Adversary Hearing Checklist

Statutory

Prior to the Hearing, review the court file to determine:

- ☐ Was hearing set within 14 days of removal? Tex. Fam. Code § 262.201(a) unless temporary order extended under Tex. Fam. Code § 262.201(e) or (e-1)
- ☐ Child's GAL/AAL was appointed and notified of hearing. Tex. Fam. Code §§ 107.011, 107.012
- ☐ All necessary parties served. Tex. Fam. Code § 102.009
- ☐ A certified copy of the child's birth certificate was filed under seal and separate from any other document. Tex. Fam. Code § 102.008(c-1)
- ☐ Court of Continuing, Exclusive Jurisdiction identified. Tex. Fam. Code § 155.101

At the Hearing:

- ☐ Determine if language interpretation is needed. Tex. Gov't Code § 57.002
- ☐ Identify those present, note those not present, determine service on parties, and swear witnesses. Tex. Fam. Code § 102.009
- ☐ Parents not represented by attorney are informed of right to be represented by an attorney, and if indigent and in opposition to suit, of right to court-appointed attorney and for good cause, postpone the hearing for up to 7 days to allow the attorney time to prepare. Tex. Fam. Code § 262.201(c), (e)
- ☐ Parents not represented by attorney are informed of right to be represented by an attorney, and if not indigent, but in opposition to suit, of right to hire an attorney and postpone hearing for up to 7 days to allow for hiring. Tex. Fam. Code § 262.201(e-1)
- ☐ If a parent claims indigence, hear evidence and make determination. Tex. Fam. Code § 262.201(d)
- ☐ Before commencing hearing, confirm in writing and in open court, that:
  - Before conducting an interview, DFPS informed the alleged perpetrator of their right to create an audio or video of the interview and to request an administrative review of the DFPS findings. Tex. Fam. Code § 262.2011(1); and
  - When DFPS first contacted the alleged perpetrator after initiating an investigation, DFPS provided the alleged perpetrator with the information required by Tex. Fam. Code § 261.307. Tex. Fam. Code § 262.2011(2)
- ☐ Confirm that DFPS generated notice to relatives. Tex. Fam. Code § 262.1095(a)
- ☐ Determine whether parent, alleged father, or relative before the court submitted Child Placement Resources Form. Tex. Fam. Code §§ 261.307(a)(2), 262.201(l)
- ☐ Determine whether the child has had the opportunity to provide information about relative or designated caregivers. Tex. Fam. Code § 262.201(l-1)(1)
- ☐ Review placement and determine whether DFPS and criminal background checks were conducted and whether home studies have been initiated. Tex. Fam. Code § 262.114(a-1)(2) and (b)
- ☐ Determine whether DFPS is able to place with relative and note evidence supporting decision. Tex. Fam. Code § 262.0022
- ☐ If the child has been placed with a relative or designated caregiver, inform the individual serving as a placement for the child of the ability to become a licensed foster parent and apply for the Permanency Care Assistance program. Tex. Fam. Code § 262.201(n-1)
- ☐ Inquire about Indian/Native American Heritage. 25 U.S.C. § 1912; Tex. Fam. Code § 262.201(f)
  - Inquire of all parties if there is Indian heritage in the family.
  - Determine which Tribes may be involved.
  - Ensure proper notice to parent, Tribe if known, and Secretary of the Interior and Bureau of Indian Affairs if Tribe unknown. **(*See* Topical Checklist: ICWA)**
- ☐ Ask Child's Attorney Ad Litem (AAL) if they have seen client and when.
- ☐ If AAL has not seen client, determine whether the AAL has shown good cause for not meeting with the client. Tex. Fam. Code § 107.004(e)
- ☐ Review and approve temporary visitation schedule. Tex. Fam. Code § 262.115

Adversary Hearing Checklist

continued

Court Findings

At the End of the Hearing:

- ☐ Regarding the parent from whom the child was removed to grant DFPS TMC of child: return the child to that parent unless there is evidence sufficient to satisfy a person of ordinary prudence and caution that:
  - There was / is a danger to physical health or safety of the child, which was / is caused by the act or failure to act of the person entitled to possession. Tex. Fam. Code § 262.201(g)(1)
  - The urgent need for protection required the immediate removal of the child / or requires the removal and reasonable efforts have been made to prevent or avoid removal. Tex. Fam. Code § 262.201(g)(2)
  - Reasonable efforts have been made to enable a child who has been removed to return to the home but there is a substantial risk of a continuing danger if the child is returned home. Tex. Fam. Code § 262.201(g)(3)
- ☐ If there is a parent before the court who was not involved in the circumstances regarding the removal, place the child with that parent unless the evidence is sufficient to satisfy a person of ordinary prudence and caution that:
  - The parent cannot be located or is unwilling to take possession of the child; or
  - Possession of the child by the parent constitutes a continuing danger to the child despite reasonable efforts by DFPS to enable that person's possession.

Tex. Fam. Code § 262.201(g-1)

- ☐ If evidence is sufficient to appoint DFPS as TMC, inform parents that their rights may be terminated or limited. Tex. Fam. Code § 262.201(m)
- ☐ Determine if aggravated circumstances are alleged or exist. Tex. Fam. Code § 262.2015
- ☐ Determine whether family violence has occurred and if Protective Order necessary or available. Tex. Fam. Code § 262.201(k)
- ☐ Determine whether the child is a victim of human trafficking and needs placement in secure agency foster or group home. Tex. Fam. Code § 262.011
- ☐ Unless not in the child's best interest, place the child with a relative. Tex. Fam. Code § 262.201(n)
- ☐ **ISSUE COURT ORDER** and include or address:
  - Service on all parties entitled to service. Tex. Fam. Code § 102.009
  - Notice of removal to all parties entitled to notice. Tex. Fam. Code § 262.1095
  - Parentage or genetic testing. Tex. Fam. Code § 160.502
  - Dismissal date. Tex. Fam. Code § 263.401
  - Transfer to court of continuing, exclusive jurisdiction, if necessary for convenience of parties and in child's best interest or order transfer of the SAPCR from the CCEJ or if grounds exist based on improper venue, order transfer of the suit to the court having venue of the suit under Tex. Fam. Code Ch. 103. Tex. Fam. Code § 262.203
  - Describe with specificity in a separate section all reasonable efforts made to return the child home or to place the child with a non-custodial parent. Tex. Fam. Code § 262.201(g-2)

Adversary Hearing Checklist

continued

Best Practices

- ☐ Review diligent efforts to locate parties not present.
- ☐ Engage parties with direct questions:
  - *Do you speak English?*
  - *Do you understand the purpose of this hearing?*
  - *Do you understand what I've explained about your parental rights?*
- ☐ Ask DFPS direct and specific questions about reasonable efforts.
  - *Tell me what efforts you made to prevent or eliminate the need to remove Sam Smith.*
  - *Tell me what efforts you made to enable Sam to return home.*
  - *Tell me specifically the continuing danger to Sam if he is returned home/remains in the home.*
- ☐ Review services with parents, as applicable or appropriate. Tex. Fam. Code § 263.105
- ☐ Set status hearing date and announce same in open court. Tex. Fam. Code § 263.201(a)
- ☐ Consider the following questions:
  - *What is preventing this child from returning home today?*
  - *How is my decision specific to this child and this family?*
  - *Are there issues impacting this family that we need to understand?*

Well-being Issues

- ☐ Education Decision-Maker, school stability, education goals, progress, school-related issues. Tex. Fam. Code § 263.004; Tex. Educ. Code § 25.001(g), (g-1)
- ☐ Medical care and behavioral or psychiatric care. Tex. Fam. Code § 266.007
- ☐ Young adult presence at hearing or opinion about education or medical care. Tex. Fam. Code §§ 263.302, 266.007