

OCC PROBABLE CAUSE HEARING CHECKLIST

Purpose:

This hearing shall be limited to determining whether probable cause existed to protect the juvenile and to determining if probable cause to protect the juvenile continues to exist; however issues of custody and services may be considered by the court. 9-27-315(a)(1)(B)

Time constraints:

The Probable Cause Hearing shall be held within 5 business days of the issuance of the ex parte order. 9-27-315(a)(1)(A)

Pre-trial Preparations:

- Service on parents, guardians or custodians
- Notice to CFS/CACD of PC Hearing
- Subpoenas issued to all witnesses, including CACD, if needed to ensure appearance
- Exhibits copied, marked and distributed
- Bring calendar to Court
- Set staffing date prior to or during hearing
- Communicate with counsel for all parties to see if any facts can be stipulated
- Determine if juvenile has been excused from attendance at hearing
- Obtain completed Affidavit of Background Information to introduce into evidence
- Obtain completed Affidavit of Financial Means to introduce into evidence
- Notice of hearing to CASA if appointment of CASA was requested

Burden of Proof:

Petitioner has proof of preponderance of the evidence that probable cause exists for continuation of emergency order. 9-27-315(b)

Hearing Issues:

- ❖ Probable cause
 - Did it exist to protect the juvenile?
 - Does it continue to exist?
- ❖ Ascertain if the juvenile can safely return home pending the adjudication hearing and if it is in the best interest of the juvenile to do so

Elicit Testimony on these Issues:

- If parents are not present, worker's efforts to locate parent and OCC efforts to provide notice of hearing
- Reason emergency custody was needed to protect juvenile (NOTE: Hearsay is admissible)
- Paternity of each child
- If no father identified, question mother or other witnesses about name and location of putative father
- Have parents provide address for all future legal service on this case
- Address for parties whose whereabouts are unknown.
- Native American heritage to see if ICWA applies
- Services which need to be ordered prior to adjudication hearing
- Parameters of visitation (parents and siblings if separated) to ensure protection of children
- Inquire about possible relatives for placement
- Request appointment of CASA, if appropriate
- Ask Court to Order Parents to watch Clock is Ticking Video
- Give parents a copy of the Green Book.
- Determine if parent or guardian receive any child support, social security or SSI and redirect to DHHS
- Obtain employment information from parents (if haven't completed Affidavit of Financial Means) and ask court to set child support based on chart
- Counsel share contact information, including email addresses
- Give written notice of Adjudication Hearing to parents or guardians
- If child is returned to custody of parents pending adjudication hearing, what is the safety plan

Exhibits

- Affidavit of Background Information
- Affidavit of Financial Means

OCC PROBABLE CAUSE HEARING CHECKLIST

Post-Trial:

- A written order shall be filed by the court or by a party or party's attorney as designated by the court within 30 days of the date of the emergency hearing, or prior to the next hearing, which ever is sooner.
- Distribute a copy of the order to all parties and CFS
- Inform investigator and caseworker of date and time of adjudication hearing (Pulaski add to docket calendar)
- Key data in legal screens on CHRIS

Best Practice: Follow up with CFS to ensure compliance with court orders.

Note: If juvenile has already been adjudicated d-n in same case and a motion for custody is filed in same case, a subsequent adjudication is not necessary if the ground for removal is the same type of ground already adjudicated in same case. **9-27-315(d)(2)** Rules of Evidence do not apply at Probable Cause Hearing. **9-27-315(d)(e)**