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ISSUES FOR THE DISABLED OR SPECIAL NEEDS CHILD

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I. Introduction

This article will discuss the unique approach that is necessary when handling a case involving a special needs child. The article will address how to approach the various parts of a Decree or SAPCR Order that may require non-standard provisions to address the uniqueness of the child's circumstances. Child support issues will only be briefly touched upon, but for a more comprehensive discussion of child support issues refer to the Author's article with Pi-Yi Mayo [Child Support for Children with Disabilities](#) presented at Advanced Family Law 2010. The article will also address the continuing need to parent an adult child and the legal options in those circumstances. Because the range of different special needs are so broad it is impossible to address all of the potential special needs that the child of a family law client might have.

At points in this paper, there are critical references to the Texas Family Law Practice Manual form language. These references should not be interpreted as a criticism of the hard work by the Practice Manual Committee over the years. The Practice Manual is an invaluable resource to family law practitioners, but some of the form language that will work in the vast majority of cases may be problematic for the parents of a special needs child and consideration of special drafting is needed in those instances.

II. Preliminary Investigation

Each child with special needs and each case involving a special needs child is unique. The first step the practitioner should take is to learn everything they can about the child. Obviously, the client will be an important source of information. The practitioner should also try to conduct independent research to obtain a better understanding of the child's condition and needs. Clients can only provide their perspective of a circumstance. We have all learned the hard way that the stories our clients tell us should be investigated. Often the two parents' perspective of their child will be very different. In those instances, it is crucial to develop corroborating evidence regarding the needs of the child.

It is often helpful to ask the client what the child's other parent would report and how they would describe the child and their needs. This line of questioning may expose potential conflicts between the parents' views, but may also provide information from another perspective of the circumstances, other than the client's. Asking what their spouse might say will at least provide the client's perception of their spouse's viewpoint. Third parties and ultimately the judge might have a different outlook than either of the parents, but this technique can be fruitful during the early stages of developing the case.

Do not make assumptions. I am the parent of an autistic son but I know that all autistic children are different. They have different strengths and weaknesses and I cannot assume that someone else's child is like my son.

It is often helpful to ask a client to describe daily routines. This will give some insight into the abilities that the child possesses. It also provides information about the level of care that the child requires, and who provides that care. Make sure to find out who is involved with each step of care giving. Find out if there are third party caregivers. Third party caregivers will be very beneficial in describing the child and the parents. They will also be a crucial witness in the case. Third party caregivers will offer a less subjective assessment of the child's ability and needs, as well as information regarding the involvement of both parents.

Ask about medical treatment that the child receives. Find out the involvement of both parents with the medical care. Ask about other interventions and therapies. Tutors and therapists will also be very helpful in educating the lawyer about the child and his or her needs. The medical treatment providers, tutors and therapists may also be crucial witnesses. Additionally, the schedule of doctors' appointments and therapy is crucial to the issues that will need to be addressed in the orders. Often, managing a child's treatment plan can be a full-time occupation.

It is very helpful to walk through with the client the managing conservator's rights as well as the other rights and duties of parents early in the case. I try to do this in the initial consultation in all cases, but I believe that it is especially important in cases

involving special needs children. It may be important to consider some other rights and duties about which the court should make orders. There may be concerns about the child's diet or various treatments that need to be addressed. For example, your client may want to request the court to create a duty that requires both parents to follow a particular diet or to perform a certain therapy treatment or tutoring during periods of possession. It is also important to inquire about the other children of the family. The needs of the special needs child's siblings may also require special consideration. When representing the parent of a special needs child, care should be taken to develop a plan that addresses the unique needs of the entire family.

III. Cautions About the Parties

Having a special needs child can affect parents significantly and in remarkably different ways. The circumstances surrounding the cause of the special needs can also have an impact on the parents. Birth defects may affect parents differently than an accident that resulted in profound injury to a child. A child is an extension of the child's parents. Some parents might perceive that a defect in their child is a defect in them. In some instances this might cause a parent to be in denial about the problem. They may blame themselves for the problem. They may blame the other parent for the defect. If the child's special needs were caused by an accident, then there will also likely be issues of blame or guilt surrounding the accident. Denial, guilt and blame may have a great deal of influence upon how the parents address their child's situation. These emotional reactions to the situation may have no rational basis, but they may have significant influence on the parents' behavior and attitudes.

Some parents hold out for a cure. Some parents are constantly on the lookout for anything that might help or cure their child. These parents are constantly on the internet and researching treatments and therapies. Other parents might be resigned that their child will never drastically improve regardless of what intervention might be tried. Neither viewpoint is right or wrong. When parents are on different ends of this spectrum there might be significant issues regarding decision

making and whether or not to explore various interventions.

Some parents will respond to their child's special needs by attempting to shelter and protect the child, but other parents will push their child out into the world despite their challenges. When each parent has a different approach then the child may benefit from both. Unfortunately, the conflict between these two styles may create difficulties in co-parenting. Extreme differences in the parenting approach presents a potential for conflict in co-parenting. One parent may wish to home school a child, while the other parent will push to send the child to public schools. Such disputes arise in our cases with typical children, but may be intensified for the parent of a special needs child who believes their approach is the one that is necessary due to the child's needs.

Typical parents' relationships with their children are only controlled by court orders until the child turns 18 and graduates from high school. Parenting of a special needs child may be subject to court involvement much longer. The practitioner should discuss with the client and bear in mind the longevity of the orders that will be put in place regarding the child. For some families this might mean that the litigation and conflict that would typically end at the time of the children turning 18 and graduating from high school could continue for many years longer. The fight might shift from the divorce/family court to the probate court when the child becomes an adult.

IV. Educating the Judge

Many lawyers will only infrequently handle cases involving children with profound special needs, and judges will generally hear such cases infrequently as well. Like most cases, cases involving special needs children will settle more often than not. Do not assume that the court will quickly understand the issues at hand. Unfortunately, the legislature has given very little guidance to judges or practitioners regarding what types of orders are in the best interest of special needs children. There are very few cases reported that guide judges either. Each case will potentially present the court with circumstances where their past experience will be much less useful than in typical cases. It will be up to the lawyer to work

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