



Termination of Parental Rights Hearing Benchcard

CASE MANAGEMENT – BEFORE THE HEARING

Persons who should be present at the termination of parental rights (TPR) hearing'

- Judge or judicial officer
- Parents of each child whose rights have not been terminated
 - Mothers, fathers (legal, biological, alleged, putative, named), non-custodial parents – all possible parents
- Child
- Assigned caseworker
- Agency attorney and/or prosecuting attorney
- Attorney(s) for each parent
- Legal advocate for the child
- Guardian *ad Litem* (GAL); CASA
- The child's current placement (caregivers, foster parents, custodial adults, adoptive parents)
- All adult relatives of the child
 - Relatives (P.L. 110-351) with legal standing or other custodial adults, including adult half-siblings
 - Paternal and maternal relatives

ASFA states that when a child has been in foster care for 15 of the last 22 months, the agency “shall file or join a petition to terminate the parental rights of the child’s parents” absent compelling reasons not to do so, the child is being cared for by a relative or the state has not made reasonable efforts to reunify (42 U.S.C. § 675(5)(E)).

In every case in which the agency does not file for the termination of parental rights after the child has been in care 15 of the last 22 months, the agency must document why not filing for the termination of parental rights is in the child’s best interests (65 Fed. Reg. 4062, Jan. 25, 2000).

- Non-related extended family, fictive kin (persons known and trusted by the families; godparents)
- Parents of a sibling child, where such parent has legal custody of the sibling (P.L. 113-183)
- If ICWA applies: Indian custodian; the child's tribe and attorney; tribal representative/tribal liaison; ICWA-qualified expert witness
- Treatment and/or service providers
- Parent partners, parent mentors if assigned/available, substance abuse coach, DV advocate
- Cultural leaders, cultural liaison, religious leaders
- Adult or juvenile probation or parole officer
- Educational surrogate parent if appropriate
- Educational liaison/school representative
- Court-certified interpreters or court-certified language services
- Court reporter
- Court security

Among the persons whose presence may also be needed at the TPR hearing:

- Non-related extended family, fictive kin (persons known and trusted by the families; godparents)
- Parents of a sibling child, where such parent has legal custody of the sibling (P.L. 113-183)
- Cultural leaders, cultural liaison, religious leaders
- Adult or juvenile probation or parole officer
- Treatment and/or service providers
- Parent partners, parent mentors if assigned/available, substance abuse coach, DV advocate
- Education liaison/school representative/educational surrogate parent if appropriate
- Court-certified interpreters or court-certified language services

Review the relevant documents

- TPR petition
- In both instances of voluntary relinquishment and trial, prior to the court hearing the judge should review the court file which should provide:
 - reports, case plan, findings, orders, and a chronology of the child's out-of-home placements and treatment;
 - the age of the child and needs at removal;
 - a current report of the child's status and well-being;
 - circumstances leading to the filing of a termination of parental rights petition; and
 - an agency report of concurrent efforts to identify, recruit, and place the child with an adoptive family or other permanent placement.

Consider whether there are any related cases in juvenile or other courts

- Are there other family, delinquency, domestic violence, probate, guardianship, or criminal cases or orders of protection involved in this case?
 - What are the steps required for obtaining update/status?
- What is the impact on this hearing?
- Is there any impact on this hearing?
- Is there a potential for duplicative or conflicting orders?
- Can the judges consult?

CONDUCTING THE TERMINATION OF PARENTAL RIGHTS HEARING

Opening the Hearing

- Call the case.
- Identify the people in the courtroom and their connection to the case.
- Swear in the parties, participants, and relatives.
- Explain the type and purpose of the hearing.
- State the number of days the child has been in care and the number of placements to date.

Due Process Considerations

- NOTICE
 - Have the identity and location of all parents and/or guardians been determined?
 - If not, what diligent search efforts have been made? Are they sufficient?
 - Has paternity of all children been legally established? If so, how?
 - How were the parents and/or guardians notified of this hearing?
 - Was the notice in a language and form understandable to the parents and/or guardian?
 - If child, parents, legal custodians, caregivers, or relatives who requested notice are absent, confirm that they were properly noticed.
 - If parent is absent and has not been served, inquire about the diligent search.
 - Require a thorough description of efforts to locate and advise any absent parent of the hearing and confirm that a diligent search was begun. If needed, ask parents.
 - Have the foster parents, pre-adoptive parent, or relative providing care for the child been provided notice of, and an opportunity to be heard in, the hearing? (42 U.S.C. § 675(5)(G))
 - Has the agency exercised due diligence to identify and provide notice to all adult relatives of the

child's removal and their options to participate in the child's care and placement? (42 U.S.C. § 671(a)(29))

- Has the agency exercised due diligence to provide notice to all parents of a sibling child, where such parent has legal custody of that child? (P.L. 113-183 § 471(a)(29))
- If the child is eligible for membership in a federally recognized tribe, confirm that the tribe has been notified pursuant to ICWA.
- Do the provisions of the Americans with Disabilities Act, Service Members Civil Relief Act, UCCJA/UCCJEA, ICPC, or other federal laws apply to this case?

- **REPRESENTATION**

- Address any outstanding or new representation issues.
 - If the parents do not have representation, are they entitled to representation?
 - Determine if the right to counsel is understood.
 - Are there language issues to consider in appointing counsel?
 - If parents request counsel and claim to be indigent, have parents fill out an affidavit of indigency.
 - If parents are ineligible for the appointment of counsel or knowingly, intelligently, and voluntarily waive appointed counsel, ask if they want to proceed pro se or hire a private attorney. Explain pro se if necessary.
 - Has counsel had sufficient opportunity to consult with his/her client prior to the hearing?
 - Has counsel been appointed to represent the child? If not, appoint counsel to represent the best interests of the child if it has not yet been appointed.
 - Has counsel met with the child in person? Is counsel able to determine and advocate the child's position?
 - Should the court appoint a Guardian *ad litem* and/or CASA for the child?
 - If any counsel needs to be appointed, ensure that orders appointing counsel are expedited.

Engage parents, children, relatives, and foster parents present

- What language are you most comfortable speaking and reading?
- Do you understand what this hearing is about? (Explain purpose of hearing.)
- Do you understand the petition?
 - Do parents understand the consequences of termination, their right to a trial and to counsel, and the availability of less drastic legal alternatives?
 - If a plea is entered, determine whether it is entered knowingly, intelligently, and voluntarily.
- Was any alternative dispute resolution process used prior to the hearing? Who was involved in that process? What was the outcome?

KEY INQUIRIES, ANALYSES, AND DECISIONS AT THE TERMINATION OF PARENTAL RIGHTS HEARING

ICWA Inquiry and Determination

- Was the ICWA inquiry made by the agency? Whom did the agency ask?
- Has an ICWA determination been made?
 - If yes, different standards apply; refer to the ICWA Checklist.²
 - If yes, determine whether **active efforts** were made to provide remedial services and rehabilitative programs designed to prevent the breakup of the family and whether the active efforts were unsuccessful (25 U.S.C. § 1912(d)).

If ICWA applies, or the court has reason to believe ICWA applies, the court should refer to the ICWA Checklist.

REFLECTIONS ON THE DECISION-MAKING PROCESS TO PREVENT BIAS

Take a moment before every hearing or before making decisions in a case to ask yourself:

- What assumptions have I made about the cultural identity, genders, and background of this family?
- What is my understanding of this family's unique culture and circumstances?
- How is my decision specific to this child and this family?
- How has the court's past contact and involvement with this family influenced (or might influence) my decision-making process and findings?
- What evidence has supported every conclusion I have drawn, and how have I challenged unsupported assumptions?
- Am I convinced that reasonable efforts (or active efforts in ICWA cases) have been made in an individualized way to match the needs of the family?
- Am I considering relatives as preferred placement options as long as they can protect the child and support the permanency plan?
- Have I placed the child in foster care as a last resort?
- Have I integrated the parents, children, and family members into the hearing process in a way that ensures they have had the opportunity to be heard, respected, and valued? Have I offered the family and children the chance to respond to each of the questions from their perspective?
- Is this family receiving the same level and tailoring of services as other families?
- Is the parents' uncooperative or negative behavior rationally related to the involvement of the agency and/or the court?
- If this were my child, would I be making the same decision? If not, why not?

- If yes, determine whether there is evidence **beyond a reasonable doubt**, including testimony of a qualified expert witness, that continued custody of the child by the parent or Indian custodian is likely to result in **serious emotional or physical damage to the child** (25 U.S.C. § 1912(f)).

Questions that Must Be Answered to Determine Whether Grounds Exist for Termination of Parental Rights and Whether Termination and Adoption are in the Best Interests of the Child

WHEN AN AGREEMENT OR MEDIATION RESULTS IN VOLUNTARY RELINQUISHMENT OF PARENTAL RIGHTS

At the hearing, the judge should take the time to make sure that each parent understands the consequences of termination and the right to a trial. Among the questions judges should ask are:

- Was the parental consent to relinquishment voluntary and informed?
- Have both biological parents consented to relinquishment?
- Why is relinquishment and adoption in the best interests of the child?
- Is there a recommendation for adoption with contact? How is this recommendation, or lack thereof, in the best interests of the child?

For Indian children, the court must comply with the requirements of ICWA (25 U.S.C. 1913), which states that voluntary relinquishments must be:

- executed in writing;
- recorded before a judge and accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian;
- certified by the court that the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood;

- any consent given prior to or within 10 days after the birth of the child shall not be valid; and
- any parent or Indian custodian may withdraw consent for any reason at any time prior to the entry of a final decree of termination of parental rights (25 U.S.C. § 1913(c)).

WHEN THE CASE GOES TO TRIAL

Questions that must be answered when termination motions go to trial include:

- Were all parties properly identified and served?
- Does the evidence presented show that statutory grounds for termination of parental rights exist?
- Were reasonable efforts made to reunify?
- Is termination of parental rights in the best interests of the child?

Questions that Must Be Answered to Determine Whether Reasonable Efforts are Being Made Toward Adoption and to Finalize the Permanency Plan

IN ALL CASES, WHAT ARE THE CHILD'S SPECIAL NEEDS?

- Is current health and educational information available?
- Is a description of the child's current placement available?
- What services have been provided to the child, what progress has the child made, and what issues still need to be addressed, including cultural needs?
- Has the child received counseling with regard to termination of parental rights, and how is the child adjusting to the adoption plan?

IF THE PLAN IS RELATIVE OR FOSTER HOME ADOPTION

- What, if anything, remains to be done before the home is approved as the adoptive home? Can the adoption home study be waived and replaced with the kinship care or foster home study?
- Is there another person who spends significant time in the home involved with the family, and if so, has

that individual been interviewed for appropriateness?

- Has there been full disclosure to the relative or foster parent regarding the child's history and any current or potential disabilities?
- What is the timeframe for finalization?
- Have all appropriate subsidies been identified and has all paperwork been completed with regard to these subsidies? Will services follow the family if they move out of state? Is the adopting family aware of the details of all appropriate subsidy issues?

IF AN ADOPTIVE HOME HAS BEEN RECRUITED

- A detailed description of the family is needed. Is there another person who spends significant time in the home, and if so, has that individual been interviewed for appropriateness? Have all relatives been explored?
- If the child is an Indian child, does the home meet the placement preferences in ICWA, and if not, why not? What efforts has the agency made to identify a placement under ICWA?
- Has there been full disclosure to the adoptive family of the child's circumstances and special needs?
- What remains to be done, if anything, to process and approve the home?
- What are the transition and placement plans and timeframe? If visits have begun, how are the child and the adoptive family adjusting?
- What efforts will be made to ensure that the child's cultural and ethnic heritage and relationships are preserved? Does the adoptive family understand the special aspects of the child's cultural and ethnic heritage?
- If the home is in another locality from where the child currently lives, what are the plans to meet the child's educational and special needs for services? How will the educational and service transition occur?
- Have all appropriate subsidies been identified, and has all paperwork been completed with regard to these subsidies? Will services follow the family if they move out of the state? Is the adoptive family aware of the details of the appropriate subsidy issues?

If the child is an Indian child, what efforts are being made to identify potential adoptive homes in the child's tribal community, and what efforts are being made by the agency to comply with the ICWA placement preferences? (25 U.S.C. 1915)

- After placement in the adoptive home, what contact will the child have with the prior caretaker and others who have had positive relationships? Is the adoptive family agreeable to any contact plan that may have been recommended with the biological parent(s) and relatives?

IF AN ADOPTIVE HOME MUST BE RECRUITED

- What efforts are being made to identify potential adoptive homes both locally and in other jurisdictions? On what adoption exchanges and Internet sites is the child listed? What other efforts are being made?
- What is the status of investigating adults with whom the child has or has had a positive relationship regarding their potential as adoptive families?
- How many potential families have expressed interest in the child, and what is the status of the investigation of each family?

THE COURT'S WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW AT THE TERMINATION OF PARENTAL RIGHTS HEARING

- Persons present and how notice was provided to absent parties, paying particular attention to any biological parent, tribal representative or Indian custodian not present.
- If there was a voluntary relinquishment of parental rights, efforts made by the court to ensure the relinquishment were voluntary and informed.³
- How reasonable efforts were made to reunify the family. If no efforts were reasonable, a statement that based on family circumstances and child health and safety, all reasonable efforts were made.⁴
- If the case went to trial, whether or not termination of parental rights is granted. If so, under what statutory grounds and the specific reasons why the statute applies in this case.⁵ For Indian children, findings must include the special requirements of ICWA.
- Why termination of parental rights and adoption is in the best interests of the child.

IN A SEPARATE ENTRY:

- What is being done to ensure that reasonable efforts are being made to find an adoptive home and to finalize the permanent placement, with specific steps and timeframes that are to occur?
- A description of any special factors or conditions of the child that are identified as special needs, what services are to be provided to address these needs and who is responsible for providing each service.
- The date and time of the next review hearing (set for within 90 days).

POST-TPR PERMANENCY REVIEWS

- Because the goal is no longer reunification, the focus is on the agency taking all steps necessary to finalize the new permanent plan.
- The child well-being inquiry must go beyond basic questions of safety and physical health as the child welfare system is responsible for meeting the child's educational, emotional, and social needs, including preparing the child for successful transition to an adult, if appropriate.

SETTING THE STAGE FOR SUBSEQUENT HEARINGS AND ACHIEVING POSITIVE OUTCOMES FOR CHILDREN AND FAMILIES

Effective Case Planning Moving Forward: The court should set clear expectations for parties and advocates regarding the information to be provided to the court at subsequent hearings by inquiring about:

Trauma:

- Has trauma played a role in the child's behavior?
- Is trauma being sufficiently considered in decisions about where the child is going to live and with whom?
- Is there reason to believe that the child is a victim of sex trafficking or at risk of becoming a sex trafficking victim? Is the placement able to support their needs and are appropriate services in place? (P.L. 113-183)

Child Well-Being:

- Has the court fully considered well-being issues including education, physical and dental health, and mental/emotional/developmental health?
- Does the placement facilitate a sense of "normalcy" by supporting the child's participation in developmentally appropriate activities and events? (P.L. 113-183)
- If the child has been missing from placement(s), why did the child leave? How will the agency address those factors in current/subsequent placements? What experiences did the child have while absent? Was the child exposed to traumatic events? How will the current/subsequent placements address any needs resulting from that trauma? (P.L. 113-183)

Refer to the Preliminary Protective Hearing Chapter in the GUIDELINES for more detail.

CONCLUDING THE TERMINATION OF PARENTAL RIGHTS HEARING

Case Management – Prepare for the next hearing

- Make oral findings and orders that all participants can understand.
- Enter additional orders necessary to move the case toward permanency.
- Set review or permanency hearing and identify tasks to be accomplished.
 - Focus on permanency. State the number of months the child has been in care and how many months before the permanency hearing.
 - Identify an expected date for final reunification or achievement of another permanency plan for each child.
 - Set the date and time of the next hearing within state and federal timeframes. Review hearings should be set for at least 30 minutes.
- Identify persons whose presence is needed at the next hearing.
- Consider appropriateness of alternative dispute resolution process.
- Engage parents, children, relatives, and foster parents (see sample questions below).
- Complete a detailed written order.
 - Ensure all orders are written, signed, copied, and distributed to all parties at the end of the hearing.

PREPARE FOR THE NEXT HEARING

- Focus on permanency and mandatory timeframes.
- Set further reviews and permanency hearings and identify tasks to be accomplished.
- Make understandable findings and orders on the record.
- Engage parents, children, and other participants.

Engage parents, children, and family members

- Specifically ask parents and children if they understand what occurred at the hearing, and engage them in a conversation about next steps.
 - Can you tell me what happened here today?
 - Can you tell me what the next steps are?
- When calendaring the next hearing, all parties should be asked if the scheduling works for them, and if not, ask for a better time.
- Ensure that all remaining parties have contact information for caseworkers and attorneys and that they understand the process to request court review if necessary.
- Ask if there are any questions for the court.

If the court determines that a child has been abandoned or that reasonable efforts to return the child home are not required, a permanency hearing must be held within 30 days (42 U.S.C. § 671(a)(15)(E); 45 C.F.R. § 1356.21(h)(2)), and the agency must file a petition to terminate parental rights within 60 days, absent compelling reasons not to file (45 C.F.R. § 1356.21(i)(ii), and (iii)).

TERMINATION OF PARENTAL RIGHTS HEARING BENCHCARD ENDNOTES

¹ State and federal laws determine who must be present for any hearing to proceed. Noted participants may or may not be required by law; however, as many as possible should be encouraged to attend the initial hearing.

² *The Indian Child Welfare Act Checklists for Juvenile and Family Court Judges* are available from the National Council of Juvenile and Family Court Judges at www.ncjfcj.org.

³ For Indian children, this must include the special requirements of ICWA previously described in this Chapter.

⁴ *Ibid.*

⁵ *Ibid.*