



**ALEX KIM**

DISTRICT JUDGE

323<sup>RD</sup> JUDICIAL DISTRICT, TARRANT COUNTY, TEXAS

February 20, 2020

Fellow members of the Board of District Judges,

I am submitting this letter to the entire board so I may bring light to certain issues that may not have been considered in the assignment of CPS cases to the downtown courts. This letter is not meant to advocate one position or another, as we all are entrusted to make our own decisions for the benefit of the citizens of Tarrant County. However, I do believe that each of us must make an informed decision. Since the 323rd District Court has typically had anywhere from 75-94% of the Child Welfare cases and having presided over the 323rd for the past year, I am in a unique position to bring certain matters before you that you may not be aware of or have not considered.

1. CBC- About 10 years ago, the Texas Legislature recognized the problems with the Department of Family and Protective Services (known as CPS) and ordered a gradual transition to what effectively is the privatization of DFPS. On March 1, 2020, there will be a transition to Community Based Care (CBC) in Tarrant County. This process is being rolled out across the state, starting with Tarrant County, as the first region to advance to Stage II. We have been in Stage I for several years, and a handful of counties are entering Stage I this year. The agency that will be taking over placement, services, monitoring, and everything except investigations is All Church Home (ACH) and their program, OC-OK (Our Community-Our Kids). This transition has been going on for quite a while and there has been extensive planning in this event. This transition is being carefully watched statewide as other counties begin their transition. There is a benefit to having a single court during this process, as ACH only has to develop their program for the policies and philosophies of one judge, as opposed to multiple judges with differing policies. There have been ongoing discussions between the 323rd and ACH during this process and a change this late could create a significant barrier to providing quality services to foster children in Tarrant County. However, this transition is not going as well as planned. Due to logistical problems, problems with the way the statute is written, and problems with understanding the actual implementation process, this will be a very difficult transition. Problems with the transition only increases the likelihood of parents being terminated of their rights, children spending more time in the foster system, and reduced family reunifications.
2. I should also inform the Board that this transition is not already without problems. At a docket about a week ago, there were 6 children before the court that were in the conservatorship of CPS. During the hearing, it was made known to the court that 2 of the 6 children were "lost," in that CPS could not tell the court who the CPS case worker was, the last time the children were visited by CPS, or when the parents were last able to see their children. I promptly contacted CASA to notify them that the court desired to appoint up to 300 CASA volunteers to all the children in conservatorship of CPS that are currently under the jurisdiction of the 323<sup>rd</sup> District Court to make sure that their needs

are being met. One of my greatest fears is that a child is "lost" in the foster system without any supervision or oversight at best, or victimized or harmed at worst. I believe the Board should be particularly concerned about the welfare of the children during this transition process and make sure we have an understanding of the particulars of the impact that the reassignment of cases during CPS to CBC transition.

3. Crossover dockets - There is a nationwide movement to place children with dual needs, (Juvenile Delinquency and CPS cases) on a separate docket called a "crossover docket." There are a significant number of children that are subject to suits in both areas of law that have very difficult situations and specialized needs that are best handled with a common judge and common attorneys. In the 323rd, there are times when the Juvenile law attorney, CPS ad litem, CPS worker, prosecutor, and guardian ad litem all appear for one child. Often times, the discussion is focused on the available options between CPS placements and Juvenile delinquency placements to address the specialized needs for the child, particularly when there are identified issues of mental health, human trafficking victimization, anger management issues, or a combination thereof. The 323rd has not had a crossover docket until 2019. Separating the CPS cases downtown would make these types of dockets impossible. The importance of recognizing the specialized needs of children with CPS cases and Juvenile cases were recognized by the 86th legislature which authorized a CPS court to order the transfer of a Juvenile case to the CPS court. (before, the law allowed the transfer with permission from the Juvenile court. In the current law, the juvenile court has no discretion).
4. Delay Tactics in other regions - The Texas legislature authorized the creation of Child Protection Courts (CPC) that handle CPS cases on a regional basis. I have found during discussion with other District Judges that are part of these regional courts that there is notable discontent with these courts. The judges of these CPC courts are Associate Judges appointed by the Regional Presiding Judge. Evidently, there has been a problem with the attorneys using de novo hearings as a delay tactic while advocating for their clients. CPS cases, by statute, must be resolved within 12 months (unless there is a one time extension of dismissal date of up to 6 months for "extraordinary circumstances" or "good faith effort to comply with court ordered drug programs"). It is not uncommon for an attorney to try to obtain more time for their parent clients who have not completed or not started their service plan by demanding a jury and/or refusing to waive the Associate Judge in order to obtain more time for their clients to engage in services before final trial. This ends up going to the District Judge docket, and because CPS cases, as a matter of law, take preference over other types of cases these are disrupting the normal dockets of the District Courts. We should be careful about expecting additional Associate Judges in Tarrant County to handle all the CPS cases that would be transferred downtown, lest we suffer from the same problems that these CPCs are facing.
5. Jury Trials - CPS cases typically have at least 4 parties, The Department of Family and Protective Services, the Attorney ad litem for the child, the attorney ad litem for the mother, the attorney ad litem for the father, and not infrequently, attorney ad litem for father number 2 or 3. It is not unusual to also have a grandparent or foster intervenor as well. I have had up to 6 attorneys and parties appearing for one trial. Furthermore, in 2019, despite the court offering a faster trial date, there has never been an agreement between the parties to waive the District Judge for Jury trials to be heard by the Associate Judge. The Board should be aware that CPS jury trials normally take at least a week and there could be a disruption in the family court dockets, should the Board of District Judges approve this motion.
6. Average age of a CPS case the first week of 2019 vs 2020 - Currently, CPS case times to final trial are approximately 275 days, based on the cases set in January of 2020. For

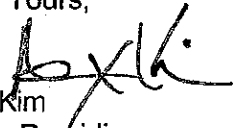
January of 2019, the average age of a CPS case was over 520 days. The Board should be reminded that these are the number of days that the children are in foster care. The 323rd has been able to reduce this time and provide permanency, termination, or reunification quicker, which reduces the amount of time children are in placement, which has been proven to reduce truancy, criminal behavior, teenage pregnancy, dropping out of school, and personally experiencing their own future CPS cases in children. Great care should be taken to reduce the amount of time children spend in foster placement.

7. Consistency breeds efficiency - I anticipate the major problem w/ CPS cases moving downtown will be the consistency between District Judges. Referring to the numbers in point 5, I believe a large part of why cases are moving faster in 2020 than 2019 is that there is one District Judge and consistency between the Associate Judges with the District Judge. Attorneys are able to counsel their clients and stress the importance of the services they need to engage in order to be reunited with their children. Absent this consistency, there is a real concern that terminations will increase because parents will have a more difficult time completing the services ordered, or understanding what is actually expected of them.
8. Objections to Associate Judges - Generally, the attorneys in CPS cases refuse to waive the final trial before the Associate Judge. This is consistent with notes in previous numbers above. In 2019, there were 2 final trials that all the parties agreed to have heard before the Associate Judge. If the Board was to approve this motion, the Family Court judges should be prepared for an increase of bench trials, with the accompanying dismissal dates and priority given to CPS cases.
9. New court - As a suggestion, perhaps Tarrant County would be better served by requesting another District Court from the 87th Legislature. The new courthouse that was just approved for construction by the commissioners court will have an additional District Judge courtroom that was planned for this purpose.
10. District Attorney impact - Currently, many CPS case functions, like confirming service on the parties (many parents are transient, incarcerated, out of state, or whereabouts unknown) permanency reviews before final orders, or permanency reviews after final orders are combined in single dockets. These settings are governed by statute, as there must be regular monitoring of children in placement or foster care to avoid "getting lost" in the foster system. Dividing these dockets among 6 Family Courts will certainly have an impact upon the District Attorney's office. I am not certain if our Criminal District Attorney is prepared for this impact and I suggest the Board of District Judges seek her input to ensure that Tarrant County can meet the statutory requirements.
11. New courthouse - The Tarrant County commissioners just approved the new courthouse for CPS cases and Juvenile Delinquency matters. A significant amount of space is devoted to CPS cases, including for CPS workers, District Clerk space, CPS Assistant District Attorneys, and other designated space. The Board should be aware of the fiscal waste if all CPS cases were to be removed to the downtown court.
12. Time to Jury Trial - Currently, the 323rd docket has become much more efficient. The current wait time to receive a CPS jury trial is 2 weeks (if the parties waive the 45 day notice). Typically, they are placed on a Jury docket to be tried within 60 days. The Board should be aware that mixing CPS cases with the downtown Family Court dockets may cause a significant disruption of jury dockets. Furthermore, if necessary, a bench trial can currently be provided in the 323rd within 1 week (assuming there is a waiver of 45 days) There are many times when a dismissal date has been missed by all parties and a trial must be provided, posthaste.. I would recommend that the Board seek input from the current Family Court Judges regarding the impact upon their dockets.
13. Priority to CPS cases - According to Texas Family Codes 105.004 and 161.202 CPS cases take preference over other cases. I would recommend that the Board seek input

from the current Family Court Judges to see if their courts can absorb this type of impact before voting.

14. Juvenile numbers misleading - While the number of filed cases in the Juvenile Courts has increased significantly since 2014, this is because of the legislative change that allows for auto-sealing of juvenile records. Currently, the vast majority of juvenile cases and referrals are eligible for automatic sealing of records when a child reaches 19 years of age. The Tarrant County Juvenile Probation Department screens for these cases, files the appropriate paperwork, then presents the order for the court to sign. About half the cases filed in the 323rd for Juvenile delinquency cases are either for children that were brought to the detention center but no case was filed, or a case was filed that was eligible for auto-sealing. The number of cases filed is not a true indicator of the caseload in the 323rd. The Board should not decide to assign the CPS cases to the downtown courts specifically to address a perceived "backlog" in the 323rd Juvenile cases.
15. Caseload in the downtown Family District Courts - It is my understanding that the downtown family courts have an overwhelming caseload. Even with the addition of associate judges to assist the downtown courts with the proposed additional CPS cases, I feel we should take deference to whether the 6 downtown Family District Courts believe they can adequately handle the increase of around 50 CPS cases per year.
16. Despite the points above, I am confident that with the removal of CPS cases from the 323rd, I would be able to focus on Juvenile matters in a way that no court in Texas could, since Juvenile and CPS courts are combined in every other urban county. Also, a Juvenile drug diversion drug court could be very effective, but currently, there are not sufficient resources available to proactively operate one. The amount of time between arrest and disposition would decrease.
17. Finally, it seems that there is a significant chance that the next Texas Legislature will raise the age of criminal culpability to 18, as the historically key vote blocking this legislation acquiesced in the last legislative session and is now supporting the statutory change. If this happens, it is accepted that juvenile dockets will increase anywhere from 30-40% across the State of Texas. I would estimate that Tarrant County would experience an increase of juvenile cases between misdemeanor and felonies to be at the higher end of the range. Wish such an increase, the 323<sup>rd</sup> District Court would not be capable of managing both Juvenile and CPS dockets.
18. Follow-up to #16. I spoke with Senator Whitmire this week about the likelihood of raising the age of culpability. The Senator indicated that there are other issues that have come to Lt. Governor Patrick's attention that the Senator is not inclined to believe it will pass or not pass this session.

Truly Yours,

  
Alex Kim  
Judge Presiding  
323rd District Court, Tarrant County, Texas