

**SECTION 263.401 OF THE FAMILY CODE:  
PROBLEMS & SOLUTIONS**

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## **SECTION 263.401 OF THE FAMILY CODE: PROBLEMS & SOLUTIONS**

*Abstract: This paper discusses the deadlines in Section 263.401, and related provisions, of the Family Code and offers possible solutions in its construction and application.*

### **I. INTRODUCTION**

Section 263.401 of the Family Code is a unique statutory dismissal process that imposes specified deadlines for when trial of a State-filed child protection case must take place after the State takes custody.<sup>1</sup> This process, in different forms, has been part of child protection law in this State for over twenty years.<sup>2</sup> The Texas Supreme Court's first comment about this process characterized it as a mechanism: "to ensure children's lives are not kept in limbo while judicial processes crawl forward."<sup>3</sup> The court also acknowledged the legislature made it part of a statutory scheme intended to promote judicial economy because complimentary laws limit the time for collateral and direct attacks, and accelerate and prioritize appeals of judgments in these type cases.<sup>4</sup>

While part of the process in child protection cases for many years, it has endured many amendments since its earliest adoption.<sup>5</sup> The most recent changes in 2017 appear to pose some significant issues.<sup>6</sup> Unfortunately, these issues complicate an already difficult scheme to apply. There are many ways to approach difficult legal schemes such as this one, but the author of this paper suggests an approach that utilizes principles promoted by the late motivational speaker Norman Vincent Peale.<sup>7</sup> Applying those principles, this paper offers solutions to address the problems in construing and applying Section 263.401.

### **II. PROBLEM: Section 263.401 of the Family Code is a long difficult provision**

**SOLUTION: Read it with a positive attitude and without emotion, take it apart, view easy parts first and consider the process to be an opportunity**

#### **A. This section has 3 deadlines**

##### **1. First Deadline: Subpart (a)**

**First Monday after Anniversary of Temporary Order**

<sup>1</sup> Tex. Fam. Code Ann. §263.401 (West Supp. 2017).

<sup>2</sup> Act of May 28, 1997, 75th Leg., R.S., ch. 600 §17, 1997 Tex. Gen. Laws 2108, 2112; Act of May 28, 1997, 75th Leg., R.S. ch. 603 §12, 1997 Tex. Gen. Laws 2119, 2123; Act of May 31, 1997, 75th Leg., R.S., ch. 1022 §90, 1997 Tex. Gen. Laws 3733, 3768; amended by Act of May 22, 2001, 77th Leg., R.S., ch. 1090 §8, 2001 Tex. Gen. Laws 2395, 2396; amended by Act of May 29, 2005, 79th R.S., ch. 268 §1.40, 2005 Tex. Gen. Laws 621, 636, amended by Act of May 27, 2007, 80th Leg., R.S., ch. 866 §2, 5, 2007 Tex. Gen. Laws 1837, 1838; amended by Act of May 29, 2015, 84th Leg., R.S., ch. 944 (SB 206) §§37, 38, 2015 Tex. Gen. Laws 326, 3283; amended by Act of May 26, 2017, 85th Leg., R.S., ch. 317 §27 (HB7), 2015 Tex. Gen. Laws 615, 623 and Act of May 28, 2017, 85th Leg., R.S., ch. 319 §12 (SB 11), 2017 Tex. Gen. Laws 716, 721.

<sup>3</sup> *In re B.L.D.*, 113 S.W.3d 340, 353 (Tex. 2003).

<sup>4</sup> *Id.*

<sup>5</sup> See, *supra* note 1. Also, see, Appendix to this paper, Attachments 2, 3, 4, 5, and 6.

<sup>6</sup> See Hachem, "2017 Legislative Update in Child Welfare Law," 43rd Annual Advanced Family Law Course, Child Abuse & Neglect Workshop, ch. 43.1 at pp. 15-17 (August 2017).

<sup>7</sup> See Appendix, Attachment 1.

The first deadline specified at subpart (a) imposes what some call, “the one year deadline.” However, it is important to note it is not an exact year. The deadline runs from 2 dates:

- (1) “the date the court rendered a temporary order appointing the department as temporary managing conservator” and
- (2) “the first Monday after the first anniversary of the date.”

*Id.* Consequently, the deadline runs a little longer than a year, because the deadline always falls on “the first Monday *after* the anniversary date.” For example, if the anniversary date for the temporary custody order falls on a Monday, “the first Monday *after*” that date will actually land on the following Monday: i.e. a year and one week.

## 2. Second Deadline: Subpart (b) No later than 180 days after Subpart (a) deadline

The second deadline, at Subpart (b), provides for an extension up to 180 days from the Subpart (a) deadline. Namely, it provides “the court may retain the suit on the court’s docket for a period not to exceed 180 days after the [first deadline]” when the court makes certain findings.<sup>8</sup> The findings the court must make are that: (1) extraordinary circumstances necessitate the child remaining in the temporary managing conservatorship of the department and (2) continuing the appointment of the department as temporary managing conservator is in the best interest of the child.

## 3. Third Deadline: Subpart (b-1) No later than 180 days from order granting new trial/mistrial, or appellate remand.

The third deadline in subpart (b-1) is up to 180 days from the date a new trial or mistrial is granted or a remand from an appellate court. Subpart (b-1) clarifies, this applies when, after timely commencement of the trial on the merits the court grants a motion for new trial or mistrial or the case is remanded following an appeal.<sup>9</sup> It adds that when these conditions exist, the court “*shall retain the suit on the court’s docket*” and render a specified order.<sup>10</sup> The specified order, like the order under Subpart(b), schedules a new date not later than the 180th day after the qualifying event; makes further temporary orders for the safety and welfare of the child as necessary to avoid further delay in resolving the suit and sets the new trial not later than the dismissal date set in that rendition.<sup>11</sup>

## B. The three deadlines in Section 263.401 occur between key events

### 1. The First Deadline runs from the order appointing the Department as a temporary managing conservator until trial commences on the merits

<sup>8</sup> Tex. Fam. Code Ann. §263.401(b) (West 2017).

<sup>9</sup> Tex. Fam. Code Ann. §263.401(b-1) (West Supp. 2017).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

The three deadlines in Section 263.401 occur between different key events. The first deadline described in Subpart (a) runs between the date (1) the court renders a temporary order appointing the department as temporary managing conservator and (2) the court commences trial on the merits. The Supreme Court clarified in *In re Tex. Dept of Fam. & Prot. Servs.*,<sup>12</sup> that the date of the temporary order that appoints the Department as a temporary managing conservator starts with any order granting the Department temporary managing conservatorship, and, therefore, may include an *ex parte* order that grants a fourteen-day conservatorship.

As far as the date that the court has commenced the trial on the merits, the meaning of this phrase is not solidified in the law. Neither Section 263.401 nor any other provision in the Family Code defines this phrase. Also, the Texas Supreme Court has not yet decided its meaning.

Notably, there is an opinion from 1876 that indicates the Supreme Court found trial commences when the plaintiffs are called for trial and announce ready, but the context of that construction did not involve construction of a statutory phrase like the one in Section 263.401.<sup>13</sup> Also, appellate opinions deciding Section 263.401 have not found the meaning from this early opinion applicable.

For example, in 2015, while the Amarillo Court of Appeals did not state precisely what it believed commencement meant in this section, it decided what it did not mean. Namely, it held it did not mean merely calling the parties to the bench, making inquiry on how long the trial would take and then immediately recessing the case.<sup>14</sup> The court's opinion indicated "at a minimum the parties should be called upon to make their respective announcements and the trial court should ascertain whether there are any preliminary matters to be taken up."<sup>15</sup> In a later case, considering the holding of the Amarillo Court, the Houston Court of Appeals (First District) found the announcement of the parties coupled with the court's determination of a number of preliminary evidentiary matters could be construed sufficient, even though the trial was ordered to resume later to permit the father's attorney to contact his client in prison.<sup>16</sup>

Cases decided in the criminal context might be helpful in understanding ways to analyze the meaning of commencement. Nonetheless, application is not easy since the Texas Supreme Court is not bound by the Texas Court of Criminal Appeals and won't have the same concerns about constitutional restrictions unique to criminal prosecution.<sup>17</sup>

<sup>12</sup> 210 S.W.3d 609, 612 (Tex. 2006)

<sup>13</sup> See *Watt v. White, Smith & Baldwin*, 46 Tex. 338, 340, 1876 WL 9309 \*2 (Tex. 1876). (deciding propriety of removal action, construction involved phrase "before or at the term at which said cause could be first tried, and before the trial thereof.").

<sup>14</sup> See *In re D.S.*, 455 S.W.3d 750, 751 (Tex. App. – Amarillo 2015, no pet.).

<sup>15</sup> *Id.* at 753 (emphasis added).

<sup>16</sup> *In re D.W.*, 498 S.W.3d 100, 114 (Tex. App. – Houston [1<sup>st</sup> Dist.] 2016, no pet.).

<sup>17</sup> See *BCCA Appeal Group, Inc. v. City of Houston*, 496 S.W.3d 1, 19 (Tex. 2015) (refused application of law from Court of Criminal Appeals since it did not carry precedential weight or dispose of issues for Texas Supreme Court); Also see *Garner v. State*, No. 05-16-00707-CR, \_\_\_ S.W.3d \_\_\_, 2017 WL 1908633 \*7 (Tex. App. – Dallas 2017, no pet. h.) (held trial begins when jury impaneled and sworn for purposes of Article 36.29 of the Code of Criminal Procedure); *Sanchez v. State*, 138 S.W.3d 324 (Tex. Crim. App. 2004) (acknowledging there was no definition of the phrase "trial on the merits commences," but concluded it did not mean the date the case was set for trial); *Crist v. Bretz*, 437 U.S. 28, 38 (1978) (held double jeopardy attaches when the jury is empaneled and sworn).

Importantly, the uncertainty of this commencement phrase in Section 263.401 is not a secret. The Tyler Court of Appeals expressly acknowledged the meaning of this phrase was unsettled in an opinion issued in 2016.<sup>18</sup> In that case, the issue concerned whether an appointed attorney provided ineffective assistance of counsel in failing to challenge the court's failure to dismiss a case under Section 263.401. In deciding that issue the court had to decide whether it would have been clear to the appointed attorney that trial did not commence when the judge timely called the case for trial, but ordered a continuance not long after the announcement.<sup>19</sup> The court noted there were only a few appellate decisions addressing the meaning of when trial commences for purposes of Section 263.401 and none of those decisions were by the Texas Supreme Court.<sup>20</sup> Consequently, since the law was unsettled, the court concluded it could not find the parent's attorney's failure to raise a dismissal issue was ineffective assistance of counsel. *Id.*

**2. The second deadline in subpart (b) runs from the expiration of the first deadline until not later than 180 days later as provided in an extension granted under Subpart (b) with findings.**

The second deadline runs from the date the initial subpart (a) deadline period expires until a date in an order under Subpart (b) that grants an extension no later than 180 days after the initial deadline expired. Subpart (b) describes a deadline that runs from the date "after the time described by Subsection (a)" until no later than 180 days later if the court makes certain findings.<sup>21</sup> The specified findings the court must make are: (1) extraordinary circumstances necessitate the child remaining in the temporary managing conservatorship of the department and (2) that continuing the appointment of the department as temporary managing conservator is in the best interest of the child. Importantly, the next sentence states: "*If the court makes those findings, the court may retain the suit on the court's docket for a period not to exceed 180 days after the time described by Subsection (a).*"<sup>22</sup> Such sentence seems to indicate the mere act of making these specified findings will give the court authority to retain the suit after the First Deadline expires up to 180 days.

Nonetheless, subpart (a) of Section 263.401 states "Unless the court has commenced the trial on the merits or *granted an extension* under Subsection (b) or (b-1), on the first Monday after the first anniversary of the date the court rendered a temporary order ..., the suit will be dismissed."<sup>23</sup> Such phrase indicates the court "granted an extension" to preclude dismissal. Also, additional language in Subpart (b) indicates the extension granted under that subpart will be in the order the court must render when the suit is retained on the specified findings. It provides:

<sup>18</sup> See *In re D.I.*, No. 12-16-00159-CV, 2016 WL 6876503 (Tex. App. – Tyler 2016, no pet.).

<sup>19</sup> 2016 WL 6876503 at \*1.

<sup>20</sup> *Id.* at \*2.

<sup>21</sup> The first sentence states:

Unless the court has commenced the trial on the merits, the court may not retain the suit on the court's docket *after the time described by Subsection (a) unless the court finds* that extraordinary circumstances necessitate the child remaining in the temporary managing conservatorship of the department and that continuing the appointment of the department as temporary managing conservator is in the best interest of the child.

Tex. Fam. Code Ann. §263.401(b) (West Supp. 2017) (emphasis added).

<sup>22</sup> *Id.*

<sup>23</sup> Tex. Fam. Code Ann. §263.401 (West 2014) (West Supp. 2018) (emphasis added).

If the court retains the suit on the court's docket, the court shall render an order in which the court:

- (1) schedules the new date on which the suit will be automatically dismissed if the trial on the merits has not commenced, which date must be not later than the 180th day after the time described by Subsection (a);
- (2) makes further temporary orders for the safety and welfare of the child as necessary to avoid further delay in resolving the suit; and
- (3) sets the trial on the merits on a date not later than the date specified under Subdivision (1).<sup>24</sup>

Read together, it seems the specified findings give the court authority to retain the suit, but rendering an order granting an extension avoids dismissal after the initial subpart (a) period expires. Importantly, this section utilizes the word “render” so the order granting the extension can be satisfied with an oral pronouncement in the presence of the court reporter.<sup>25</sup>

**3. The Third Deadline runs from grant of new trial, mistrial or remand until date specified in described order.**

The third deadline runs from the date of a new trial, mistrial or appellate remand until a date specified in an order rendered under Subpart (b-1). As in the case of the second deadline, this third deadline at Subpart (b-1) is referenced in Subsection (a) where it states the court must grant an extension under Subsection (b-1). Consequently, there must be a court order granting the extension no longer than 180 days after the qualifying event.

No court has yet been asked to construe the key event that qualifies as the date the new trial, or mistrial is granted or the date of remand under this section. However, the Code Construction Act provides in construing a statute it is presumed the legislature intended a date that provides a result feasible for execution.<sup>26</sup> Because it would only be feasible for execution if the new trial, mistrial, or remand can actually compel a new trial by the trial court, the dates would have to be the dates these actions become effective to compel new trial or remand. Applying that reasoning, the date a new trial is granted would be the date that the court *signs an order* granting the new trial, because an oral pronouncement or docket entry would not be effective to satisfy Tex. R. Civ. P. 329b.<sup>27</sup> However, that would not be the case with a mistrial. There is nothing in the rules that requires a mistrial to be documented in an order to be effective. Consequently, as soon as a mistrial is granted by rendition of the court, orally or in writing, it would be effective as the key event to start the deadline period.

There is a problematic issue, however, in determining the key event of effectiveness with respect to remand by the appellate court. When a court of appeals issues a decision that remands a case, it may be some time before that decision because final because of the right to seek further

<sup>24</sup> *Id.*

<sup>25</sup> Tex. Fam. Code Ann. §101.026 (West 2014); *In re Dept of Fam. & Prot. Servs.*, 273 S.W.3d 634, 644 (Tex. 2009) (recognizing the requirement in Section 263.401 that the court renders an order is satisfied with an oral pronouncement in the presence of the reporter).

<sup>26</sup> Tex. Gov't Code Ann. §311.021 (West 1998).

<sup>27</sup> *See Faulknew v. Culver*, 851 S.w.2d 187, 188 (Tex. 1993)



review to the Texas Supreme Court. To evidence finality, the appellate rules provide for the issuance of a mandate from the appellate court to the trial court a certain number of days after all review efforts are exhausted under Tex. R. App. P. 18.1. Such instrument, provides official notification to the trial court that the appeal is over and would provide certainty for starting the deadline period.

Nonetheless, as discussed in the concurring opinion authored by Justice Brister in *Edwards Aquifer Authority v. Chemical Line, Ltd.*<sup>28</sup> the date of issuance of a mandate may not always be the proper date to characterize the effect of the appellate decision. Despite this uncertainty, the Code Construction Act seems to indicate the date of issuance of the mandate should be the key event; otherwise, execution of this provision would not be feasible or reasonable.<sup>29</sup> This issue will likely remain unresolved until the Supreme Court provides guidance or the legislature corrects this uncertainty in the subpart (b-1) deadline.

**C. The deadline calculations may be subject to exceptions or suspension per other law.**

**1. First day, Saturday, Sunday, legal holiday excluded.**

In computing the days for the deadline, special statutory considerations apply. For example, Section 311.014 of the Code Construction Act provides the following instructions for construing Code provisions:

- (a) In computing a period of days, the first day is excluded and the last day is included.
- (b) If the last day of any period is a Saturday, Sunday, or legal holiday, the period is extended to include the next day that is not a Saturday, Sunday, or legal holiday.
- (c) If a number of months is to be computed by counting the months from a particular day, the period ends on the same numerical day in the concluding month as the day of the month from which the computation is begun, unless there are not that many days in the concluding month, in which case the period ends on the last day of that month.<sup>30</sup>

As indicated, in computing the period, the first day does not count, but the last day does count toward the number of days. While this instruction is not in the Family Code, the Construction Code Act provides it applies to all statutory Code enactments after the 60th Legislature to clarify situations construed under the different Codes.<sup>31</sup>

The second instruction in this provision is: Saturday, Sunday and legal holidays do not count if the period concludes with those days and the next day that is not a Saturday, Sunday or legal holiday will apply. Consequently, if the deadline ends on a Saturday, or Sunday that date will not be counted. Instead, the next day that is not a Saturday, Sunday or legal holiday will be counted.

<sup>28</sup> *Edwards Aquifer Authority v. Chemical Lime, Ltd.*, 291 S.W.3d 392, 405-07 (Tex. 2009).

<sup>29</sup> Tex. Fam. Code Ann. §311.021(4) (West 1998) (Code Construction Act provides it must be presumed the intent of the statute is for "a result feasible of execution.").

<sup>30</sup> Tex. Gov't Code Ann. §311.014 (West 1988).

<sup>31</sup> Tex. Gov't Code Ann. §311.003 (West 1998); *See Peco County v. Fort Stockton Holdings, L.P.*, 457 S.W.3d 451 (Tex. App. – El Paso 2014, no pet.) (applied to Water Code provision in calculating time).

Importantly, what constitutes a “legal holiday” is not defined in the Code Construction Act. However, the Texas Supreme Court has construed those terms “legal holiday” in the context of a very similar provision at Tex. R. Civ. P. 4.<sup>32</sup> In that case, the court considered whether the terms “legal holiday” as used in Rule 4, is restricted to the legal holidays the legislature designates. The Supreme Court held such interpretation was too restrictive. It found the more reasonable interpretation would be to characterize a holiday to include not only holidays designated by the legislature but also any day in which the commissioners court in the county designates as a holiday or on which the clerk’s office for the court in which the case is pending is officially closed.<sup>33</sup>

## 2. **Order by Texas Supreme Court in Disaster may impose suspension of deadline.**

Section 22.0035(b) of the Texas Government provides:

Notwithstanding any other statute, the supreme court may modify or suspend procedures for the conduct of any court proceeding affected by a disaster during the pendency of a disaster declared by the governor. An order under this section may not extend for more than 30 days from the date the order was signed unless renewed by the Supreme Court.<sup>34</sup>

The Texas Supreme Court has utilized this procedure to suspend the deadlines under Section 263.401 in the situation of natural disaster.<sup>35</sup> Namely, in September of last year, the Supreme Court issued an order suspending the deadlines in counties in which disaster was declared after Hurricane Harvey. The order provided the suspension extended to the date the court found reasonably possible to proceed, taking into account the circumstances.<sup>36</sup>

## 3. **Section 263.403 may provide independent basis for extension**

Section 263.403 of the Family Code has been characterized as an independent basis by which the court can extend a dismissal deadline, notwithstanding Section 263.401.<sup>37</sup> Sometimes referred to as the “Monitored Return exception.” This section, as amended in 2017, provides:

### Sec. 263.403. MONITORED RETURN OF CHILD TO PARENT. (a)

Notwithstanding Section 263.401, the court may retain jurisdiction and not dismiss the suit or render a final order as required by that section if the court renders a temporary order that:

- (1) finds that retaining jurisdiction under this section is in the best interest of the child;
- (2) orders the department to:

<sup>32</sup> *Miller Brewing Co. v. Villarreal*, 829 S.W.2d 770, 772 (Tex.1992),

<sup>33</sup> *Id.*

<sup>34</sup> Tex. Gov’t Code Ann. §22.0035 (West 2017).9

<sup>35</sup> See *Emergency Order Affecting Child Protection Cases*, Misc. Docket No. 17-9111 (Tex. September 5, 2017)

<sup>36</sup> *Id.*

<sup>37</sup> *In Interest of D.M.K.*, 04-15-00351-CV, 2015 WL 7747433, at \*4 (Tex. App.—San Antonio Dec. 2, 2015, no pet.) (“The plain language of section 263.403 permits a trial court to retain a case on its docket separate and independent of section 263.401.”)

- (A) return the child to the child's parent; or
- (B) transition the child, according to a schedule

*determined by the department or court, from substitute care to the parent while the parent completes the remaining requirements imposed under a service plan and specified in the temporary order that are necessary for the child's return;*

(3) orders the department to continue to serve as temporary managing conservator of the child; and

(4) orders the department to monitor the child's placement to ensure that the child is in a safe environment.

(a-1) *Unless the court has granted an extension under Section 263.401(b), the department or the parent may request the court to retain jurisdiction for an additional six months as necessary for a parent to complete the remaining requirements in a service plan and specified in the temporary order that are mandatory for the child's return.*

(b) If the court renders an order under this section, the court shall:

(1) include in the order specific findings regarding the grounds for the order; and

(2) schedule a new date, not later than the 180th day after the date the temporary order is rendered, for dismissal of the suit unless a trial on the merits has commenced.

(c) If before the dismissal of the suit or the commencement of the trial on the merits a child placed with a parent under this section must be moved from that home by the department or the court renders a temporary order terminating the transition order issued under Subsection (a)(2)(B), the court shall, at the time of the move or order, schedule a new date for dismissal of the suit. The new dismissal date may not be later than the original dismissal date established under Section 263.401 or the 180th day after the date the child is moved or the order is rendered under this subsection, whichever date is later.

(d) If the court renders an order under this section, the court must include in the order specific findings regarding the grounds for the order.<sup>38</sup>

**III. PROBLEM: When does automatic dismissal of a suit under the 2017 changes to Section 263.401 of the Family Code apply?**

**SOLUTION: Every problem contains the seeds of its own solution**

**A. Looking at the enacting provisions, the automatic dismissal provisions only apply to suits filed by the Department on or after September 1, 2017.**

The 2017 amendments to Section 263.401 of the Family Code in 2017 that compel automatic dismissal after the described time periods appear in two bills with almost identical provisions:

<sup>38</sup> Tex. Fam. Code Ann. §263.403 (West Supp. 2017).

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House Bill 7 and Senate Bill 11.<sup>39</sup> Both of these bills have an effective date of September 1, 2017.<sup>40</sup> Nonetheless, these bills have conflicting instructions concerning the applicability of the changes to Sections 263.401 of the Family Code.

Namely, House Bill 7 instructs:

- (a) The changes made by this Act to Section 263.401, Family Code, apply only to a suit affecting the parent-child relationship pending in a trial court on the effective date of this Act or filed on or after the effective date of this Act. A suit affecting the parent-child relationship in which a final order is rendered before the effective date of this Act is governed by the law in effect on the date the order was rendered, and the former law is continued in effect for that purpose.

HB7 §73 (emphasis added).

Senate Bill 11, on the other hand, instructs:

The changes in law made by this Act to Section 263.401, Family Code, apply only to a suit affecting the parent-child relationship filed on or after the effective date of this Act. A suit affecting the parent-child relationship filed before the effective date of this Act is governed by the law in effect on the date the suit was filed and the former law is continued in effect for that purpose.

SB11 §33 (emphasis added).

As indicated, the applicable effective date instructions for the changes made in Section 263.401 by both House Bill 7 and Senate Bill 11 are different. House Bill 7 makes the changes in Section 263.401 applicable to any suit affecting the parent-child relationship that is *pending* on September 1, 2017; while Senate Bill 11 only makes the changes applicable to suits *filed on or after* September 1, 2017. These instructions are inconsistent when applied to the identical changes about automatic dismissal to Section 263.401 appearing in both these bills and irreconcilable.

To address this conflict, the Code Construction Act, applicable to amendments to the Family Code, provides instructions for this situation.<sup>41</sup> Namely, Section 311.025(b) of the Code Construction Act instructs “if amendments to the same statute are enacted at the same session of the legislature, one amendment without reference to another, the amendments shall be harmonized, if possible, so that effect may be given to each.”<sup>42</sup> However, “If the amendments are irreconcilable, the latest in date of enactment prevails.” *Id.*

<sup>39</sup> Act of May 26, 2017, 85th Leg., R.S., ch. 317 §27, 2015 Tex. Gen. Laws 615, 623 [hereinafter “HB7”] and Act of May 28, 2017, 85th Leg., R.S., ch. 319 §12, 2017 Tex. Gen. Laws 716, 721 [hereinafter “SB11”].

<sup>40</sup> HB7 at §79; SB11 at §34.

<sup>41</sup> See Tex. Gov’t Code Ann. §311.002 & §311.003 (West 1998).

<sup>42</sup> Tex. Gov’t Code Ann. §311.025(b) (West 1998).

Importantly, *the date of enactment is the date on which the last legislative vote is taken on the bill enacting the statute.*<sup>43</sup> Viewing the legislative records shows Senate Bill 11 was the latest date of enactment.<sup>44</sup> Consequently, the applicable effective date appearing in Senate Bill 11 prevails between the irreconcilable effective dates in these two bills. Because Senate Bill 11 states the changes to Section 263.401 only apply to suits filed on or after September 1, 2017, that instruction prevails as the effective date.

**B. The automatic dismissal provision only applies to suits filed by the department and that seek parental termination or appointment of the Department as a conservator.**

As indicated in the 2017 changes to Subpart (a) & (c) of Section 263.401 of the Family Code, the effect of the deadlines not only terminates jurisdiction over a suit but also imposes automatic dismissal without a court order.<sup>45</sup> However, the automatic dismissal only applies to suits with the specified description provided; therefore, that must be considered in determining if automatic dismissal applies.

Namely, subpart (a) states unless trial commences on the merits or the court grants an extension under subpart(b) or (b-1):

*the court's jurisdiction over the suit affecting the parent-child relationship filed by the department that requests termination of the parent-child relationship or requests that the department be named conservator of the child is terminated and the suit is automatically dismissed without a court order.*<sup>46</sup>

As indicated, this provision does not merely terminate the court's authority over any suit. It has specific qualifications.

This instruction only terminates jurisdiction over the suit that is (1) "*filed by the department ... and (2) that "requests termination of the parent-child relationship or ... that the department be named conservator of the child."* *Id.* By this wording, "the court's jurisdiction" does not terminate over a suit that *is not filed by the department*. Also, if the department's suit does not seek parental termination or appointment as a conservator, it is not a suit described by this section that can be subject to dismissal.

In 1999, not long after the first version of Section 263.401 was adopted, the Waco Court of Appeals acknowledged this section "requires dismissal of only the suit filed by DPRS."<sup>47</sup> Consequently, the court recognized an intervention in the Department was not subject to dismissal

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<sup>43</sup>*Id.*

<sup>44</sup> S.J. of Tex., 85<sup>th</sup> Leg., R.S. 3567 (2017) (House concurred in senate Amendments to HB7 on May 26, 2017); S.J. of Tex., 85<sup>th</sup> Leg., R.S. 4150-51 (House adopted conference committee reports on SB 11 on May 28, 2017).

<sup>45</sup> Tex. Fam. Code Ann. §263.401(a) and (c) (West Supp. 2017). Section 263.403 of the Family Code can provide an additional exception to the dismissal rule, and will be discussed later in this paper.

<sup>46</sup> Tex. Fam. Code Ann. §263.401(a) (West Supp. 2017).

<sup>47</sup> *In re Bishop*, 8 S.W.3d 412, 420 (Tex. App. – Waco 1999, original proceeding).

and could be severed or docketed separately even if the Department's suit was required to be dismissed under this section.<sup>48</sup>

Similarly, the First Court of Appeals in Houston recognized this as well.<sup>49</sup> Namely, in an appeal from a judgment that terminated parental rights and named the Department as the child's sole managing conservator, a parent argued on regular appeal that the judgment was invalid and should have been dismissed because the trial court lost jurisdiction over the department's suit when the period expired under Section 263.401.<sup>50</sup> The appellate court's opinion agreed that the trial court exceeded the deadline period under subpart(a) and was not properly extended under subpart(b) to permit the court to exercise jurisdiction over the Department's suit. However, while the court found that meant the trial court lost jurisdiction over the Department's suit that did not prevent the court's authority to exercise jurisdiction over the foster parents' intervention suit that also sought parental termination.

Also, the opinion acknowledged the judgment appointed the Department as conservator and that was not a request in the foster parents' suit. Nonetheless, the opinion explained that the court had authority to render that decision once it terminated parental rights based on the intervention suit, because the Family Code specifically gives a court to appoint the Department as conservator when parental rights are terminated.<sup>51</sup>

IV. **PROBLEM:** If a parent needs more time to complete services in order to avoid termination under Subsection O of Section 161.001(b)(1) of the Family Code, can a parent obtain a dismissal deadline extension?

**SOLUTION:** Avoid the word *if*. Focus on the dynamic word *how*. Don't run away from your problem. Face it. Then fight it out.

A. An extension may be available under Section 263.401(b).

Subsection O of Section 161.001(b)(1) of the Family Code provides a basis for termination of parental rights when a parent fails to comply with the provisions of a court order for reunification after the child has been placed in the Department's custody.<sup>52</sup> To avoid the possibility of parental termination based on this provision, a parent may need to obtain an extension of the automatic dismissal deadline under subpart (b) of Section 263.401 of the Family Code so that trial does not occur before finishing services that cannot be completed before the first deadline.

<sup>48</sup> *Id.*

<sup>49</sup> *In re C.V.G.*, 112 S.W.3d 180, 184 (Tex. App. – Houston [1st Dist.] 2003, no pet.); *See also In re D.B.*, 153 S.W.3d 575, 576-77 (Tex. App. – Amarillo 2004, no pet.) (recognizing intervention and separate original suit vested the court with jurisdiction to terminate parent's parental rights, did not need to consider appellant's claim that trial court should have dismissed Department's suit); *In re D.D.M.*, 116 S.W.3d 224, 232 (Recognizing the intervenor's suit was not subject to dismissal under Section 263.401, court held "[e]ven if the Department's 'suit is dismissed, the trial court has the authority to appoint any proper person or agency as D.D.M.'s managing conservator, despite a lack of pleadings requesting appointment.").

<sup>50</sup> It should be noted that the First Court applied the 1997 version of the Act, even though the 2001 Act removed jurisdictional language, because it found the revisions in the law made in 2001 were not applicable to the subject suit filed before 2001. *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> Tex. Fam. Code Ann. 161.001(1)(b)(1)(O) (West 2014).

Nonetheless, to obtain a subpart (b) extension up to 180 days, the court must find “*extraordinary circumstances* necessitate the child remaining in the temporary managing conservatorship of the department and that continuing the appointment of the department as temporary managing conservator is in the child’s best interest.”<sup>53</sup> Several appellate decisions indicate courts do not always find this to be a good basis to support that finding, and Appellate Courts reviewing those decisions have not found them to be in error.<sup>54</sup> Consequently, this might not be the best provision to rely upon.

C. **An extension may be available under Section 263.403.**

As mentioned above, Section 263.403 of the Family Code provides an independent basis for extension of the dismissal deadlines. Although until this past year, it was only available for monitored return situations in which the child was placed back in the home, changes made by the legislature in 2017 permit a transitional monitored return for a situation when a parent is trying to complete the terms of a temporary order for reunification.<sup>55</sup> Under the terms of that extension, the court is permitted to retain the suit and not dismiss the suit if the court renders a temporary order that:

- (1) finds that retaining jurisdiction under this section is in the best interest of the child;
- (2) orders the department to
  - (A) return the child to the child’s parent or
  - (B) transition the child, according to a schedule determined by the department or court, from substitute care to the parent while the parent completes the remaining requirements imposed under a service plan and specified in the temporary order that are necessary for the child’s return.
- (3) orders the department to continue to serve as temporary managing conservator of the child; and
- (4) orders the department to monitor the child’s placement to ensure that the child is in a safe environment.<sup>56</sup>

This section further clarifies in a new subpart (a-1) that request for this extension may come from the department or the parent as follows:

- (a-1) Unless the court has granted an extension under Section 263.401(b), the department or the parent may request the court to retain jurisdiction for an additional six months as necessary for a parent to complete the remaining

<sup>53</sup> Tex. Fam. Code Ann. §263.401(b) (West Supp. 2017) (emphasis added).

<sup>54</sup> *In re N.W.* No. 07-17-00409-CV, 2018 WL 1440896 \*3 (Tex. App. – Amarillo 2018, no pet.) (mem. op.) (no abuse of discretion in failing to extend statutory dismissal deadline to permit parent to complete services); *In re A.S.* No. 12-16-00104-CV, 2016 WL 5827941 \*2 (Tex. app. – Tyler 2016, no pet) (court did not err in finding it was not an extraordinary circumstance to extend deadline for parent who wanted more time due to incarceration to complete services); *In re KP*, No. 02-09-028-CV, 2009 WL 2462564 \*11-12 (Tex. App. – Fort Worth, no pet.) (mem. op.) (“when a parent, through his or her own choices, fails to comply with a service plan and then at the time of the termination trial requests a continuance or an extension of the statutory dismissal deadline in order to complete the plan, the trial court does not abuse its discretion by denying the continuance or extension.”).

<sup>55</sup> See Act of May 26, 2017, 85th Leg., R.S., ch. 317 §29, 2017 Tex. Gen. Laws 615, 624.

<sup>56</sup> Tex. Fam. Code Ann. §263.403(a) (West Supp. 2017).

requirements in a service plan and specified in the temporary order that are mandatory for the child's return.<sup>57</sup>

As indicated, this clarifies either the department or the parent can ask for more time to permit the parent to complete the temporary order requirements for reunification. However, as indicated in the initial phrase this extension will not be available if the court already granted an extension under Section 263.401(b) of the Family Code.

**VI. CONCLUSION**

As discussed, numerous considerations and requirements may need to be applied to understand and apply Section 263.401 of the Family Code. It is not merely a clear one-year deadline from two clear events. Also, some application is not entirely clear because of the wording in Section 263.401 itself. Future guidance from the Supreme Court or the legislature will likely be required. Nonetheless, in the meantime having a positive attitude, facing the complexities of these issues directly, and dissecting the issues piece by piece may assist a litigant or judge in properly applying this scheme. That methodology derives from the first appendix provided with this paper from the motivational speaker Norman Vincent Peale. Good luck.

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<sup>57</sup> *Id.* §263.403(a-1).



APPENDIX

## ATTACHMENT 1

### STEPS IN SOLVING DIFFICULT PROBLEMS

1. **Think positively about your problem.** Attitudes are more important than facts. The person with positive faith looks at a problem creatively, and finds a way to go around, under it, or over it, or hit it straight on. The positive thinker activates things positively and draws back positive results.
2. **You can think your way through any difficulty or problem.** But you must think, not react emotionally. Discipline yourself to be calm about your problem.
3. **Develop a real faith in God and in yourself.** Then you can believe yourself right through your problem. “If thou canst believe, all things are possible” (Mark 9:23). Strengthen your faith with the powerful concepts of the Bible. Practice the presence of God.
4. **Stop thinking “IF.”** Next time trouble strikes you, avoid the word *if*. Focus on the dynamic word *how*. Don’t run away from your problem. Face it. Then fight it out.
5. **Learn know-how from your problems.** Look at every problem as containing some amazing value for you. When one door shuts, God may be guiding you to another door with new opportunities.
6. **When God made you, He made you great.** Affirm and believe: “I am bigger than any problem. I can overcome any problem.”
7. **Cut your problem down to size.** Take it apart, break it into its components. Then chisel off the easiest part and dispose of that. Continue until each part of the problem is solved.
8. **Every problem contains the seeds of its own solution.** Believe this, erase all doubts, never give up trying. Keep on believing, thinking, praying. You can overcome any problem.<sup>58</sup>

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<sup>58</sup> These 8 steps of advice were published by the late Norman Vincent Peale in a Guideposts Magazine more than 25 years ago. The author of this paper kept a copy of these steps by her desk for her entire career as a lawyer. Unfortunately, the author was unable to pinpoint the exact volume and year where it appeared in Guideposts

**ATTACHMENT 2**  
**1997 Version of Section 263.401**

Sec. 263.401. DISMISSAL AFTER ONE YEAR EXTENSION. (a) Unless the court has rendered a final order or granted an extension under Subsection (b), on the first Monday after the first anniversary of the date the court rendered a temporary order appointing the department as temporary managing conservator, the court shall dismiss the suit affecting the parent-child relationship filed by the department that requests termination of the parent-child relationship or requests that the department be named conservator of the child.

(b) On or before the time described by Subsection (a) for the dismissal of the suit, the court may extend the court's jurisdiction of the suit for a period stated in the extension order, but not longer than 180 days after the time described by Subsection (a), if the court has continuing jurisdiction of the suit and the appointment of the department as temporary managing conservator is in the best interest of the child. If the court grants an extension, the extension must also:

- (1) schedule the new date for dismissal of the suit; and
- (2) make further temporary orders for the safety and welfare of the child as necessary to avoid further delay in resolving the suit.

(c) If the court grants an extension, the court shall render a final order or dismiss the suit on or before the date specified in the extension order and may not grant an additional extension.

(d) For purposes of this section, a final order is an order that:

- (1) requires that a child be returned to the child's parent;
- (2) names a relative of the child or another person as the child's managing conservator;
- (3) without terminating the parent-child relationship, appoints the department as the managing conservator of the child; or
- (4) terminates the parent-child relationship and appoints a relative of the child, another suitable person, or the department as managing conservator of the child.

Act of May 28, 1997, 75th Leg., R.S., ch. 600 §17, 1997 Tex. Gen. Laws 2108, 2113; Act of May 28, 1997, 75th Leg., R.S., ch. 603 §12, 1997 Tex. Gen. Laws 2119, 2123 (same); act of May 31, 1997, 75th Leg., R.S., ch. 1022 §90, 1997 Tex. Gen. Laws 3733, 3768 (same).

**ATTACHMENT 3**  
**2001 Version of Section 263.401**

Sec. 263.401. DISMISSAL AFTER ONE YEAR EXTENSION. (a) Unless the court has rendered a final order or granted an extension under Subsection (b), on the first Monday after the first anniversary of the date the court rendered a temporary order appointing the department as temporary managing conservator, the court shall dismiss the suit affecting the parent-child relationship filed by the department that requests termination of the parent-child relationship or requests that the department be named conservator of the child.

(b) ~~The [On or before the time described by Subsection (a) for the dismissal of the suit, the]~~ court may *retain* ~~[extend the court's jurisdiction of ]~~ the suit *on the court's docket* for a period *not to exceed* ~~[stated in the extension order, but not longer than]~~

180 days after the time described by Subsection (a), if the court *finds that* ~~[has]~~ continuing ~~[jurisdiction of the suit and]~~ the appointment of the department as temporary managing conservator is in the best interest of the child. If the court *retains the suit on the court's docket* ~~[grants an extension]~~, the court shall render an ~~[extension]~~ order in which the court ~~[must also]~~:

(1) *schedules* ~~[schedule]~~ the new date for dismissal of the suit *not later than the 180th day after the time described by Subsection (a); and*

(2) *makes* ~~[make]~~ further temporary orders for the safety and welfare of the child as necessary to avoid further delay in resolving the suit; *and*

(3) *sets a final hearing on a date that allows the court to render a final order before the required date for dismissal of the suit under this subsection.*

(c) If the court grants an extension *but does not* ~~[the court shall]~~ render a final order or dismiss the suit on or before the *required date for dismissal under Subsection (b), the court shall dismiss the suit. The court* ~~[specified in the extension order and]~~ *may not grant an additional extension that extends the suit beyond the required date for dismissal under Subsection (b).*

(d) For purposes of this section, a final order is an order that:

(1) requires that a child be returned to the child's parent;

(2) names a relative of the child or another person as the child's managing conservator;

(3) without terminating the parent-child relationship, appoints the department as the managing conservator of the child; or

(4) terminates the parent-child relationship and appoints a relative of the child, another suitable person, or the department as managing conservator of the child.

Act of May 28, 1997, 75th Leg., R.S., ch. 600 §17, 1997 Tex. Gen. Laws 2108, 2113; Act of May 28, 1997, 75th Leg., R.S., ch. 603 §12, 1997 Tex. Gen. Laws 2119, 2123 (same); act of May 31, 1997, 75th Leg., R.S., ch. 1022 §90, 1997 Tex. Gen. Laws 3733, 3768 (same), *as amended by* Act of May 22, 2001, 77th Leg., R.S., ch. 1090 §8, 2001 Tex. Gen. Laws 2395, 2396 (amending Section 263.401(b)&(c) of the Family Code).

**ATTACHMENT 3**  
**2005 Version of Section 263.401**

Sec. 263.401. DISMISSAL AFTER ONE YEAR EXTENSION. (a) Unless the court has rendered a final order or granted an extension under Subsection (b), on the first Monday after the first anniversary of the date the court rendered a temporary order appointing the department as temporary managing conservator, the court shall dismiss the suit affecting the parent-child relationship filed by the department that requests termination of the parent-child relationship or requests that the department be named conservator of the child.

(b) The court may *not* retain the suit *on the court's docket after the time described by Subsection (a) unless the court finds that extraordinary circumstances necessitate the child remaining in the temporary managing conservatorship of the department and that continuing the appointment of the department as temporary managing conservator is in the best interest of the child. If the court makes those findings, the court may retain* the suit on the court's docket for a period not to exceed 180 days after the time described by Subsection (a). ~~if the court finds that continuing the appointment of the department as temporary managing conservator is in the best interest of the child.~~ If the court retains the suit on the court's docket, the court shall render an order in which the court:

- (1) schedules the new date for dismissal of the suit not later than the 180th day after the time described by Subsection (a);
  - (2) makes further temporary orders for the safety and welfare of the child as necessary to avoid further delay in resolving the suit; and
  - (3) sets a final hearing on a date that allows the court to render a final order before the required date for dismissal of the suit under this subsection.
- (c) If the court grants an extension but does not render a final order or dismiss the suit on or before the required date for dismissal under Subsection (b), the court shall dismiss the suit. The court may not grant an additional extension that extends the suit beyond the required date for dismissal under Subsection (b).
- (d) For purposes of this section, a final order is an order that:
- (1) requires that a child be returned to the child's parent;
  - (2) names a relative of the child or another person as the child's managing conservator;
  - (3) without terminating the parent-child relationship, appoints the department as the managing conservator of the child; or
  - (4) terminates the parent-child relationship and appoints a relative of the child, another suitable person, or the department as managing conservator of the child.

Act of May 28, 1997, 75th Leg., R.S., ch. 600 §17, Act of May 28, 1997, 75th Leg., R.S., ch. 603 §12, (same); act of May 31, 1997, 75th Leg., R.S., ch. 1022 §90, (same), *amended by* Act of May 22, 2001, 77th Leg., R.S., ch. 1090 §8, *as amended by* Act of May 29, 2005, 79th Leg., R.S., ch. 268 §1.40, 2005 Tex. Gen. Laws 621, 636 (amends Subsection (b) of Section 263.401)

**ATTACHMENT 4**  
**2007 Version of Section 263.401**

Sec. 263.401. DISMISSAL AFTER ONE YEAR EXTENSION. (a) Unless the court has *commenced the trial on the merits* [~~rendered a final order~~] or granted an extension under Subsection (b), on the first Monday after the first anniversary of the date the court rendered a temporary order appointing the department as temporary managing conservator, the court shall dismiss the suit affecting the parent-child relationship filed by the department that requests termination of the parent-child relationship or requests that the department be named conservator of the child.

(b) *Unless the court has commenced the trial on the merits, the* [~~The~~] court may not retain the suit on the court's docket after the time described by Subsection (a) unless the court finds that extraordinary circumstances necessitate the child remaining in the temporary managing conservatorship of the department and that continuing the appointment of the department as temporary managing conservator is in the best interest of the child. If the court makes those findings, the court may retain the suit on the court's docket for a period not to exceed 180 days after the time described by Subsection (a). If the court retains the suit on the court's docket, the court shall render an order in which the court:

(1) schedules the new date *on which the suit will be dismissed if the trial on the merits has not commenced, which date must be* [~~for dismissal of the suit~~] not later than the 180th day after the time described by Subsection (a);

(2) makes further temporary orders for the safety and welfare of the child as necessary to avoid further delay in resolving the suit; and

(3) sets *the trial on the merits* [~~a final hearing~~] on a date *not later than the date specified under Subdivision (1)* [~~that allows the court to render a final order before the required date for dismissal of the suit under this subsection~~].

(c) If the court grants an extension but does not *commence the trial on the merits* [~~render a final order or dismiss the suit on or~~] before the required date for dismissal under Subsection (b), the court shall dismiss the suit. The court may not grant an additional extension that extends the suit beyond the required date for dismissal under Subsection (b).

Act of May 28, 1997, 75th Leg., R.S., ch. 600 §17, Act of May 28, 1997, 75th Leg., R.S., ch. 603 §12, (same); act of May 31, 1997, 75th Leg., R.S., ch. 1022 §90, (same), *amended by* Act of May 22, 2001, 77th Leg., R.S., ch. 1090 §8, *as amended by* Act of May 29, 2005, 79th Leg., R.S., ch. 268 §1.40, 2005 Tex. Gen. Laws 621, 636 (amends Subsection (b) of Section 263.401); Act of May 27, 2007, 80th Leg., R.S., ch. 866 §5, 2007 Tex. Gen. Laws 91837, 1838 (subsection (d) repealed); Act of May 27, 2007, 80th leg., R.S., ch. 866 §2, 2007 Tex. Gen. Laws 1837, 1837 (amends Subsection a, b and c of Section 263.401).

**ATTACHMENT 5**  
**2015 Version of Section 263.401**

Sec. 263.401. DISMISSAL AFTER ONE YEAR EXTENSION. (a) Unless the court has commenced the trial on the merits or granted an extension under Subsection (b) *or* (b-1), on the first Monday after the first anniversary of the date the court rendered a temporary order appointing the department as temporary managing conservator, the court shall dismiss the suit affecting the parent-child relationship filed by the department that requests termination of the parent-child relationship or requests that the department be named conservator of the child.

(b) Unless the court has commenced the trial on the merits, the court may not retain the suit on the court's docket after the time described by Subsection (a) unless the court finds that extraordinary circumstances necessitate the child remaining in the temporary managing conservatorship of the department and that continuing the appointment of the department as temporary managing conservator is in the best interest of the child. If the court makes those findings, the court may retain the suit on the court's docket for a period not to exceed 180 days after the time described by Subsection (a). If the court retains the suit on the court's docket, the court shall render an order in which the court:

- (1) schedules the new date on which the suit will be dismissed if the trial on the merits has not commenced, which date must be ~~[for dismissal of the suit]~~ not later than the 180th day after the time described by Subsection (a);
- (2) makes further temporary orders for the safety and welfare of the child as necessary to avoid further delay in resolving the suit; and
- (3) sets the trial on the merits ~~[a final hearing]~~ on a date not later than the date specified under Subdivision (1) ~~[that allows the court to render a final order before the required date for dismissal of the suit under this subsection].~~

*(b-1) If, after commencement of the initial trial on the merits within the time required by Subsection (a) or (b), the court grants a motion for a new trial or mistrial, or the case is remanded to the court by an appellate court following an appeal of the court's final order, the court shall retain the suit on the court's docket and render an order in which the court:*

- (1) schedules a new date on which the suit will be dismissed if the new trial has not commenced, which must be a date not later than the 180th day after the date on which:*
  - (A) the motion for a new trial or mistrial is granted; or*
  - (B) the appellate court remanded the case;*
- (2) makes further orders for the safety and welfare of the child as necessary to avoid further delay in resolving the suit; and*
- (3) sets the new trial on the merits for a date not later than the date specified under Subdivision (1).*

(c) If the court grants an extension *under Subsection (b) or (b-1)* but does not commence the trial on the merits before the dismissal ~~[required]~~ date ~~[for dismissal under Subsection (b)]~~, the court shall dismiss the suit. The court may not grant an additional extension that extends the suit beyond the required date for dismissal under Subsection (b) *or (b-1)*, as applicable.

Act of May 28, 1997, 75th Leg., R.S., ch. 600 §17, Act of May 28, 1997, 75th Leg., R.S., ch. 603 §12, (same); act of May 31, 1997, 75th Leg., R.S., ch. 1022 §90, (same), amended by Act of May 22, 2001, 77th Leg., R.S., ch. 1090 §8, as amended by Act of May 29, 2005, 79th Leg., R.S., ch. 268 §1.40, 2005 Tex. Gen. Laws 621, 636 (amends Subsection (b) of Section 263.401); Act of May 27, 2007, 80th Leg., R.S., ch. 866 §5, 2007 Tex. Gen. Laws 91837, 1838 (subsection (d) repealed); Act of May 27, 2007, 80th leg., R.S., ch. 866 §2, 2007 Tex. Gen. Laws 1837, 1837 (amends Subsection a, b and c of Section 263.401); as amended by Act of May 29, 2015, 75th Leg., R.S., ch. 944 §37, 2015 Tex. Gen. Laws 3268, 3283.

**ATTACHMENT 6**  
**2017 Version of Section 263.401**

Sec. 263.401. DISMISSAL AFTER ONE YEAR EXTENSION. (a) Unless the court has commenced the trial on the merits or granted an extension under Subsection (b) or (b-1), on the first Monday after the first anniversary of the date the court rendered a temporary order appointing the department as temporary managing conservator, the *court's jurisdiction over* ~~[court shall dismiss]~~ the suit affecting the parent-child relationship or requests that the department-named conservator of the child is terminated and the suit *is automatically dismissed without a court order. Not later than the 60th day before the day the suit is automatically dismissed, the court shall notify all parties to the suit of the automatic dismissal date.*

Commented [HS(1):

(b) Unless the court has commenced the trial on the merits, the court may not retain the suit on the court's docket after the time described by Subsection (a) unless the court finds that extraordinary circumstances necessitate the child remaining in the temporary managing conservatorship of the department and that continuing the appointment of the department as temporary managing conservator is in the best interest of the child. If the court makes those findings, the court may retain the suit on the court's docket for a period not to exceed 180 days after the time described by Subsection (a). If the court retains the suit on the court's docket, the court shall render an order in which the court:

(1) schedules the new date on which the suit will be *automatically* dismissed if the trial on the merits has not commenced, which date must be not later than the 180th day after the time described by Subsection (a);

(2) makes further temporary orders for the safety and welfare of the child as necessary to avoid further delay in resolving the suit; and

(3) sets the trial on the merits on a date not later than the date specified under Subdivision (1).

(b-1) If, after commencement of the initial trial on the merits within the time required by Subsection (a) or (b), the court grants a motion for a new trial or mistrial, or the case is remanded to the court by an appellate court following an appeal of the court's final order, the court shall retain the suit on the court's docket and render an order in which the court:

(1) schedules a new date on which the suit will be *automatically* dismissed if the new trial has not commenced, which must be a date not later than the 180th day after the date on which:

(A) the motion for a new trial or mistrial is granted; or

(B) the appellate court remanded the case;

(2) makes further orders for the safety and welfare of the child as necessary to avoid further delay in resolving the suit; and

(3) sets the new trial on the merits for a date not later than the date specified under Subdivision (1).

(c) If the court grants an extension under Subsection (b) or (b-1) but does not commence the trial on the merits before the dismissal date, the *court's jurisdiction over* ~~[court shall dismiss]~~ the suit *is terminated and the suit is automatically dismissed without a court order.* The court may not grant an additional extension that extends the suit beyond the required date for dismissal under Subsection (b) or (b-1), as applicable.

Act of May 28, 1997, 75th Leg., R.S., ch. 600 §17, Act of May 28, 1997, 75th Leg., R.S., ch. 603 §12, (same); act of May 31, 1997, 75th Leg., R.S., ch. 1022 §90, (same), amended by Act of May 22, 2001, 77th Leg., R.S., ch. 1090 §8, as amended by Act of May 29, 2005, 79th Leg., R.S., ch. 268 §1.40, 2005 Tex. Gen. Laws 621, 636 (amends Subsection (b) of Section 263.401); Act of May 27, 2007, 80th Leg., R.S., ch. 866 §5, 2007 Tex. Gen. Laws 91837, 1838 (subsection (d) repealed); Act of May 27, 2007, 80th leg., R.S., ch. 866 §2, 2007 Tex. Gen. Laws 1837, 1837 (amends Subsection a, b and c of Section 263.401); *as amended by* Act of May 29, 2015, 75th Leg., R.S., ch. 944 §37, 2015 Tex. Gen. Laws 3268, 3283, *amended by* Act of May 26, 2017, 75th Leg., R.S., ch. 317 §27, 2017 Tex. Gen. Laws 615, 623; and *amended by* Act of May 28, 2017, 75th Leg., R.S., ch. 319, 12, 2017 Tex. Gen. Laws 716, 721.



Family Code Section 263.401  
April 19-20, 2018