

# Final Hearing Checklist

for non-jury trial

## Statutory

### Prior to Final Hearing, review the 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 the 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 Termination Grounds Checklist**
    - *Holley v. Adams* 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)
  - DFPS made reasonable efforts to return the child to the parent and despite those reasonable efforts, a continuing danger remains in the home.
- Closing arguments, unless waived.

## Court Findings

### At the End of the 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 against that parent,
    - best interest of child, and
    - whether DFPS made reasonable efforts to return the child to the parent and despite those reasonable efforts, a continuing danger remains in the home. [Tex. Fam. Code § 101.007](#); [Tex. Fam. Code § 161.001\(b\)\(1\),\(b\)\(2\), and \(f\)](#); [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, must 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\(a\)](#)

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# Final Hearing Checklist

*continued*

## Court Findings

- 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\(b\)](#)
- 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\(a\)](#)
- 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. [Tex. Fam. Code § 107.016](#)

## Best Practices

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