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 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.