

Termination of Parental Rights Hearing

MCR 3.977 | MCL 712A.19b | SCAO Form JC 63

The termination of parental rights, or permanent wardship, hearing is divided into two phases. The first phase is to determine whether there is clear and convincing evidence to support statutory grounds for termination of parental rights. The second phase is to determine if it is in the child's best interests to terminate parental rights.

Procedural Issues

Must hold within 42 days of filing supplemental petition (21 day extension permitted for "good cause").

Was legally sufficient notice given to necessary parties?

If child is an Indian child, see the ICWA/MIFPA bench card.

Are the parent(s) and child represented by counsel?

If a parent is in prison is he or she able to participate in person or via telephone/video conference?

If there is only one respondent parent, what is the status of the other parent? What has the agency done to locate and engage the other parent?

Evidentiary Standards—MCR 3.997(H) & (F)

Original Allegations

- Rules of evidence do not apply, other than those with respect to privileges that have not been abrogated by MCL 722.631.
- Clear and convincing evidence that is relevant and material.

If the parent was not adjudicated (i.e., plea by the other parent):

- The Rules of Evidence do apply.
- Must find *clear and convincing* legally admissible evidence as to the non-adjudicated parent.

New or Different Allegations

- Rules of evidence do apply.
- Clear and convincing legally admissible evidence. This standard also applies when termination is sought at the initial disposition.

★ Required Judicial Findings/Orders

Determine if at least one statutory ground for termination has been proven by clear and convincing evidence.

If statutory grounds have been proven, determine if termination of parental rights is in the child's best interests. See second page.

If grounds do not exist and/or termination is not in the child's best interests, dismiss the petition.

If grounds exist and termination is in the child's best interests, enter timely order terminating parental rights and that further efforts to reunify the family must not be made.

State on the record, or in writing, findings of fact and conclusions of law.

If in writing, the decision shall be filed within 28 days after taking final proofs, but no later than 70 days after commencement of the hearing.

If termination of parental rights is ordered:

- Determine whether to maintain the child as a county ward or commit the child to the MCI Superintendent.
- Schedule post-termination review hearing within 91 days, if continuing in foster care or within 182 days if residing in APPLA or with a fit and willing relative.

Continued on reverse

Termination of Parental Rights Hearing (cont.)

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Best Interests Determination

A finding that termination is in the child's best interests must be supported by a preponderance of the evidence.

The following is a non-exhaustive list of factors for the court to consider when making a best interests determination:

The court must consider relative placement.

The court may consider:

- Child-parent bond.
- The child's age and need for stability and permanency.
- The opinion of experts, including psychologists, therapists, LGAL, and caseworker.
- The child's wishes.
- The likelihood of the child being adopted.
- Ethnic or cultural considerations.
- The child's bond with siblings, if appropriate.

Mandatory Advice of Rights to Parent Upon Termination

The court shall inform a parent of the following rights orally, or in writing, immediately after entry of an order terminating parental rights. SCAO form JC 44 may be used to provide the written advice of rights.

Parent is entitled to appellate review.

If the parent is unable to afford an attorney, the court will appoint one to assist with an appeal and furnish the attorney with portions of the transcript and record as may be required.

A request for assistance of an attorney must be made within 14 days after notice of the order terminating parents rights is given, or order entered denying a post-judgment motion.

Parent has the right to keep identifying information current with the Central Adoption Registry.

Parent has the right to file a denial of release of identifying information.