

# PARENT COUNSEL

## TERMINATION OF PARENTAL RIGHTS HEARING CHECKLIST

### A.C.A. '9-27-341

#### Purpose:

- ① To provide permanency in a child's life when a return home is contrary to the child's health, safety or welfare, and cannot be accomplished in a reasonable period of time, as viewed from the child's perspective (A.C.A. '9-27-341(a)(3)).
- ② To clear the child for permanent placement (A.C.A. '9-27-341(a)(2)).

#### Time constraints:

- ⌚ Upon the court's determination that the goal is termination of the parental rights, DHS shall file a TPR petition within 30 days of the permanency planning hearing that establishes TPR as the permanency goal (A.C.A. '9-27-338(f)).
- ⌚ If the Court determines the new permanency goal to be termination of parental rights, DHS shall file the TPR petition no later than the 15<sup>th</sup> month after the child's entry into foster care (A.C.A. '9-27-359(c)).
- ⌚ The court shall conduct and complete the TPR hearing within 90 days from the date the TPR petition is filed, unless continued for good cause as articulated in the written order of the court (A.C.A. '9-27-341(d)).
- ⌚ A written order shall be filed by the court, or by a party or party's counsel as designated by the court, within 30 days of the date of the termination hearing or before the next hearing, whichever is sooner (A.C.A. '9-27-341(e)).
- ⌚ After the TPR hearing, the court shall review the case at least every 6 months. A Permanency Planning Hearing shall be held each year after the initial permanency planning hearing, until permanency is achieved for that child (A.C.A. '9-27-341).

#### Petitioners:

- ✓ DHS
- ✓ Attorney Ad Litem

**Burden of Proof:** Clear and convincing evidence (*Note: in ICWA cases - beyond a reasonable doubt*).

#### Notice:

The petitioner shall provide the parent(s) or putative parent actual or constructive notice (§9-27-341(b)(2)(A)).

*Best Practice: Make sure all notice requirements have been complied with. Due diligence requires that OCC file a specific affidavit setting out the due diligence efforts that have been made, in addition to filing proof of publication. If not done, move to dismiss.*

The petitioner shall also contact the Putative Father Registry when the name or whereabouts of a putative father is unknown (§9-27-341(b)(2)(B)). The petition to TPR must contain the specific ground(s) for TPR, with specific facts to support each ground.

#### Pre-trial Preparations:

- *Before this hearing, realistically discuss with your client his/ her chances of succeeding at trial, and discuss options such as voluntary consent, guardianship, or permanent custody.*
- *Make sure the client knows that an involuntarily termination can be used in the future as grounds to terminate parental rights as to other children.*
- *Attend and participate in the staffing, or request mediation if appropriate, along with your client; discuss the case goal and concurrent goal.*
- *Prior to the hearing, if you anticipate arguing that DHS has failed to provide services, or are proceeding on any other grounds, file a Motion to Dismiss setting out in detail the reasons the petition should be dismissed (i.e., which services were not provided, or the length of delay before they were provided). Make sure to get a ruling on that motion at the final hearing.*
- *Review the petition carefully, and go over it with your client. The petition must be factual and specific. If it is not sufficiently specific, move to dismiss.*
- *Get CHRIS notes from DHS for the entire case.*

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- *Request a pre-trial hearing about a month prior to the final hearing to determine final witness lists, ensure exhibits have been exchanged, ensure discovery is completed, and to ensure service is proper.*
- *Interview all witnesses, including the caseworker, and review all evidence to be introduced into evidence; share your evidence with opposing counsel.*

### Present at Hearing:

- ✓ Judge;
- ✓ All parties, including children, unless they have been excused by the court for good cause;
- ✓ Attorneys for all parties;
- ✓ CASA volunteer, if appointed;
- ✓ Case worker, adoption specialist, ILP specialist;
- ✓ Relevant witnesses;
- ✓ Foster parents or relative caregivers;
- ✓ Court Reporter.

### Best Practice:

- *Petition for Termination of Parental Rights is a new petition, and DHS should be required to prove its case, and the specific grounds for TPR alleged in the petition, in this hearing.*
- *If an attorney moves to incorporate the entire record, object to relevancy, any hearings during which your client was not represented, and to the inclusion of the probable cause hearing because the rules of evidence didn't apply.*
- *Pleadings and testimony are the only things that can be incorporated (not exhibits, not statements of the parties or witnesses that are not sworn testimony).*
- *If other attorneys are repeatedly asking the same questions, object that questions have been asked and answered.*
- *Make a Motion for Directed Verdict at the close of the petitioner's case, and again at the closure of your own case. Motions for Directed Verdict must be very specific and analyze each element DHS is required to prove.*

### Issues:

- ✓ Is TPR in the child's best interest?

- Court shall rely on record of parent's compliance in the entire dependency-neglect case, and evidence presented at TPR hearing, to determine best interest.

- ✓ Has petitioner proved at least one of the statutory TPR grounds?

A parent's resumption of contact or overtures in following the case plan and court orders, following the permanency planning hearing and prior to the TPR hearing, is an insufficient reason not to terminate parental rights.

### Best Practice:

- *Call witnesses to refute DHS' witnesses.*
- *If it is a hotly contested TPR, and there is a previous caseworker who would testify positively about your client, make sure you subpoena the previous caseworker to testify.*
- *Discuss with your client the pros and cons of subpoenaing the child.*

- ✓ Does an appropriate permanency plan exist?

**Best Practice:** *Examine witnesses about the adoptability of the child (i.e., will the child consent to adoption, ages of children, sibling group).*

- ✓ What efforts have been made to place the child in an adoptive home?

**Best Practice:** *If the foster parents have wanted to adopt the child all along, and the foster parents are among the people testifying against your client, point out the bias of the foster parents as witnesses.*

- ✓ What type of visitation with relatives and siblings is appropriate?

**Best Practice if your client's parental rights are terminated:**

- *request a final visit between your client and the children, and ask that the therapist be included if needed;*
- *notify your client of the Mutual Consent Voluntary Adoption Registry and give him or her the information to contact the registry; and*
- *notify your client in writing of the right to appeal, and the required timelines. Discuss*

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*with him or her the likelihood of a successful  
appeal.*