Final Hearing Checklist for Non-Jury Trial

Statutory

Prior to the Hearing:

- ☐ Notice provided to parties within 45 days of trial
- ☐ All parties served
- ☐ Legal relief properly pleaded
- ☐ Compliance with Indian Child Welfare Act, if applicable

At the 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
- ☐ Evidence
  - Grounds for termination
  - Best interest of the child; for factors *see Holley v. Adams*:
    - 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
  - Reasonable efforts by DFPS
- ☐ Closing arguments, unless waived

Court Findings

At the End of the Hearing:

- ☐ Determine if met burden of proof:
  - Termination of Parental Rights: Clear and Convincing Evidence (Grounds + Best Interest + Reasonable Efforts)
  - Conservatorship: Preponderance of the Evidence
  - If ICWA applies: Beyond a Reasonable Doubt
- ☐ If termination, appoint DFPS or individual as managing conservator (MC)
- ☐ If no termination and DFPS awarded MC, must find that:
  - Appointment of parent not in child's best interest because would significantly impair child's physical health or emotional development (Clear and Convincing Evidence); 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 six months if MC granted to DFPS without termination
- ☐ Continue appointment of child's attorney ad litem (AAL), or guardian ad litem (GAL), or attorney in the dual role as long as the child is in the conservatorship of DFPS

Best Practices

- ☐ Remind Parent Attorney of appellate duties
- ☐ Set initial hearings sooner than statutorily required to ensure progress toward child's permanency goal