

Final Hearing Checklist

(for non-jury trial)

Prior to Final Hearing:

- Notice provided to parties within 45 days of trial
- All parties served
- Legal relief properly plead
- Compliance with Indian Child Welfare Act, if applicable

At Hearing:

- Note appearances of all parties present
- Take announcements about readiness to proceed to trial
- Rule on any pending pretrial motions
- Opening Statements, unless waived
- Presentation of evidence
- Closing arguments, unless waived
- Evidence
 - Grounds for termination
 - *Holley v. Adams* Best Interest:
 - desires of the child
 - emotional and physical needs of child now and in future
 - emotional and physical danger to child now and in future
 - parental abilities of individuals seeking custody
 - programs available to assist those individuals to promote best interest of child
 - plans for child by these individuals or by agency seeking custody
 - stability of home or proposed placement
 - acts or omissions of parent which may indicate that existing parent-child relationship not a proper one
 - any excuse for acts or omissions of the parent

At the End of the Hearing:

- Determine if met burden of proof:
 - Termination of Parental Rights: Clear and Convincing Evidence
 - If ICWA applies: Beyond a Reasonable Doubt
 - Conservatorship: Preponderance of the Evidence
- If termination, appoint DFPS or individual as managing conservator (MC)
- If no termination and DFPS awarded MC, find that:
 - Appointment of parent not in child's best interest because would significantly impair child's physical health or emotional development; and
 - Not in child's best interest to appoint relative of child or another person as managing conservator
- If no termination and DFPS awarded MC, consider whether:
 - The child will turn 18 in not less than 3 years;
 - The child is at least 12 years old or has continuously expressed a strong desire against being adopted; and
 - Needs and desires of child
- Advise parties of right to appeal
- Set Permanency Hearing After Final Order (PHAFO) within 90 days if MC granted to DFPS with termination
- Set PHAFO within 180 days if MC granted to DFPS without termination

Best Practices:

- Remind Parent Attorney of appellate duties
- Set initial hearings sooner than statutorily required to ensure progress toward child's permanency goal
- Continue appointment of child's attorney ad litem (AAL) and guardian ad litem (GAL) until child reaches permanency/exits foster care.