

# Final Hearing Checklist for Non-Jury Trial

## Statutory

### 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

## Court Findings

### At End of 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.

