



PRE-HEARING TERMINATION OF PARENTAL RIGHTS CONFERENCE PROTOCOL Pilot Project: DHHS-AOC/ODR

Definition

The Pre-Hearing Termination of Parental Rights Conference (PHTPR) is a structured facilitated discussion among all parties that focuses on critical questions that need to be answered at an upcoming termination of parental rights hearing.

Purpose

The purpose of the PHTPR is to bring the parties together to gather information and determine whether the case is ready for trial regarding terminating parental rights and to provide the parties an opportunity to explore non-trial alternatives, all with the primary focus on the need for permanency for the child that are in the child's best interests. The PHTPR may result in an agreement among the parties regarding the permanency plan that can be presented to the Court but that is not the main purpose. Even if there is no agreement, the PHTPR participants should address all the questions that correspond with the questions of termination of parental rights and the child's permanency plan (detailed below). This information may be provided to the Court.

When

Optimally, the PHTPR should be held at least 6-8 weeks prior to the termination of parental rights hearing so that there is sufficient time for the parties to gather or provide any missing information that is needed to respond to the following questions.

Who attends

The PHTPR may be attended by two or more of the following parties: the parents and their attorneys; older children and youth and their attorneys; caseworker; guardians ad litem; relatives; foster parents; the county attorney.

Confidentiality and privilege

The PHTPR is governed by Neb. Rev. Stat. section 43-247.01 in regard to confidentiality and privilege. This provision states in part: "All discussions taking place during such facilitated conferences, including plea negotiations, shall be considered confidential and privileged communications, except communications required by mandatory reporting under section 28-711 for new allegations of child abuse or neglect which were not previously known or reported."

Facilitator

The facilitator(s) for the PHTPR of the pilot project between DHHS and AOC/ODR shall be trained, proficient child welfare facilitators affiliated with an ODR-approved mediation center. The facilitator will have a minimum of 30 hours of basic mediation training; have 8 or more hours of child welfare facilitation training; and 8 hours of continuing education per year on topics related to child abuse and neglect, juvenile justice, termination of parental rights, permanency planning, crisis management, cultural competency, role of the team, engaging families, or plan development.

Pre-conference preparations

The judge should order the PHTPR as soon as practicable in reference to the actual or anticipated filing of a Petition for Termination of Parental Rights. The PHTPR should be held within 14 days of the filing of the Petition for Termination of Parental Rights. All parties are expected to come to the PHTPR with information that responds to the questions that will be covered in the PHTPR and that are listed in the appendix. Attorneys should prepare their clients for the PHTPR. The PHTPR facilitator should review the court file prior to the conference. The ODR-approved mediation center will assist with case management and preparation for the PHTPR, including determining which parties should attend, when and where scheduled, and preparing the parties for the conference. The affiliated PHTPR facilitator should review the court file prior to the conference.

Conference

- 1) **Introduction:** The facilitator explains the process and each attendee introduces him/herself and his/her role in the legal case or in the child's life. If there is not a designated "scribe" the facilitator should ask one of the professionals to take notes. The facilitator provides information about confidentiality and privilege for communications during the conference.
- 2) **Updates on the child(ren):** The following should be covered for each child in the family
 - a. A description of each child's current placement and behavior.
 - b. If a sibling group, information on the status of the relationship and contact between siblings, including half siblings.
- 3) **Updates on the parents**
 - a. A description of the services provided to each parent, the status of the progress or the lack thereof the parent has made in regard to permanency.
 - b. A description of the contact that the parents have had with each child in the family.
- 4) **Discussion of recommendation of termination of parental rights:** The party that filed the Petition should present its recommendation for termination of parental rights and recommended permanency and explain why. Other parties should briefly discuss their agreement or disagreement with the request for termination of parental rights and recommended permanency.

- 5) **Addressing permanency plan questions:** If there is consensus at the PHTPR regarding the ultimate permanency objective, then only the questions for that plan need to be addressed at the PHTPR. If there is not agreement, each plan that is supported by a party should be addressed.
- 6) **Discussion of next steps:**
- a. Discussion of any activities/plans that will occur prior to the termination of parental rights hearing. Designate person who is responsible for each part and a timeline.
 - b. Discussion of any activities or plans that will occur should voluntary relinquishment be decided. What would be the timeline and who would take those next steps?
 - c. Discussion of any activities or plan that will occur should reunification or other permanency plan be considered. What would be the timeline and who would take those next steps?
 - d. Determination of what non-privileged information should be provided to the court and by whom.

Appendix A

Questions for PHTPR

IF TERMINATION OF PARENTAL RIGHTS (TPR) AND ADOPTION ARE RECOMMENDED:

- What are the facts and circumstances supporting the grounds for termination?
- What reasonable efforts were made to reunify?
- Why is this plan in the best interest of the child(ren)?
- Has the petition been filed and if not, what is the date it will be filed?
- Has voluntary relinquishment of parental rights been explored? What does the parent understand about their legal rights? What would be consequences for this child if voluntary relinquishment went forward? For any other non-involved children?
- Are there relatives who will adopt the child if TPR is granted? If so, is the child living with the relative? If not, why not? Who are the relatives that might be possible adoptive parents? If there are no relatives willing and able to adopt, why not?
- If relative adoption is not the plan, is adoption by the foster parents the plan? If not, why not?
- If an adoptive home must be recruited, what efforts are being made to identify potential adoptive homes both locally and in other jurisdictions? Are there adults with whom the child has a positive relationship and are they potentially adopting families?
- Will adoption with contact be recommended and why or why not? What might the level of contact be?
- What counseling will occur to assist the child to deal with this change of plan?
- If the child is an Indian child, have ICWA requirements been met?

IF PERMANENT GUARDIANSHIP OR PERMANENT CUSTODY IS RECOMMENDED:

- Why is this option preferable to TPR and adoption? Why is it in the best interest of the child(ren)?
- What reasonable efforts were made to reunify?
- What are the facts and circumstances demonstrating the appropriateness of the individual or couple to serve as permanent family to the child(ren)? Is there another person who spends significant time in the home, and if so, has that individual been interviewed for appropriateness?
- Has there been full disclosure to the family of the child(ren)'s circumstances and special needs?
- What is the plan to ensure that this will be a permanent home for the child(ren)?
- What contact will occur between the child(ren) and parents, siblings, and other family members?
- What financial support will be provided by the biological parents?
- What are the plans to continue any necessary services to the child(ren)? How will these services be funded after the guardianship or custody has been granted?
- If the child(ren) are not already placed in the home, why not and:
 - How often is ~~visitation~~ parent-child contact occurring and what is the impact on the child(ren)?

- What is the date and detailed plan for the child(ren)'s placement in this home and follow-up supervision after placement?
- If a change in school will occur, what will be done to prepare the transition?
- Will the state continued to offer any financial assistance to the guardians once finalized?

IF ANOTHER PLAN (INCLUDING REUNIFICATION) IS BEING RECOMMENDED:

- What are the compelling reasons not to proceed with reunification, TPR, adoption, permanent guardianship or permanent custody? What is the plan, and why is this plan in the child(ren)'s best interest?
- What reasonable efforts were made to reunify the child(ren) with the parent(s)?
- How will this plan provide stability and permanency for the child(ren)?
- What contact will occur between child(ren) and parents, siblings and other family members?
- What are the plans to continue any necessary services to the child(ren)?
- If the child is a teenager, what is the plan to prepare the child for independent living?
- If the child(ren) are not already placed in a home, why not and:
 - How often is parent-child contact occurring and what is the impact on the child(ren)?
 - What is the date and detailed plan for the child(ren)'s placement in this home and follow-up supervision after placement?
 - If a change in school will occur, what will be done to prepare the transition?