

Everything a Criminal Lawyer Needs to Know About Family Law

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What Do Family Lawyers Handle?

- ▶ Divorce
- ▶ Suits Affecting the Parent Child Relationship (SAPCR)
- ▶ Child Support
- ▶ Modification of Possession and Access
- ▶ Modification of Child Support
- ▶ Spousal Support
- ▶ Premarital Agreements
- ▶ Post Marital Agreements
- ▶ Adoption
- ▶ Protective Orders
- ▶ Temporary Restraining Orders
- ▶ Child Protective Services Cases
- ▶ Enforcement of Possession and Access
- ▶ Enforcement of Property Division
- ▶ Enforcement of Child Support
- ▶ Mediation
- ▶ Appeals

JMC, SMC, PC – What are these acronyms?

▶ **Sole Managing Conservator (SMC)**

- ▶ A SMC is a person or entity who is granted certain exclusive rights to make decisions for the child. Tex. Fam. Code § 153.132.
- ▶ Can be a parent or non-parent. Tex. Fam. Code § 153.371.

▶ **Joint Managing Conservator (JMC)**

- ▶ A JMC is one of two or more people who share the rights and duties of a parent. Tex. Fam. Code § 153.005.
- ▶ A “primary JMC” is the person who is designated as having the exclusive right to designate the primary residence of the child. Tex. Fam. Code § 153.133(a)(1).

▶ **Possessory Conservator (PC)**

- ▶ A PC is a person who is designated by a court as having a right to possession of a child at specified times and who is authorized to exercise certain rights of a parent during the period of possession. Tex. Fam. Code § 153.074.

Domestic Violence or Sexual Abuse

▶ Petition Pleading Options:

- ▶ No protective order under title 4 of the Texas Family Code, protective order under chapter 7A of the Texas Code of Criminal Procedure, or order for emergency protection under article 17.292 of the Texas Code of Criminal Procedure is in effect in regard to a party to this suit or a child of a party to this suit, and no application for any such order is pending.
- ▶ A protective order under title 4 of the Texas Family Code/A protective order under chapter 7A of the Texas Code of Criminal Procedure/An order for emergency protection under article 17.292 of the Texas Code of Criminal Procedure in regard to a party/a child of a party/a party to this suit and a child of a party to this suit was issued by the [designation] Court in Cause No. [number] and was entered on [date]. A copy of the order is attached to this petition as Exhibit A.
- ▶ An application for a protective order under title 4 of the Texas Family Code/a protective order under chapter 7A of the Texas Code of Criminal Procedure/an order for emergency protection under article 17.292 of the Texas Code of Criminal Procedure is pending with regard to a party/a child of a party/a party to this suit and a child of a party to this suit. The application for protective order/order for emergency protection was filed on [date] in the [designation] Court in Cause No. [number].

Domestic Violence or Sexual Abuse

- ▶ Texas Family Code § 153.004(a)
 - ▶ (a) In determining whether to appoint a party as a sole or joint managing conservator, the court **shall consider** evidence of the intentional use of abusive physical force, or evidence of sexual abuse, by a party directed against the party's spouse, a parent of the child, or any person younger than 18 years of age committed **within a two-year period** preceding the filing of the suit or during the pendency of the suit.

Domestic Violence or Sexual Abuse

- ▶ Texas Family Code § 153.004(b)
 - ▶ (b) The court may not appoint joint managing conservators if credible evidence is presented of a history or pattern of past or present child neglect, or physical or sexual abuse by one parent directed against the other parent, a spouse, or a child, including a sexual assault in violation of Section 22.011 or 22.021, Penal Code, that results in the other parent becoming pregnant with the child.
 - ▶ It is a rebuttable presumption that the appointment of a parent as the sole managing conservator of a child or as the conservator who has the exclusive right to determine the primary residence of a child is not in the best interest of the child if credible evidence is presented of a history or pattern of past or present child neglect, or physical or sexual abuse by that parent directed against the other parent, a spouse, or a child.

Domestic Violence or Sexual Abuse

- ▶ Texas Family Code § 153.004(d)
 - ▶ (d) The court may not allow a parent to have access to a child for whom it is shown by a preponderance of the evidence that:
 - ▶ (1) there is a history or pattern of committing family violence during the two years preceding the date of the filing of the suit or during the pendency of the suit; **or**
 - ▶ (2) the parent engaged in conduct that constitutes an offense under Section 21.02 (continuous sexual abuse of child), 22.011 (sexual assault), 22.021 (aggravated sexual assault), or 25.02 (prohibited sexual conduct), Penal Code, and that as a direct result of the conduct, the victim of the conduct became pregnant with the parent's child.

Domestic Violence or Sexual Abuse

- ▶ Texas Family Code § 153.004(d-1)
 - ▶ The court can award a parent access to the child if the child's physical health or emotional welfare would not be endangered and it would be in the child's best interest, **and**
 - ▶ The court renders a possession order requiring:
 - ▶ Continuous supervision during periods of access;
 - ▶ Exchange of the child in a protective setting;
 - ▶ That the parent abstain from the consumption of alcohol within 12 hours prior to and during the period of access; or
 - ▶ The parent to complete a battering intervention and prevention program.

Domestic Violence or Sexual Abuse

- ▶ Texas Family Code § 153.004(e)
 - ▶ It is a rebuttable presumption that it is **not** in the child's best interest for a parent to have unsupervised visitation with the child if credible evidence is presented of a history or pattern of past or present child neglect or abuse or family violence by:
 - ▶ (1) that parent; or
 - ▶ (2) any person who resides in that parent's household or who is permitted by that parent to have unsupervised access to the child during that parent's periods of possession of or access to the child.

The Court shall consider whether a protective order was rendered under Chapter 85, Title 4, against the parent or other person during the two-year period preceding the filing of the suit or during the pendency of the suit. Tex. Fam. Code § 153.004(f).

Domestic Violence or Sexual Abuse

- ▶ Magistrate's Emergency Protective Order Under Tex. Code Crim Proc. Art 17.292
 - ▶ Must remain effective for at least 31 days but not longer than 61 days.
 - ▶ If the defendant was arrested for family violence that also involved the use or exhibition of a deadly weapon, the order must remain effective for at least 61 days but not longer than 91 days.
 - ▶ The conditions imposed by the magistrate's order for emergency protection prevails unless the court issuing a temporary ex parte order is informed of the existence of the magistrate's order and makes a finding in the temporary ex parte protective order that it supersedes the magistrate's order. Tex. Code Crim. Proc. Art. 17.292(f-2).

Domestic Violence or Sexual Abuse

- ▶ Temporary Ex Parte Protective Order under Tex. Fam. Code Chapter 83
 - ▶ Valid for 20 days and may be extended for additional 20-day periods.
 - ▶ Can contain a kick-out order removing a party from a residence if the court finds:
 - ▶ (1) the party requesting the kick-out order either resides on the premises or has resided there within 30 days before the date the application was filed;
 - ▶ (2) the person to be excluded has committed family violence against a member of the household within the 30 days before the date the application was filed; and
 - ▶ (3) there is a clear and present danger that the person being excluded is likely to commit family violence against a member of the household.
 - ▶ An ex parte temporary restraining order cannot contain a kickout order.

Domestic Violence or Sexual Abuse

▶ Chapter 8 Spousal Maintenance

- ▶ Generally, the issue of spousal maintenance arises in cases where the requesting spouse:
 - ▶ Is physically incapacitated or has a mental disability;
 - ▶ the spouses have been married 10 years or longer and the requesting spouse cannot provide for the spouse's minimum reasonable needs; or
 - ▶ Is the custodian of a child of the marriage of any age who requires substantial care and personal supervision because of a physical or mental disability that prevents the spouse from earning sufficient income to provide for the spouse's minimum reasonable needs.

Domestic Violence or Sexual Abuse

▶ **Tex. Fam. Code § 8.051(1)**

- ▶ If the spouse seeking maintenance will lack sufficient property on dissolution of the marriage to provide for the spouse's minimum reasonable needs and:
 - ▶ (1) the spouse from whom maintenance is requested was **convicted of** or received **deferred adjudication** for a criminal offense that also constitutes an act of family violence, as defined by Section 71.004, committed during the marriage against the other spouse or the other spouse's child and the offense occurred:
 - ▶ (A) within two years before the date on which a suit for dissolution of the marriage is filed; or
 - ▶ (B) while the suit is pending.

5th Amendment

- ▶ The Fifth Amendment can be asserted in civil cases “wherever the answer might tend to subject to criminal responsibility [she] who gives it.” *Tex. Dept. of Public Safety Officers Ass’n. v. Denton*, 897 S.W.2d 757, 760 (Tex. 1995) (quoting *McCarthy v. Arndstein*, 266 U.S. 34, 40, 45 S.Ct. 16, 17 (1924)).
- ▶ The privilege may be invoked “during the discovery process to avoid answering questions at a deposition, responding to interrogatories or requests for admissions, or to produce documents.” *In re Ferguson*, 445 S.W.3d 270, 276 (Tex. App.—Houston [1st Dist.] 2013, orig. proceeding) (quoting *Davis–Lynch v. Moreno*, 667 F.3d 539, 547 (5th Cir. 2012)).
- ▶ However, “when a civil plaintiff uses his Fifth Amendment privilege offensively and refuses to comply with discovery, a trial court has the authority to impose sanctions authorized by the rules of procedure, including death penalty sanctions,” but only after the trial court has “consider[ed] whether remedial steps can alleviate the problem.” *Dunne v. Brinker Tex., Inc.*, No. 05-16-00496-CV, 2017 WL 3431465, at *3 (Tex. App.—Dallas Aug. 10, 2017, pet. denied).

5th Amendment

- ▶ A witness's decision to invoke the privilege is not absolute. *In re Speer*, 965 S.W.2d 41, 45 (Tex.App.-Fort Worth 1998, orig. proceeding).
- ▶ A trial court is entitled to determine whether the assertion of the privilege appears to be based upon the good faith of the witness and is justifiable under all the circumstances. *Ex Parte Butler*, 522 S.W.2d 196, 198 (Tex. 1975).
- ▶ Failure to invoke the privilege waives it, and statements given in a civil case may then be used in a subsequent criminal prosecution. See *United States v. Kordel*, 297 U.S. 1 (1970).
- ▶ While the Fifth Amendment expressly forbids negative inferences from assertion of the right not to testify in criminal cases, "the Fifth Amendment does not forbid adverse inferences against parties to civil actions when they refuse to testify in response to probative evidence offered against them: the Amendment does not preclude the inference where the privilege is claimed by a party to a civil cause." *Baxter v. Palmigiano*, 425 U.S. 308, 319 (1976).

Child Protective Services Cases

- ▶ Cases involving the Department of Family and Protective Services are governed by Texas Family Code chapters 261, 262, 263, & 264.
 - ▶ Collin County CPS Courts: 199th; 296th; 417th; 468th; 469th; & 470th.
 - ▶ The Department is generally seeking to terminate parental rights.
 - ▶ Each parent for which the department seeks to terminate rights is entitled to an attorney;
 - ▶ The child is entitled to an Attorney Ad Litem
 - ▶ Must communicate to the court the child's desires if the child is 6 and older;
 - ▶ Will communicate what the attorney believes is in the child's best interest if the child is nonverbal. Tex. Fam. Code § 107.003 & 107.004
 - ▶ The child is entitled to a Guardian Ad Litem
 - ▶ Monitors the child's safety and well-being;
 - ▶ Is usually aware of a Client Parent's actions before the attorneys. Tex. Fam. Code § 107.002.

Child Protective Services Cases

- ▶ Tips for the Criminal Lawyer
 - ▶ Attend every hearing.
 - ▶ Get to know the Attorney Ad Litem and Guardian Ad Litem.
 - ▶ The Attorney Ad Litem and Guardian Ad Litem give reports to the court before each hearing.
 - ▶ The Attorney Ad Litem does not always follow the rules of evidence, and the court record may contain statements which hurt your client's criminal case.
 - ▶ Pay attention to who is attending the hearing. The parent's attorney and the criminal law attorney can work together to make sure the testimony given is helpful to the CPS case while not hurting the criminal case.

Child Protective Services Cases

▶ Hearings

- ▶ **Adversary Hearing:** held no later than the 14th day after the Department takes possession of a child. Tex. Fam. Code § 262.201 (a).

- ▶ If the Department did not take possession of the child but has filed suit, the hearing must be held no later than the 30th day after filing suit. Tex. Fam. Code § 262.201 (b).

- ▶ **Status Hearing:** must be held no later than 60 days after the Department is appointed a managing conservator of the child. Tex. Fam. Code § 263.201.

- ▶ Family Service Plan

- ▶ Sets forth the requirements for a parent to have their child returned.
 - ▶ Must be filed within 45 days of a court order appointing the Department as managing conservator of the child.
 - ▶ Non-compliance may result in the termination of a parent's rights.
 - ▶ Probation terms of the criminal case may overlap or cover services required by CPS.

Child Protective Services Cases

- ▶ **Permanency Hearings:** required to be held no later than the 180th day after the date the court ordered the Department as managing conservator of the child. Tex. Fam. Code § 263.303.
 - ▶ The Department is required to file a permanency report with the Court 10 days before this hearing.
 - ▶ Court required to make specific findings as listed in Tex. Fam. Code § 263.306.
 - ▶ Review the extent of the parties' compliance with temporary orders and the service plan and the extent to which progress has been made toward alleviating or mitigating the causes necessitating the placement of the child in foster care.
 - ▶ Determine whether to return the child to the child's parents if the child's parents are willing and able to provide the child with a safe environment and the return of the child is in the child's best interest.
- ▶ **Termination Trial:** will be held if the child has not been returned to the parent.

Child Protective Services Cases

► **Brady Issues**

- *Harm v. State*, 183 S.W.3d 403 (Tex. Crim. App. 2006).
 - CPS is not a member of the prosecutorial team, but their reports and investigations must be disclosed under certain circumstances.
 - CPS was not acting as an agent of the state when it created reports in the course of a non-criminal investigation unrelated to the Defendant. Therefore, the reports were not Brady material.
- If there is a CPS investigation going at the same time as the criminal investigation and CPS is actively participating in the criminal case, any information in CPS' possession could be Brady material.
- Timing of the CPS and criminal case is important.

Standing Order on Children, Property, and Conduct of Parties

*199th Judicial District, Hon. Angela Tucker
219th Judicial District, Hon. Jennifer Edgeworth
296th Judicial District, Hon. John Roach, Jr.
366th Judicial District, Hon. Tom Nowak
380th Judicial District, Hon. Benjamin Smith
401st Judicial District, Hon. Mark Rusch*



*416th Judicial District, Hon. Andrea Thompson
417th Judicial District, Hon. Cynthia Wheless
429th Judicial District, Hon. Jill Willis
468th Judicial District, Hon. Lindsey Wynne
469th Judicial District, Hon. Piper McCraw
470th Judicial District, Hon. Emily A. Miskel
471st Judicial District, Hon. Andrea Bouressa*

**DISTRICT JUDGES
IN AND FOR
COLLIN COUNTY, TEXAS**

STANDING ORDER ON CHILDREN, PROPERTY & CONDUCT OF PARTIES

On their own motion, the district judges issue this standing order, which shall apply to suits for dissolution of marriage and suits affecting the parent-child relationship, for the protection of the parties and their children, and for the preservation of their property.

https://www.collincountytx.gov/district_courts/Pages/local_rules.aspx

Standing Order on Children, Property, and Conduct of Parties

5. SERVICE & APPLICATION OF THIS ORDER

Each party must attach a copy of this order to the party's live pleading. This order is effective upon the filing of an original petition and shall remain in full force and effect as a temporary restraining order for fourteen days after the date of the filing of the original petition. If no party contests this order by presenting evidence at a hearing on or before fourteen days after the date of the filing of the original petition, this order shall continue in full force and effect as a temporary injunction until further order of this court. This entire order will terminate and will no longer be effective when the court signs a final order or the case is dismissed.

- Order is effective upon filing
- Remains in full force and effect as a temporary restraining order
- If no objection, shall remain in effect as a temporary injunction

Access to Community Funds

1.9 Unless specifically authorized by the Court:

- 1.9.1 Selling, transferring, assigning, mortgaging, encumbering, or in any other manner alienating any of the property of the parties or either party, regardless of whether the property is:**
 - a) Personal property, real property, or intellectual property; or**
 - b) Separate or community property;**
- 1.9.2 Incurring any debt, other than legal expenses in connection with the suit for dissolution of marriage;**
- 1.9.3 Withdrawing money from any checking or savings account in a financial institution for any purpose;**
- 1.9.4 Spending any money in either party's possession or subject to either party's control for any purpose;**
- 1.9.5 Withdrawing or borrowing money in any manner for any purpose from a retirement, profit sharing, pension, death, or other employee benefit plan, employee savings plan, individual retirement account, or Keogh account of either party; or**
- 1.9.6 Withdrawing or borrowing in any manner all or any part of the cash surrender value of a life insurance policy on the life of either party or a child of the parties;**

2. SPECIFIC AUTHORIZATIONS

This standing order does not:

- 2.1 Exclude a party from occupying the party's residence;**
- 2.2 Prohibit a party from spending funds for reasonable and necessary living expenses;**
- 2.3 Prohibit a party from engaging in acts reasonable and necessary to conduct that party's usual business and occupation;**

Destruction of Property

- 1.4 Intentionally, knowingly, or recklessly destroying, removing, concealing, encumbering, transferring, or otherwise harming or reducing the value of the property of the parties or either party with intent to obstruct the authority of the court to order a division of the estate of the parties in a manner that the court deems just and right, having due regard for the rights of each party and any children of the marriage;
- 1.5 Intentionally falsifying a writing or record, including an electronic record, relating to the property of either party;
- 1.6 Intentionally misrepresenting or refusing to disclose to the other party or to the court, on proper request, the existence, amount, or location of any tangible or intellectual property of the parties or either party, including electronically stored or recorded information;
- 1.7 Intentionally or knowingly damaging or destroying the tangible or intellectual property of the parties or either party, including electronically stored or recorded information;
- 1.8 Intentionally or knowingly tampering with the tangible or intellectual property of the parties or either party, including electronically stored or recorded information, and causing pecuniary loss or substantial inconvenience to the other party;

Destruction of Property

► Spoliation

- The duty to preserve evidence arises when a party knows or reasonably should know there is a substantial chance of litigation. *Brookshire Bros. v. Aldridge*, 438 S.W.3d 9 (Tex. 2014).
- Sanctions under Tex. R. Civ. P. 215.2 include:
 - An order disallowing any further discovery of any kind or of a particular kind by the disobedient party.
 - Order charging all or any portion of the expenses of discovery or taxable court costs or both against the disobedient party or the attorney advising him.
 - An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order.
 - An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing with or without prejudice the action or proceedings or any part thereof, or rendering a judgment by default against the disobedient party.

Interference with Child Custody

▶ Collin County Standing Order 3.1

3. SUITS AFFECTING THE PARENT-CHILD RELATIONSHIP

While a suit affecting the parent-child relationship is pending, it is ORDERED that each party is prohibited from:

3.1 During the pendency of an original suit, removing a child from the State of Texas for the purpose of changing the child's residence, acting directly or in concert with others, without the written agreement of the parties or an order from the presiding judge;

- Tex. Fam. Code § 153.134(b)(1)
 - In rendering an order appointing joint managing conservators, the court shall
 - (1) designate the conservator who has the exclusive right to determine the primary residence of the child and:
 - (A) establish . . . A geographic area within which the conservator shall maintain the child's primary residence; or
 - (B) specify that the conservator may determine the child's primary residence without regard to geographic restriction.

Interference with Child Custody

- ▶ Texas Penal Code § 25.03
 - ▶ (a) A person commits an offense if the person takes or retains a child younger than 18 years of age:
 - ▶ (2) when the person has not been awarded custody of the child by a court of competent jurisdiction, knows that a suit for divorce or a civil suit or application for habeas corpus to dispose of the child's custody has been filed, and takes the child out of the geographic area of the counties composing the judicial district if the court is a district court or the county if the court is a statutory county court, without the permission of the court and with the intent to deprive the court of authority over the child.
 - ▶ (c) It is a defense to prosecution under Subsection (a)(2) that the actor returned the child to the geographic area . . . within three days after the date of the commission of the offense.

Interference with Child Custody

- ▶ Habeas Corpus - Tex. Fam. Code Chapter 157, Subchapter H
 - ▶ § 157.372(a) – Subject to Chapter 152 and the Parental Kidnapping Prevention Act (28 U.S.C. Section 1738A), if the right to possession of a child is governed by a court order, the court in a habeas corpus proceeding involving the right to possession of the child shall compel return of the child to the relator only if the court finds that the relator is entitled to possession under the order.

Child Support Enforcement

- ▶ Child Support - Texas Penal Code § 25.05 Criminal Nonsupport
 - ▶ (a) An individual commits an offense if the individual intentionally or knowingly fails to provide support for the individual's child younger than 18 years of age, or for the individual's child who is the subject of a court order requiring the individual to support the child.
 - ▶ (b) For purposes of this section, "child" includes a child born out of wedlock whose paternity has either been acknowledged by the actor or has been established in a civil suit under the Family Code or the law of another state.
 - ▶ (c) Under this section, a conviction may be had on the uncorroborated testimony of a party to the offense.
 - ▶ (d) It is an affirmative defense to prosecution under this section that the actor could not provide support for the actor's child.
 - ▶ (e) The pendency of a prosecution under this section does not affect the power of a court to enter an order for child support under the Family Code.
 - ▶ (f) An offense under this section is a state jail felony.

Child Support Enforcements

- ▶ Tex. Fam. Code Chapter 157, Subchapter A
 - ▶ § 157.001(a) – A motion for enforcement as provided in this chapter may be filed to enforce any provision of a temporary or final order rendered in a suit.
 - ▶ § 157.001(b) – The court may enforce by contempt any provision of a temporary or final order.

Child Support Enforcement

▶ Child Support -

- ▶ Motion for enforcement by contempt can be filed not later than the second anniversary of the date: (1) the child becomes an adult; or (2) on which the child support obligation terminates under the order or by operation of law. Tex. Fam. Code § 157.005(a).
- ▶ Motion for enforcement to confirm child support arrearages can be filed not later than the 10th anniversary after the date: (1) the child becomes an adult; or (2) on which the child support obligation terminates under the child support order or by operation of law. Tex. Fam. Code § 157.005(a).
 - ▶ If a motion for enforcement of child support requests a money judgment for arrearages, the court shall confirm the amount of arrearages and render one cumulative money judgment. Tex. Fam. Code § 157.263(a).
- ▶ If the court finds that the respondent has failed to make child support payments, the court shall order the respondent to pay the movant's reasonable attorney's fees and all court costs in addition to the arrearages. Tex. Fam. Code § 157.167(a).

Online Impersonation

- ▶ Texas Penal Code § 33.07 - (a) A person commits an offense if the person, without obtaining the other person's consent and with the intent to harm, defraud, intimidate, or threaten any person, uses the name or persona of another person to:
 - ▶ (1) create a web page on a commercial social networking site or other Internet website; or
 - ▶ (2) post or send one or more messages on or through a commercial social networking site or other Internet website, other than on or through an electronic mail program or message board program.
- ▶ (b) A person commits an offense if the person sends an electronic mail, instant message, text message, or similar communication that references a name, domain address, phone number, or other item of identifying information belonging to any person:
 - ▶ (1) without obtaining the other person's consent;
 - ▶ (2) with the intent to cause a recipient of the communication to reasonably believe that the other person authorized or transmitted the communication; and
 - ▶ (3) with the intent to harm or defraud any person.

Online Impersonation

► Requests for Production Examples:

- For each social network account for which you contend your spouse has an account, (i.e., Facebook, Ask.fm, Blogspot, BuzzFeed, CafeMom, Class mates, DeviantArt, Flickr, Foursquare, Google +, Habbo, Instagram, LinkedIn, LiveJournal, Meet Me, Meetup, MyLife, MySpace, MyYearbook, Periscope, Pinterest, Quora, Reddit, Reunion, Snapchat, Tagged, Tumblr, Twitter, Vine, VK, Windows Live Spaces, YouTube, etc.), please produce a copy of each page and each photograph that includes your spouse's image for the period beginning January 1 2017.
- For each dating website or mobile phone application for which you contend your spouse has an account (including but not limited to Match.com, Bumble, Tinder, Grindr, Badoo, Clover, Plenty of Fish, OkCupid, Zoosk, Elite Singles, Ashley Madison, EHarmony, Chemistry.com, ChristianMingle.com) please produce a copy of each page of your spouse's "profile," "user information" and each photograph that includes your spouse's image for the period beginning January 1, 2017.
- All correspondence, including but not limited to text messages, emails, letters, tweets, Instagram posts, Snapchat data, Facebook.com postings, social media messages of any kind, and electronically-stored information, between you and any other individual discussing matters of this litigation since January 1, 2017.

Electronic Data

▶ Unauthorized Access of a Computer

- ▶ Tex. Penal Code § 33.02(a): “A person commits an offense if the person knowingly accesses a computer, computer network, or computer system without the effective consent of the owner.

- ▶ **1.21 Using any password or personal identification number to gain access to the other party's e-mail account, bank account, social media account, or any other electronic account;**

▶ Recording A Child's Telephone Conversation

- ▶ Texas follows the vicarious consent doctrine, allowing a parent to vicariously consent to a recording on behalf of his or her child. *Alameda v. States*, 235 S.W.3d 218 (Tex. Crim. App. 207), cert denied, 552 U.S. 1029.
- ▶ A parent can record a child's conversation with the other parent if there is a good-faith belief that the recording is in the child's best interest. *Allen v. Mancini*, 170 S.W.3d 167, 172 (Tex.App.-Eastland 2005, pet. denied).

Soberlink

- ▶ Record of testing is used in original cases; as grounds for modification; emergency ex parte requests for temporary restraining order; and child custody evaluations.
- ▶ Are the court ordered testing times going to interfere with pickup/drop-off times of children?
 - ▶ Time school resumes / time school releases
 - ▶ 6:00 pm and 8:00 pm on Thursdays
 - ▶ 6:00 pm on Fridays and 6:00 pm on Sundays
- ▶ The longer a client is required to be on Soberlink, the longer a family law case may drag out before conclusion.

Practice Suggestions

- ▶ Confer with a family lawyer as soon as family violence becomes a case issue.
- ▶ Remember the court transcripts from a criminal case will be analyzed by family lawyers preparing the family case.
- ▶ As soon as your client is incarcerated, he or she should seek to modify the child support order and/or possession order.
- ▶ Encourage clients to pay whatever portion of child support they can. While lack of full payment is a violation of the order, Collin County judges tend to appreciate when a child support obligor is trying to pay at least some portion.

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