PARENT COUNSEL
TERMINATION OF PARENTAL RIGHTS HEARING CHECKLIST

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

Purpose:

¬ To provide permanency in a child's life where 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)).**

∧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, DHHS shall file a TPR petition within 30 days of the order (**A.C.A. '9-27-338(f)).**

🕓 If the Court determines the new permanency goal to be termination of parental rights, DHHS shall file the TPR petition no later than the 15th 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)(2)).**

🕓 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:

✓ DHHS
✓ 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. ***Best Practice: Make sure all notice requirements have been complied with. Due diligence requires that OCC file a specific affidavit setting out what due diligence efforts 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 are unknown (**§9-27-341(b)(2)(B)).**

Pre-trial Best Practices:

- ***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 on other children.***
- ***Prior to the hearing, if you anticipate arguing that DHHS 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 DHHS for the entire case.***
- ***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.

Present at Hearing:

T Judge;
T All parties, including children, unless they have been excused by the court;
T Attorneys for all parties;
T CASA volunteer, if appointed;
T Case workers;
T Relevant witnesses; and
T Court Reporter.

Best Practice:

- ***Petition for Termination of Parental Rights is a new petition and DHHS should be required to prove its case during that 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). Even pleadings and testimony cannot be incorporated if the parent was not represented (A.C.A. 9-27-341(d)(2)).***
- ***If other attorneys are repeatedly asking the same questions, object to the questions being 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 DHHS is required to prove.***

Issues:

T 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 prior to the TPR hearing is an insufficient reason not to terminate parental rights.

Best Practice:
- ***Call witnesses to refute DHHS' 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.***

T 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).

T 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.

T 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 of the right to appeal and the required timelines. Discuss with him or her the likelihood of a successful appeal.***