

Jurisdiction and Venue

PRESENTED BY:

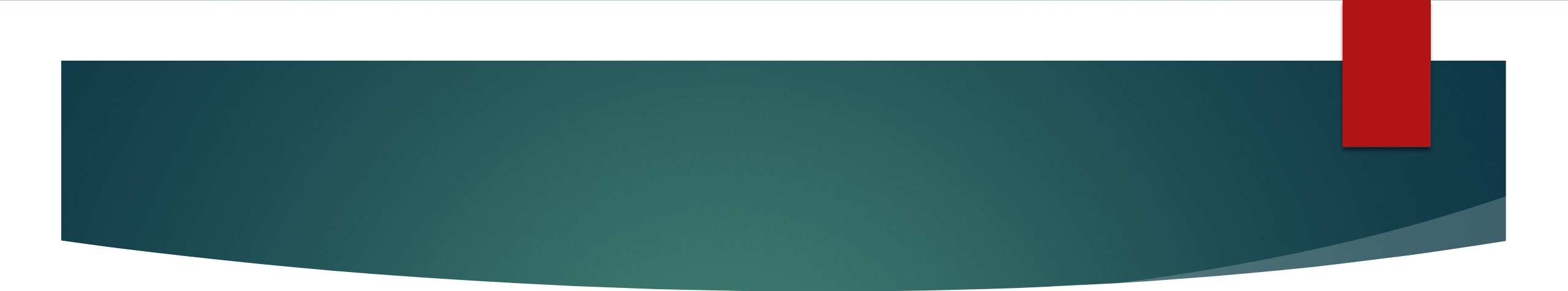
ERIC TAI, MANAGING ATTORNEY,
TDFPS APPELLATE DIVISION

1ST ANNUAL CHILD PROTECTION LAW COURSE
AUSTIN, TEXAS
APRIL 20, 2018

Personal Jurisdiction

In re E.C.Q.L., No. 12-16-00297-CV (Tex. App.—Tyler Apr. 28,
2017, no pet.)

- ▶ How Much Due Diligence is Required for Citation by Publication?

- 
- ▶ Father and Mother were married in 2007 and lived in California.
 - ▶ Mother left in 2009 and gave birth to the child in Texas in 2010.
 - ▶ The child was removed from Mother at birth due to a positive drug test. Mother told Father in early 2011 that the child was in the custody of the government until her criminal issues were resolved.

- 
- ▶ In March 2011, the Department filed its petition to terminate the parents' parental rights.
 - ▶ Father was appointed counsel.

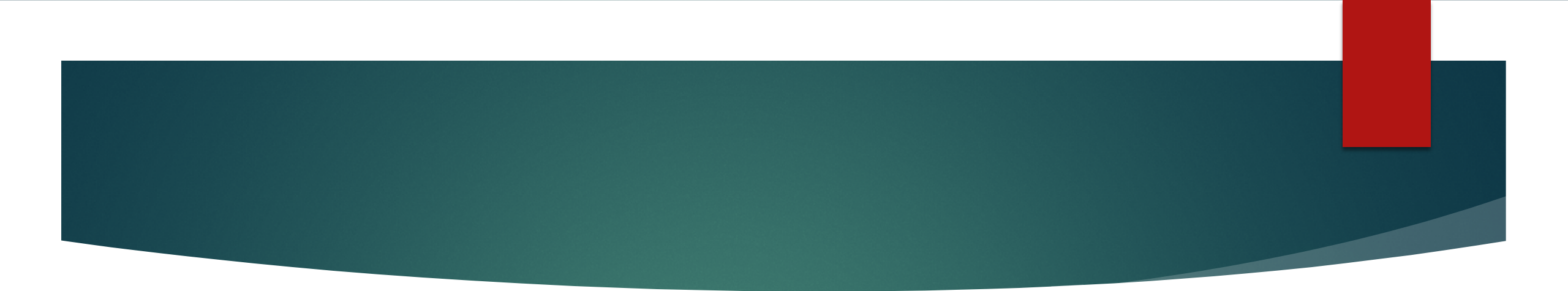


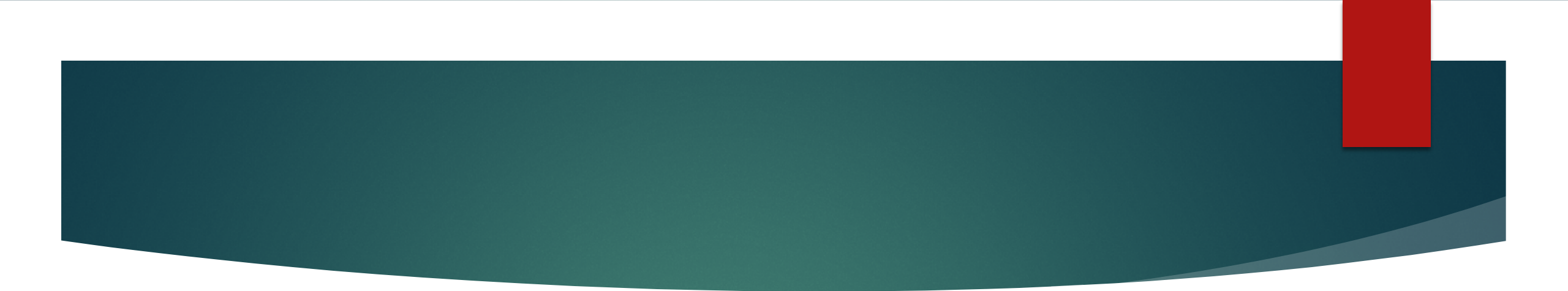
▶ Attempts to find Father (according to affidavit):

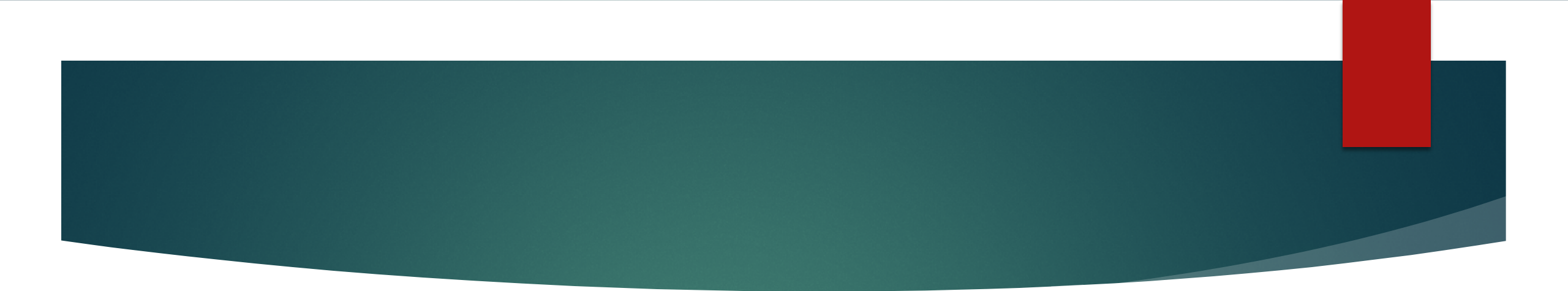
- ▶ Caseworker calls business number provided by Mother, leaves message;
- ▶ CASA volunteer also calls attempts to leave message, but language barrier makes it unsure;
- ▶ Caseworker sends letter to business address. The “green card” is returned, but not signed by Father.
- ▶ Inquiries to the Diligent Search Unit, Google, Department of Public Safety Databases, and the Department of Human Services yielded no results;
- ▶ Caseworker executes affidavit indicating that Father was unknown to her and a transient.

- 
- ▶ The Department effectuated service on Father by publication.

- 
- ▶ Father's parental rights were terminated and the order was filed in July 2011.

- 
- ▶ In January 2016, Father filed a bill of review, contending that he was not personally served and was unaware that a court proceeding concerning his parental rights was pending-denied by trial court.

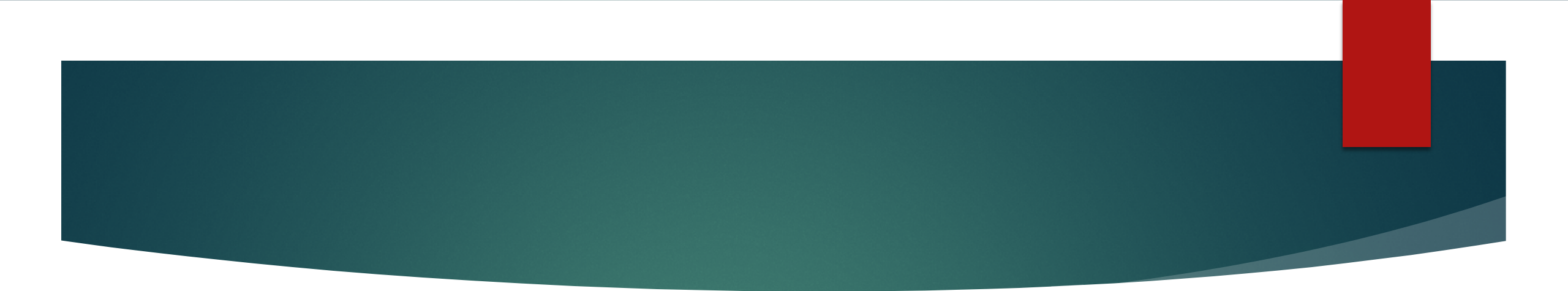
- 
- ▶ TRCP 109(2) allows citation by publication if a party states under oath that the defendant is a transient person, and that after due diligence, the affiant is unable to locate the defendant's whereabouts.

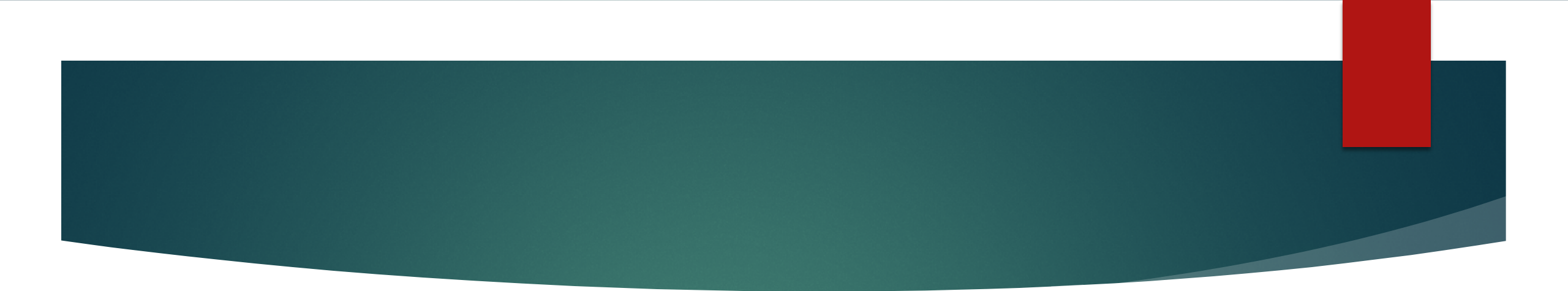
- 
- ▶ The Court cited to *In re E.R.*, 385 S.W.3d 552 (Tex. 2012) in stating that when a defendant's identity is known, service by publication is **generally inadequate**, and service by publication should be a **last resort**, not an "expedient replacement" for personal service. The Court stated that if personal service can be effected by the exercise of reasonable diligence, "substituted service is not to be resorted to".



What diligence is due?

- ▶ “A diligent search must include inquiries that someone who really wants to find the defendant would make, and diligence is measured not by the quantity of the search, but by its quality.”

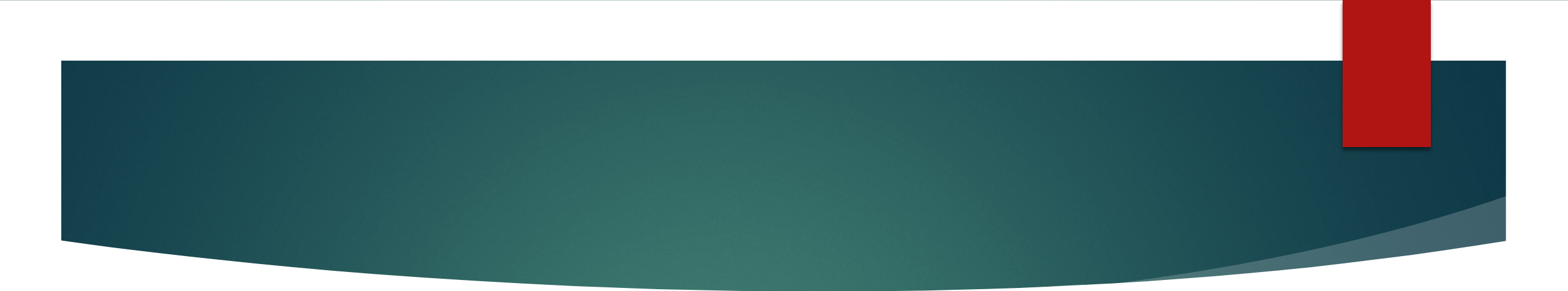
- 
- ▶ Problems with due diligence:
 - Phone calls – language barrier
 - Letter – green card signed by someone else should have caused further inquiries.
 - Searches with google, diligent search unit and other Texas agencies only valid in Texas

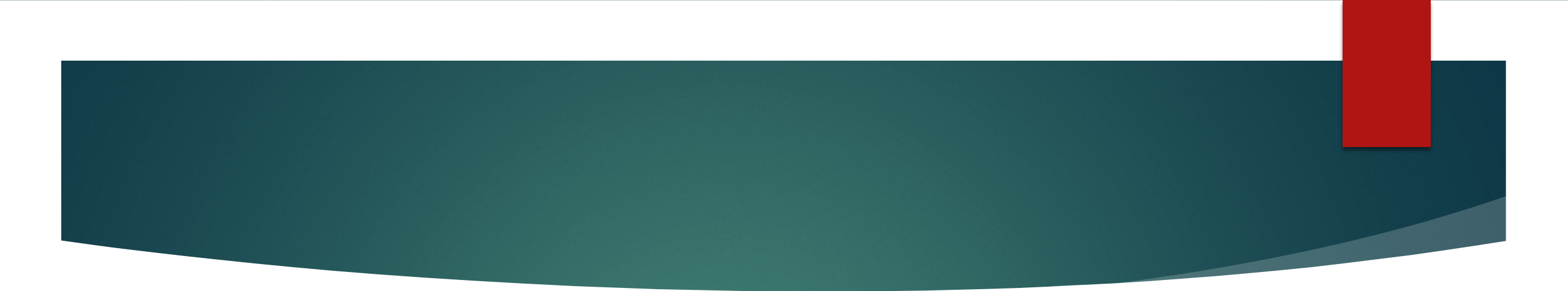
- 
- ▶ The Court noted that publication in Texas when Father was known to live in California was “a poor” and “hopeless substitute for actual service of notice.”
 - ▶ Court held that the trial court’s finding of fact regarding the diligence of the Department’s search for Father was not supported by the evidence and citation by publication in this case, was constitutionally inadequate.

Subject Matter Jurisdiction

In re J.I.M., 516 S.W. 3d 674 (Tex. App.—Texarkana 2017,
no pet.)

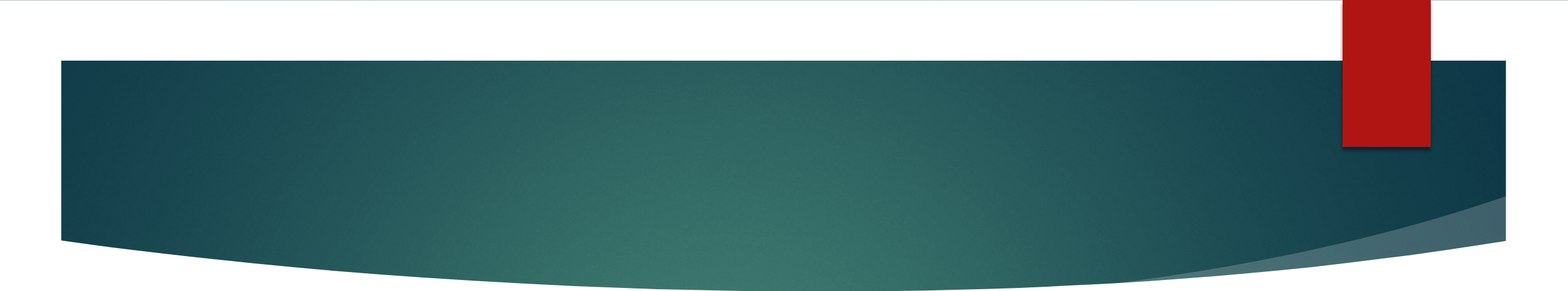
- ▶ 2010 – District Court established paternity and determined conservatorship
- ▶ 2015 – Department filed parental termination petition in County Court at Law of the same county
- ▶ County Court at Law has concurrent jurisdiction with District Court

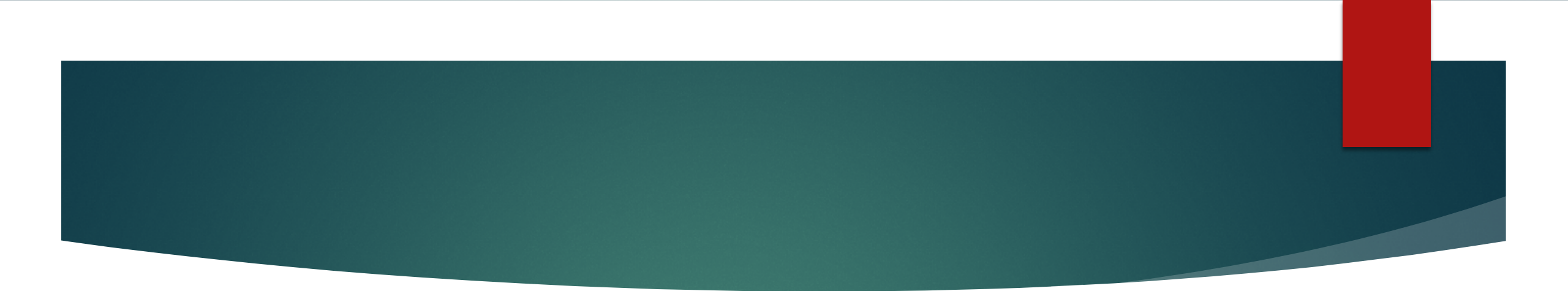
- 
- ▶ Affidavit attached to Original Petition;
 - ▶ AG's Answer; and
 - ▶ Exhibit at trial
 - ▶ Inform County Court at Law about District Court case

- 
- ▶ Holding:
 - ▶ Because District Court was the court of continuing, exclusive jurisdiction; and
 - ▶ there was no order of transfer
 - ▶ The Order of Termination was void.

In re. L.S., No. 06-17-00113-CV, 2018 WL 1281692 (Tex. App.—Texarkana Mar. 9, 2018, no pet. H.) (mem. op.)

- ▶ March 2010, 307th Judicial District Court of Gregg County enters a final order regarding the subject children.
- ▶ March 2016, Department filed Original Petition seeking termination of parental rights in 71st Judicial District Court of Harrison County.
 - ▶ Department filed in Harrison County, which had emergency jurisdiction under 262.002, which states: a request for an emergency order can be filed “in a court with jurisdiction to hear the suit in the county in which the child is found.”

- 
- ▶ Department's petition also stated that "Continuing jurisdiction over the children has been established in another Court, and a timely transfer will be sought."
 - ▶ At trial, the trial court took judicial notice of the Gregg County court's file and entered an order terminating father's parental rights.

- 
- ▶ The Appellate Court abated the case to the trial court, noting that the appellate record was missing the Gregg County Order, any transfer order, and any evidence supporting a transfer.
 - ▶ Following a hearing before the trial court, the Appellate Court noted that there was:
 - ▶ (1) a Gregg County Final Order;
 - ▶ (2) a CCJ search indicating that Gregg County was the court of continuing, exclusive jurisdiction; and
 - ▶ (3) no transfer order.
 - ▶ Termination order was void.

Venue

Venue

TFC § 103.001

- ▶ Venue in an original SAPCR is generally proper where the child resides, unless:
 - ▶ An agreement of the parties (*or waiver of the parties*)
 - ▶ CCJ
 - ▶ Divorce (Fixed Venue)
 - ▶ Adoption suit
 - ▶ Some other explicit exception under (C)

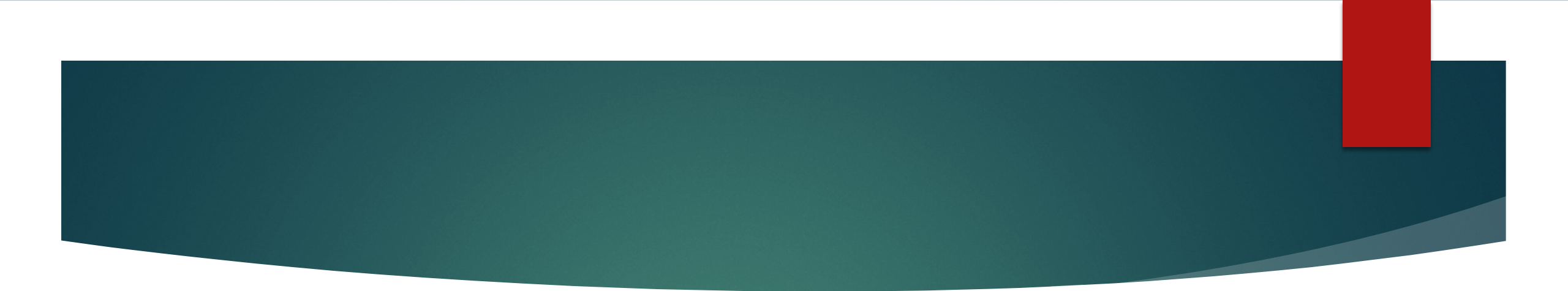
In re Nabors 276 S.W.3d 190 (Tex. App.—Houston
[14th Dist.] 2009, orig. proceeding)

- ▶ Transfer procedures under the Texas Family Code are the exclusive mechanism for transferring suits affecting the parent-child relationship and are designed to supplant the regular venue rules.

TRANSFER OF SUIT

Amendment to TFC § 262.203(a)

- ▶ (a) On the motion of a party or the court's own motion, if applicable, the court that rendered the temporary order shall in accordance with procedures provided by Chapter 155:
 - ▶ (1) transfer the suit to the court of continuing, exclusive jurisdiction, if any, within the time required by Section 155.207(a), if the court finds that the transfer is:
 - ▶ (A) necessary for the convenience of the parties; and
 - ▶ (B) in the best interest of the child;

- 
- ▶ (2) ~~[if grounds exist for mandatory transfer from the court of continuing, exclusive jurisdiction under Section 155.201,]~~ order transfer of the suit from the ~~[that]~~ court of continuing, exclusive jurisdiction; or
 - ▶ (3) if grounds exist for transfer based on improper venue, order transfer of the suit to the court having venue of the suit under Chapter 103.

MANDATORY TRANSFER

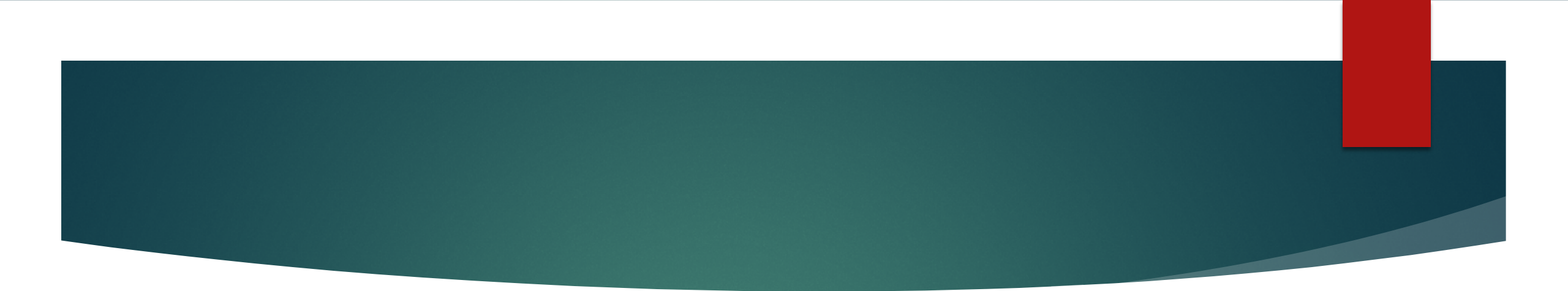
Amendment to TFC 155.201 adding (d).

- ▶ (d) On receiving notice that a court exercising jurisdiction under Chapter 262 has ordered the transfer of a suit under Section 262.203(a)(2), the court of continuing, exclusive jurisdiction shall, pursuant to the requirements of Section 155.204(i), transfer the proceedings to the court in which the suit under Chapter 262 is pending within the time required by Section 155.207(a).

PROCEDURE FOR TRANSFER

Amendment to TFC 155.204(i).

- ▶ (i) If a transfer order has been signed by a court exercising jurisdiction under Chapter 262, the Department of Family and Protective Services shall [~~a party may~~] file the transfer order with the clerk of the court of continuing, exclusive jurisdiction. On receipt and without a hearing or further order from the court of continuing, exclusive jurisdiction, the clerk of the court of continuing, exclusive jurisdiction shall transfer the files as provided by this subchapter within the time required by Section 155.207(a)

- 
- ▶ Eric Tai
 - ▶ Phone: (512) 929-6532
 - ▶ Email: eric.tai@dfps.state.tx.us