

Final Hearing Checklist

for non-jury trial

Statutory

Prior to Hearing, review court file to determine:

- Notice provided to parties within 45 days of setting for trial. [Tex. R. Civ. P. 245](#)
- All parties have been served. [Tex. Fam. Code § 102.009](#)
- Legal relief sought by parties properly plead. [Tex. Fam. Code § 102.003](#); [Tex. Fam. Code § 102.008](#)
- Ensure compliance with the Indian Child Welfare Act, if applicable. [25 U.S.C. § 1912](#)

At Hearing

- Recite appearances of all parties present at the hearing.
- Take announcements regarding readiness to proceed to trial.
- Rule on any pending pretrial motions.
- Opening Statements, unless waived.
- Evidence
 - See [Grounds for Termination Checklist](#)
 - Best Interest Factors to Consider:
 - the desires of the child
 - the emotional and physical needs of the child now and in the future
 - the emotional and physical danger to the child now and in the future
 - the parental abilities of the individuals seeking custody
- the programs available to assist those individuals to promote the best interest of the child
- the plans for the child by these individuals or by the agency seeking custody
- the stability of the home or proposed placement
- the acts or omissions of the parent which may indicate that the existing parent-child relationship is not a proper one
- any excuse for the acts or omissions of the parent. *Holley v. Adams*, [544 S.W.2d 367](#) (Tex. 1976)
- Closing arguments, unless waived

Court Findings

At End of Hearing

- Determine if evidence meets burden of proof to support pleadings:
 - For Termination of Parental Rights: Clear and Convincing Evidence, specified as to each ground alleged, as well as to that parent, and as to Best Interest of child. [Tex. Fam. Code § 101.007](#); [Tex. Fam. Code § 161.001\(b\)\(1\)](#) and (2); [Tex. Fam. Code § 161.206\(a-1\)](#)
 - For Conservatorship: Preponderance of the Evidence. [Tex. Fam. Code § 105.005](#)
 - For ICWA: Beyond a Reasonable Doubt. [25 U.S.C. § 1912\(f\)](#)
- If termination is ordered, appoint a managing conservator (DFPS or other suitable individual). [Tex. Fam. Code § 161.207](#)
- If termination is NOT ordered and DFPS is awarded managing conservatorship, find that:
 - Appointment of parent would not be in the child's best interest because it would significantly impair the child's physical health or emotional development; and
 - It would not be in the child's best interest to appoint a relative of the child or another person as the managing conservator. [Tex. Fam. Code § 263.404\(a\)](#)
- If termination is NOT ordered and DFPS is awarded managing conservatorship, 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
 - The needs and desires of the child. [Tex. Fam. Code § 263.404\(b\)](#)

Updated September 2020

Final Hearing Checklist

continued

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Court Findings

At End of Hearing

- Advise parties of their right to appeal. [Tex. Fam. Code § 263.405](#)
- Set Permanency Hearing After Final Order for 90 days if PMC granted to DFPS with termination. [Tex. Fam. Code § 263.501\(b\)](#)
- Set Permanency Hearing After Final Order for no later than 180 days if PMC granted to DFPS without termination. [Tex. Fam. Code § 263.501\(a\)](#)

Best Practices

- Remind Parent Attorney of appellate duties.
- Set initial placement review hearings sooner than statutorily required to ensure progress toward the child's permanency goal.
- Continue appointment of child's attorney ad litem (AAL) and guardian ad litem (GAL) until child reaches permanency through reunification, adoption, or conservatorship being given to an individual.