subsidy.

Adoption Assistance

Adoption assistance is also available and sometimes critical to support the adoption of children from care. Studies have shown that children adopted from foster care are at a heightened risk of moderate to severe health problems, learning disabilities, and developmental delays. Title IV-E of the Social Security Act provides funding to states for adoption assistance and provides requirements that must be met by your child client for the child to qualify for assistance to be provided to adoptive parents. Texas has its own requirements in addition to those specified by federal law. The DFPS Handbook, at [1700 Adoption Assistance Program \(texas.gov\)](#), summarizes the eligibility requirements in detail. The basics are discussed below.

Federal Requirements

Federal law provides for adoption assistance funded under Title IV-E. The following basic requirements must be met for a child to be eligible for Title IV-E funded adoption assistance:

1. The child must qualify as "special needs," as described below, at the time the adoptive placement agreement is signed.
2. Reasonable efforts must be made to place the child without adoption assistance, except when to do so is contrary to the child's best interest.
3. The child must be placed for adoption by DFPS, or a private, licensed, non-profit child-placing agency. For both relative and non-relative placements, the adoptive home must meet all of the requirements for approval under licensing minimum standards, including the criminal-records check.
4. The child must be in an adoptive placement and meet one of the following four conditions:

- a. The child is eligible for Supplemental Security Income (SSI) benefits, as determined by the Social Security Administration (SSA) during the adoptive placement,
 - b. the child is AFDC eligible both in the month that court proceedings began that resulted in the order removing the child from the home and in the month the adoption petition is filed,
 - c. the child was determined eligible for Title IV-E foster care assistance both at the time the child entered care and in the month the adoption petition is filed, or
 - d. the child lives with a minor parent in foster care, and the child's costs are included in the Title IV-E foster care payments being made on behalf of the minor parent.
5. The adoption assistance agreement must be signed before the adoption is consummated.

For the details of Title IV-E adoption assistance, see 42 U.S.C. § 673.

Texas Requirements

The general eligibility requirements for Texas funded adoption assistance are as follows:

- (a) To be eligible to receive adoption assistance on behalf of a child who is in DFPS conservatorship on the day immediately prior to date of adoption, the child ... must be a child with special needs, as specified in §700.804 of this title ... and (the adoptive parents) must meet all of the additional eligibility criteria set forth in this section.
- (b) (The adoptive parents) must have an approved adoptive home screening by DFPS or an LCPA in Texas or other state where the LCPA is licensed or certified.... Additional requirements may apply depending upon the state in which you are verified or otherwise approved by an LCPA to adopt a child.
- (c) (The adoptive parents) must sign an adoption assistance agreement before the adoption is final, which means (they) must sign the agreement before the adoption is legally consummated. Exceptions can be made to this requirement only in certain circumstances, as described in §700.881 of this title (relating to Can my child still get benefits if I did not sign an adoption assistance agreement before the adoption?).
- (d) Notwithstanding any other provision of this subchapter, an applicable child who meets the definition of special needs in §700.804 of this title is not eligible for adoption assistance if the child was not a U.S. citizen or resident prior to the adoption and the child was adopted outside the United States or brought into the United States for the purpose of adoption.

40 T.A.C. §700.803

Both the federal requirements and the Texas requirements refer to the fact that to be eligible, your child client must qualify as “special needs.” “Special needs” is a term of art that includes a variety of children, as follows:

The child must be younger than 18 years old and meet one of the following criteria when the adoptive placement agreement is signed:

On the day immediately preceding the date of adoption, the child is in the managing conservatorship of DFPS and:

1. The child is at least six years old;
2. the child is at least two years old and a member of a racial or ethnic group that exits foster care at a slower pace than other racial or ethnic groups;
3. the child is being adopted with a sibling or to join a sibling; or
4. The child has a verifiable physical, mental, or emotional disabling condition, as established by an appropriately qualified professional through a diagnosis that addresses: (a) what the condition is; and (b) that the condition is disabling, or
5. The child has been determined by the Social Security Administration to meet all the medical or disability requirements with respect to eligibility for Supplemental Security Income (SSI) benefits.

[1700 Adoption Assistance Program \(texas.gov\)](http://www.texas.gov)

Other Financial Assistance

Due to a disability, a child may be entitled to receive social security benefits, which can then be paid to a caregiver to assist in the child's care. If a parent has retained any rights, that parent may also have been ordered to pay child support for the child. Children in care also may receive Medicaid benefits to assist with their health care. Further, adoptive parents may be able to receive assistance with the costs of the adoption itself. All of these benefits should be considered and evaluated in connection with how they may impact the subsidies that are available to permanent caregivers.

V. GENERAL ONGOING DUTIES AS THE CHILD'S ATTORNEY AD LITEM IN THE PERMANENCY PHASE

Even if a permanency hearing only occurs every six months, to effectively fulfill your role as the child's attorney ad litem during the Permanency Phase of a child welfare proceeding, you must exercise ongoing vigilance to be sure your client's needs are being met and special needs are being served. This requires active involvement with your client's case – not only to monitor the Department's efforts to actively pursue permanency for your client – but also to ensure your client is safe in her current placement, her rights as a foster child are being respected, and that she is getting her needs met. To properly ensure your client's well-being in this manner, you will need to communicate regularly with the client, the caregiver, the Department, and providers who are serving your client's needs. Waiting until a few days before a scheduled permanency hearing to “check up” on your client is not acceptable.

You should regularly monitor the following:

1. **Your client's needs and desires.** Talk to your client. Does she have any needs that are not being met in her placement? Is she having struggles at school, at the home, maintaining family connections, etc.? If you don't keep in touch with your client, you will not know the answers to these questions or if an issue is brewing.
2. **Medical care** – You should be aware of physical health issues that arise and the medications that your client is receiving. Be sure your client's medical appointments are being kept – and that her caregiver is transporting her to the appointments. Ask for medical records that are created at visits. Fam. Code § 107.003(b)(1) requires you to review the medical care provided to the child and, as developmentally appropriate, seek to elicit the child's opinion on the medical care provided.
3. **Medication** – you should inquire about medications that your client has been prescribed, especially psychotropic medications. Have her medications changed? Why? Ask the caregiver and follow up with the medical provider for clarification as necessary. If your client is prescribed psychotropic medications, is she meeting with the provider for a reassessment at least every 90 days?
4. **Normalcy** – Would your client like to be on the football team, be a cheerleader, or participate in choir? Is she getting to go on field trips with the other school children or being denied that activity due to funding or other technicalities of foster care? Your client has the right to be “normal” and participate in activities that other kids enjoy. You should be checking that she is getting the opportunities that non-foster kids have.
5. **Psychological/Emotional needs** – Is your client receiving therapy? Would she benefit from that?
6. **Placement** – Have there been any changes in the placement where your client resides? A new roommate, another foster child entering the home, changes with the caregiver? How are these changes affecting your client? Is the placement stable?
7. **Educational needs** – How is your client doing in school? Seek her grading records. Notify the school – either with the assistance of DFPS or directly – that you would like notices of ARD meetings or Section 504 Meetings. Attend those meetings. Is your client nearing graduation? You should help your client with planning for college or trade school. Your client is likely entitled to receive a tuition waiver and an education training voucher to support her ongoing education.
8. **Familial Connections** – If your client is not placed with her siblings, is she getting reasonable sibling visitation? If your client is still entitled to parent visits or contact, is that happening (provided she wants those visits).
9. **For a child who is at least 16** – you must advise your client of her right to request the court to authorize her to consent to her own medical care (per Fam. Code. Section 266.010); determine if the child has received a certified copy of her birth certificate; social security card or replacement social security card; a drivers license or personal identification certificate. With respect to the foregoing important identification documents, talk to your client about the safe-keeping of such materials and help her devise a plan for that.
10. **Preparation for Adult Living (PAL) Services** – if your client is nearing the age of 16, has she been enrolled in PAL training or services? Does she have a PAL worker? If not, reach out to DFPS to secure these services for your client.

- 11. Any potential caregivers** – Check with your client, in a developmentally appropriate manner, whether there are any adults who could be her designated caregiver. This is not something that should be asked only once. Ask this question regularly as the child may develop a relationship or recollect a relative or fictive kin from her past.

If your client has needs that are not being met, or services and documents to which she is entitled and not receiving, you should take action. Tex. Fam. Code Section 107.003 (a)(1)(F) states that the Attorney ad litem for a child, although not a party, can participate in the litigation as though a party. This means that you can and should file motions, issue subpoenas, seek discovery, make records requests. There is no need for you to wait until the 6 month statutory hearing. File a motion and set a hearing to bring the issues to the court's attention and get your client the needed relief. An example form of motion for the child to consent to her own medical care is included with this paper and can be used as a template for motions based on other statutes or to seek other relief.

VI. CONCLUDING THE PERMANENCY PHASE

Achieving Permanency

The hoped for outcome to the Permanency Phase is for the Department to be relieved as the child's PMC so that the child can achieve the permanency discussed out the outset of this paper: an enduring family relationship meant to last a lifetime. On the day that the court will enter final orders that will legally create that relationship – celebrate! If possible, invite family members of your child's new family to court to witness the adoption or other transfer of parental rights.

Extended Foster Care

For a child who does not achieve permanence by age 18, there is an option to remain in foster care until age 21. That said, the child's ability to remain in care largely depends on whether there is a placement available. Such placements are particularly hard to secure for youth who have had a recent history of behavioral or mental health problems while in care. There are a limited number of Supervised Independent Living Facilities that you might consider for your client. You should, however, be aware that your client will have to interview for admission to those facilities and, again, a less than perfect history may create a barrier to acceptance. While your client is in extended foster care, the court's jurisdiction over the child will also be extended and the 6-month permanency hearings will continue. Tex. Fam. Code § 263.602.

Trial Independence

Once a child reaches 18 and is legally an adult in charge of her own life, her court case will continue for 6 months to a year. In this "trial independence" period, the court will hold hearings every six months and the child will continue to have a caseworker who may be able to advise and assist the child. The first 6 month period is mandatory beginning on the client's 18th birthday. The court may order trial independence for another six month period as well. Tex. Fam. Code § 263.6015. Consider if that would be beneficial to your client to have continued court oversight and at least limited support from the Department.

Extended Jurisdiction in Special Circumstances

You can seek extended court jurisdiction for your client beyond the trial independence period if the client requests the court to extend its jurisdiction and the client is receiving transitional living services from the Department. Tex. Fam. Code § 263.6021. Again, this extension can be beneficial so that the client continues to receive some support from the Department and the court as she tries to gain footing to live life on her own.

Jurisdiction may also be extended when the court believes your client may be incapacitated as defined by Section 1002.617(2) of the Estates Code. In such a case, the Court does not need the client's consent to extend its jurisdiction. The extension will provide the time to allow the Department to refer the young adult to the Department of Aging and Disability Services for guardianship services.

VII. CONCLUSION

Representing a child in the Permanency Phase of a child welfare case is both a challenge and a privilege. Children in the Permanent Managing Conservatorship of the Department are incredibly vulnerable and have lived through tremendous trauma. But you can help them find the family they deserve that can heal their suffering and help them regain a sense of belonging. Even when that permanent family proves elusive, you can use your legal skills (and empathy) to ensure that your client is well cared for, protected, and is afforded all of their rights as a child in care.

NOTICE: CONTAINS SENSITIVE DATA

CAUSE NO. _____

IN THE INTEREST OF	§	IN THE DISTRICT COURTS OF
_____	§	_____ COUNTY, TEXAS
CHILDREN	§	___ JUDICIAL DISTRICT

MOTION TO ALLOW CHILD TO MAKE HER OWN MEDICAL DECISIONS

TO THE HONORABLE JUDGE _____:

This Motion is filed by the Attorney Ad Litem for the Child, requesting the Court to allow the Child to make her own medical decisions moving forward for the following reasons.

I. SUMMARY

[Provide a brief summary of the relief and why it is warranted]

E.g., The Child requests that this Court allow her to make her own medical decisions moving forward. The Child is [16 or older] years old and currently living in a foster home placement where she has been for the last year. She is currently a junior in high school. She has started working to support herself . . . etc. The Child desires to be able to make decisions regarding her own medical care, specifically the medications that she takes.

II. ARGUMENT

This Court should grant the Child’s motion because she is of the appropriate age and demonstrates sufficient capacity to consent to her own medical care. “A foster child who is at least 16 years of age may consent to the provision of medical care, except as provided by Chapter 33, if the court with continuing jurisdiction determines that the child has the capacity to consent to medical care.” Tex. Fam. Code §266.010(a). Further, this Court may determine the Child’s capacity to consent to medical care during a hearing under Chapter 263¹ and issue an order authorizing the child to consent to some or all medical care.²

¹ Tex. Fam. Code 266.010(b)

² *Id.*

NOTICE: CONTAINS SENSITIVE DATA

a. The Child is of age to make her own medical decisions.

At 17-years-old, the Child is over the age of 16, as Texas law would require.

b. The Child has capacity to consent to her own medical care.

The Child has the capacity to consent to medical care as required by statute because she is mature, well-informed, and intellectually functioning at an appropriate level. “In making a decision regarding a foster child’s capacity to consent to medical care, the court shall consider: (1) the maturity of the child; (2) whether the child is sufficiently well-informed to make a decision regarding the medical care; and (3) the child’s intellectual functioning.” Tex. Fam. Code §266.010(g). The Child demonstrates sufficient capacity to consent to her own medical care in the following ways.

i. The Child is sufficiently mature to consent to her own medical decisions.

(Argue relevant facts)

ii. The Child is sufficiently well-informed regarding the medical care.

The Child is sufficiently well-informed regarding her medical care and has expressed a desire to make her own decisions accordingly (Briefly detail supporting facts)

iii. The Child functions at an appropriate intellectual level.

The Child functions at an appropriate intellectual level for a 17-year-old. (Briefly explain why)

In conclusion, the Child should be granted the ability to make her own medical decisions as she has demonstrated that she is of age and has the maturity, information, and intellectual ability to make such decisions. Most importantly, this Court has the opportunity to empower The Child towards independence through this motion.

III. REQUEST FOR RELIEF

For these reasons, we ask that this Court grant this motion for The Child to make her own medical decisions, including choosing the medications she takes or does not take.

NOTICE: CONTAINS SENSITIVE DATA

Respectfully submitted,

Dated:

By: _____

Signature block

CERTIFICATE OF CONFERENCE

(Insert certificate of conference in compliance with local rules)

CERTIFICATE OF SERVICE

I hereby certify that, on the _____ day of _____, 20__ a true and correct copy of the foregoing instrument was served upon each attorney of record in accordance with the Texas Rules of Civil Procedure.
