PARENT COUNSEL DEPENDENCY-NEGLECT PROBABLE CAUSE HEARING CHECKLIST

A.C.A. '9-27-315

Purpose:

This hearing shall be limited to determining whether probable cause existed to protect the juvenile, and to determining if probable cause to protect the juvenile continues to exist; however, issues of custody and services may be considered by the court. **A.C.A. '9-27-315(a)(1)(B)**

Time constraints:

≅ The hearing, also known as an emergency hearing, shall be held within 5 business days of the issuance of the ex parte order **A.C.A. '9-27-315(a)(1)(A).**

≅ By agreement of the parties, and with the court's approval, the Adjudication Hearing can be held anytime after the Probable Cause hearing. However, the Adjudication Hearing shall be held within 30 days of the Probable Cause Hearing and may be continued for no more than 30 days upon motion of the court or parties for good cause shown. **A.C.A.'9-27-315(a)(2)(B) and '9-27-327(a)(1)(A)**.

≅ A written order shall be filed by the court, or by a party or party=s attorney, as designated by the court, within 30 days of the date of the emergency hearing, or prior to the next hearing, whichever is sooner. **A.C.A. '9-27-327(c)(3).**

Present At Hearing:

T Judge;
T All parties, including children, <u>unless</u> excused for good cause by court;
T Attorneys for all parties;
T Foster parents and relative caregivers;
T Assigned investigator and/or caseworker; and
T Court Reporter

Burden of Proof:

Petitioner must prove by a preponderance of the evidence that probable cause exists for continuation of emergency order **A.C.A. '9-27-315(b).**

Best Practice Prior to Court:

- ***Evaluate whether your client should stipulate to a finding of probable cause.***
- ***Evaluate whether reasonable efforts were made to prevent the removal of the children. Bring it to the judge's attention if reasonable efforts were not made (i.e., if substance abuse is the issue and the client is now in a residential treatment facility that allows children, or if environmental neglect caused removal, and payment of a gas bill would have prevented removal).***
- ***Meet with your client.***
- ***Review investigator's report, police report.***
- ***Identify and subpoena witnesses.***

Issues:

T Have all parties been identified, including putative father(s)?
T Do all parties who are entitled to counsel have counsel? For court-appointed counsel, custodial parents and guardians must request counsel and be indigent!
T What is the legal relationship of the parties to the children?
T Is the child of Native American heritage?
T Probable cause
  ➢ Did it exist to protect the child?
  ➢ Does it continue to exist?
T What needs should be addressed or services provided prior to an adjudication hearing?
T Establish custody and visitation (parents and siblings if separated) and possible relatives for placement so that a home study can be initiated.

Best Practice during the hearing:

- ***Be sure that OCC meets the burden of proof.***

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- ***Introduce into evidence the Affidavit Regarding Background Information and the Affidavit of Indigency.***
- ***If appropriate, ask that CASA be appointed, case-specific services be ordered, that home studies be done, and visitation be ordered. Also ask that the services be ordered to be in place by a date certain.***
- ***Request that paternity testing be ordered and that DHHS pay for the testing and all other services.***
- ***Advocate for the parent to be provided notice and be allowed to attend medical appointments, including the comprehensive examination for the child, and school activities.***
- ***Request that DHHS provide transportation to all appointments.***
- ***Leave court with an order stating the adjudication date and setting a staffing date.***
- ***Always take your calendar to Court.***
- ***When the hearing is being set, ensure appropriate time is scheduled for the adjudication.***

Court Findings and Orders:

¬That probable cause existed;

∧That probable cause continues to exist and the juvenile cannot be returned home OR the court shall return the juvenile home if it finds it is in the juvenile's best interest and the juvenile can be returned home safely pending adjudication. **A.C.A. '9-27-315(a)(1)(B) and '9-27-315(c)**

∨Court shall set date and time for adjudication hearing. **A.C.A. '9-27-315(d)(1)**

Note: If the juvenile has already been adjudicated dependent -neglected in the same case and a motion for custody is filed in that same case, a subsequent adjudication is not necessary if the ground for removal is the same type of ground already adjudicated in the same case. **A.C.A. '9-27-315(d)(2).**

Rules of Evidence do not apply at Probable Cause Hearing**. A.C.A. '9-27-315(e).** This means that hearsay is admissible.

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Best Practice Following the Hearing:

- ***Consult with your client(s) about the importance of attending visitation regularly and behaving appropriately during the visitation.***
- ***Educate your client about being responsible and explain what he or she needs to do to get the children back (i.e., going to all appointments, being stable, not having unknown men/women around the children).***
- ***Obtain an Order to Transport, if client is incarcerated and needs transportation to adjudication.***
- ***Ensure that appropriate time is scheduled for the adjudication.***