

## JUDICIAL CHECKLIST – TPR HEARING ON THE PETITION

This checklist is designed to highlight key questions that the court should ask at a Hearing on the Petition in a Termination of Parental Rights (TPR) case. It is not necessarily an exhaustive list and may need to be modified based on the specific circumstances of the case.

- ☐ Ask the attorneys: Is there a challenge to the legal sufficiency of the petition?
  - Name, birthdate, and address of the child.
  - Name and address of parents.
  - Grounds supported by facts?
  - Does WICWA apply?
- ☐ Determine whether all necessary parties have been given proper notice.
  - Default all properly noticed non-appearing parties, subject to evidence being presented supporting the TPR grounds.
  - Alleged fathers – paternity testing.
  - If case subject to WICWA, was tribe notified?
- ☐ Inform the parties of their rights:
  - Have the parties read the petition?
  - Explain 2 phases:
    - ❖ Jurisdiction or “grounds” – petitioner/state must prove by clear and convincing evidence that grounds for termination of parental rights exist.
    - ❖ Dispositional or “best interests” phase – where child’s best interests is prevailing factor.
  - Right to jury trial or you can ask the judge to decide whether the evidence does or does not support the grounds for termination. If you chose a jury trial, this means that at least 10 out of 12 jurors must be satisfied with the evidence. Jury trial must be requested before the end of the hearing on petition.
    - ❖ You have the right to testify and subpoena and present witnesses, as well as the right to cross-examine witnesses.
    - ❖ This is a civil, not a criminal, matter—so while you have the right to remain silent, the judge or jury may use that silence against you.
  - Right to be represented by an attorney – if you cannot afford an attorney, the public defender’s office may appoint an attorney, if you qualify.
  - Right to substitute the judge assigned to hear the case. This must also be requested before the end of the hearing on petition.

- ❑ Determine whether party wishes to be represented by counsel.
  - If so, make a good cause finding and adjourn the hearing.
    - ❖ Any non-petitioning party shall be granted a continuance for the purpose of consulting with an attorney on the request for jury trial or substitution of judge.
  - Refer to public defender, if appropriate, and provide contact information.
  - If waive right to counsel, find whether knowing and voluntary waiver.
- ❑ Determine whether party is contesting the petition.
  - If petition is contested, set date for fact-finding hearing within 45 days.
  - If parent is voluntarily consenting to TPR, see TPR Voluntary Consent Checklist.
  - If parent is entering an admission or no-contest plea to grounds, engage in colloquy as provided in [§ 48.422\(7\)](#) to establish made knowingly, intelligently, and voluntarily:
    - ❖ Ask questions about education, mental health status, recent drug/alcohol use, etc.
    - ❖ Establish parent has understanding of nature of the acts and elements of the grounds alleged in the petition.
    - ❖ Advise parent that acceptance of plea will result in finding of parental unfitness.
    - ❖ Advise parent of the constitutional rights he/she is giving up.
    - ❖ Explain the next phase is disposition where:
      - Best interests of the child is the prevailing factor considered by the court.
      - Potential dispositions: grant the TPR or dismiss the petition.
    - ❖ Establish whether any promises or threats were made and parent was not coerced.
    - ❖ If unrepresented, explain attorney may discover defenses, mitigating circumstances, or alternative dispositions, which may not be apparent to them.
    - ❖ Hear testimony in support of the allegations in the petition.
- ❑ Inform the parents that they must personally appear at each court hearing and cooperate with counsel/discovery or risk being found in default.
- ❑ **If the hearing on the petition is adjourned, always remember to make a good cause finding on the record and ask if the GAL approves of the adjournment. For example:**
  - Alleged fathers need paternity testing.
  - A party was not properly served.
  - Party requests continuance to consult with an attorney.