PARENT COUNSEL
TERMINATION OF PARENTAL RIGHTS GROUNDS CHECKLIST

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

It is in the child's best interest <u>and</u> one of the following grounds:

Best Practice as to best interest:

- ***Make sure the petitioner proves that TPR is in the child's best interest by clear and convincing evidence. The court must hear evidence and make specific findings on the child's best interest.***
- ***Some children might not be able to live with their parents, but it would be detrimental to terminate parental rights because of the strong bond they have with their parents. Do you need a therapist to testify to the child's best interest not to terminate? Are there better permanency alternatives that serve the best interests of the children?***
- ***Does the agency have a viable permanency plan of adoption for this child? Does the child want to be adopted? What kind of bond does the child have with the parent?***
- ***Parties cannot stipulate to best interest. The petitioner must present specific best interest as to the best interests of the child.***

¬ The child was adjudicated d-n, and has been out of home for 12 months & despite meaningful efforts to rehabilitate, conditions which caused removal have not been remedied; **A.C.A. '9-27-341(b)(3)(B)(i)**

Best Practice:

- ***Make sure child was adjudicated d-n and has been out of the home for 12 months. Ensure the petitioner pleads specific facts as to reasons for removal, the specific efforts the agency provided to rehabilitate the conditions that caused removal, and why the conditions which caused removal have not been remedied.***
- ***If the petitioner fails to state specific facts to support ground, file motion to dismiss. Motion should set out in detail the reason the petition insufficiently establishes grounds. Reasons could include lack of specific facts or failure to provide services. Make sure to get a ruling on the motion to dismiss.***

∧ The child lived outside home for 12 months and parent willfully failed to support or maintain contact; **A.C.A. '9-27-341(b)(3)(B)(ii)**

Best Practice:

- ***Point out that in addition to the child having been out of the home for 12 months, the parent has to have willfully failed to provide support or maintain contact.***
- ***If the parent has not been ordered to provide support, argue that failing to pay it wasn't willful when it wasn't ordered and that shouldn't be held against the client.***
- ***If your client has been bringing food, clothing, toys, or other things to the visits (i.e., throwing a birthday party for the child during visits), argue that constitutes support. The appellate courts have held that a parent using funds in ways ultimately beneficial to the child and to remedy the parents' circumstances should not have her rights terminated for failure to support. Minton v. DHS.***
- ***If your client has visited regularly, that is maintaining contact.***

∨ The presumptive legal father is not biological father; **A.C.A. '9-27-341(b)(3)(B)(iii)**

⇔ The child was abandoned; **A.C.A. '9-27-341(b)(3)(B)(iv)**

⇐ The parent has executed consent to TPR or adoption; **A.C.A. '9-27-341(b)(3)(B)(v)**

〉 The court has found the child to be a victim of dependency-neglect as a result of neglect or abuse that could endanger the child's life, sexual abuse or sexual exploitation perpetrated by the juvenile's parent(s); **A.C.A. '9-27-341(b)(3)(B)(iv)**

⇒ Subsequent to the dependency-neglect petition, other factors/issues arose which demonstrate return is contrary to child's health, safety or welfare & that despite the offer of appropriate family services, the parent has manifested the incapacity or indifference to remedy the subsequent issues or factors which prevent return to the family home; **A.C.A. '9-27-341(b)(3)(B)(vii)**

Best Practice: If DHHS is using this ground for TPR, protect your client's due process rights by ensuring that the subsequent factor or issue was adjudicated.

⇓ The parent is sentenced in a criminal proceeding for a period of time which would constitute a substantial period of the child's life; **A.C.A. '9-27-341(b)(3)(B)(viii)** or

◊ The parent is found by a court of competent jurisdiction to have:

- Committed murder or voluntary manslaughter of any child;
- To have aided, abetted, attempted, conspired or solicited to commit such murder or voluntary manslaughter;
- Committed a felony battery or assault that results in serious bodily injury to any child;
- Subjected the child to aggravated circumstances as defined in 9-27-303(6);
- Had parental rights involuntarily terminated as to a sibling of the child; or

Best Practice: Consider the grounds of the prior involuntary termination and argue relevance if the circumstances of the current case differ. Consider due process and equal protection arguments. Also, see if the prior termination was prior to ASFA, because some states have held that a termination prior to ASFA cannot be used to terminate parental rights pursuant to this statute.

- Abandoned an infant. ACA **'9-27-341(b)(3)(B)(ix)**

Effect of a TPR order:

A TPR order terminates the parent-child relationship and divests the parent and the child of all legal rights, powers and obligations between each other, including the right to withhold consent to adoption. A child has a right to inherit until the final adoption is entered. **A.C.A. '9-27-341(c)(1)**

TPR between a child and one parent does not affect the relationship between that child and the other parent if those rights were legally established and not terminated. If no legal rights have been established, a putative parent must prove significant contacts existed with the juvenile in order for the rights to attach. **A.C.A. '9-27-341(c)(2)**