

3

General Information and Ascertainment of Paternity

➤ *Comment.* All witnesses must be sworn before testifying.

Sworn Testimony of Birth Parent(s)

➤ *Comment.* Questions may be asked of both birth parents together, but each birth parent must answer individually and completely.^[1]

Biographical Information

§

3.1

- What is your name?

§

3.2

- What is your address?
- In what county do you live?

§

3.3

- What is your birth date?
- How old are you?

§

3.4

- Are you the birth [mother/father/parents] of (name of child) ?

➤ *Comment.* If the proceedings pertain to more than one *child*, all references in these questions to *child* should be changed to *children*, and all related pronoun references should be changed from the singular to the plural.

Understanding of Proceedings

§

3.5

- Why are we in court today?

§

3.6

- Do you have any questions about this hearing?

§
3.7

- Do you understand that you can take a break from this hearing at any time to talk with *[your lawyer/the guardian ad litem/the child's mother/the child's father]*, think things through, or just end the hearing?
- Will you ask the court to stop this hearing if you feel uncomfortable continuing at any time?
- If there is a question you don't understand, will you ask to have it repeated or explained before you answer?
- Do you promise not to answer any question that you don't understand or that is confusing to you?

Substitution of Judge

§
3.8

- Do you understand that you have the right to have a different judge preside at this hearing?
- Do you want to have a different judge preside?

Indian Tribal Membership

§
3.9

- Are you or is your child's *[father/mother]* a member of an American Indian tribe or a member of an Alaskan Native Regional Corporation?
- **[If so, request a continuance of the proceedings to comply with the requirements of the Indian Child Welfare Act, 25 U.S.C. §§ 1901–1963, see *infra* Appendix B, and the Wisconsin Indian Child Welfare Act, Wis. Stat § 48.028. If not, continue with section 3.10.]**

➤ *Comment.* See Wis. Dep't of Children & Families, Wisconsin Indian Child Welfare Act Desk Aid, available at <http://dcf.wisconsin.gov/publications/pdf/2536.pdf> (Jan. 2012); Wisconsin Judicare, *Indian Child Welfare Act: A Manual for Wisconsin Practitioners* (Ellyn Fuchsteiner ed., 4th ed. 2005); *Adoption Law and Practice* ch. 15 (Joan H. Hollinger ed. 1988 & Supp. 1999); see also *infra* Appendix C. Note that for the Indian Child Welfare Act to apply, the child must either (1) be a member of a federally recognized tribe or (2) be eligible for tribal membership and have a biological parent who is a member of a federally recognized tribe. There are additional special considerations for Alaska natives. See 25 U.S.C. § 1903(3).

Armed Forces Membership

§
3.10

- Are you or is your child's *[father/mother]* a member of the U.S. armed services?
- **[If so, proceed pursuant to the Servicemembers Civil Relief Act of 2004, 50 U.S.C. app. §§ 502–597b; see *infra* Appendix D. If not, continue with section 3.11.]**

> *Comment.* Only one parent need answer questions in sections 3.11 to 3.13.

Child's Biographical Information

§

3.11

- What is your child's birth date?

§

3.12

- Where was *[he/she]* born?

§

3.13

- In what county is your child now?
- **[If he/she is not present in the county where the proceedings are held:]** In what county was your child present when the Petition for Termination of Parental Rights was filed?

> *Comment.* Note the different venue requirements in sections 48.185 and 48.83. See *supra* §§ 2.3, 3.4.

Substance Use

§

3.14

- Have you used any drugs, taken any medications, or consumed any alcohol during the past 24 hours?
- **[If so:]** When and what particular substance?
- Does your use of any of these substances interfere with your understanding of what we're doing in court today?
- **[If appropriate, continue questioning regarding the nature, amount, prescription, and effects of these substances. Consider calling the treating physician to testify.]**

Mental Health

§

3.15

- Do you currently suffer or have you ever suffered from any mental disease or emotional problems?
- **[If so:]** Have you ever been or are you currently being treated for any mental disease or emotional problems?
- **[If so:]** Why *[are/were]* you being treated?
- When did your treatment begin?

- Has your treatment been completed?
- **[If so:]** When and under what circumstances was your treatment completed?
- **[Follow up with questions relating to the effect of the mental illness and treatment on the birth parent's capacity to consent. Consider calling the treatment provider to testify.]**

§
3.16

- Have you ever been committed to a mental institution?

[If so:]

- When and under what circumstances was your commitment?
- When and under what circumstances did your commitment end?
- **[Follow up with questions relating to the commitment.]**

Disability

§
3.17

- Do you currently suffer from any physical, mental, or learning disability?
- **[If so:]** Does this disability make it hard for you to understand what is happening at this hearing?
- **[If so, follow up with questions relating to the disability. Consider the appointment of a guardian ad litem or calling the treatment provider to testify.]**

Literacy

§
3.18

- Can you read, write, and understand the English language?

Education

§
3.19

- What is the highest grade you have completed in school?
- Have you studied anything since you finished school?
- **[If so:]** What have you studied?
- **[If the birth parent is a minor, continue with section 3.20. If not, proceed to section 3.22.]**

Representation by Guardian ad Litem

§

3.20

- Are you represented by a guardian ad litem?
- **[If so, continue with section 3.21 . If not, request a continuance of the proceedings for the appointment of a guardian ad litem.]**

➤ **Comment.** Note that an incompetent birth parent cannot consent to the termination of his or her parental rights. The proceedings must be dismissed without prejudice. Wis. Stat. § 48.41(3).

Parent Represented by Guardian ad Litem

§

3.21

- Who is your guardian ad litem?
- What is your guardian ad litem supposed to do?
- When did you first meet [him/her/me]?
- How often have you met with [him/her/me]?
- How much time have you spent with [him/her/me]?
- Do you have any questions to ask [him/her/me]?
- Do you want the court to stop the hearing to give you more time to meet with [your guardian ad litem/me]?
- **[If so, request a recess in the proceedings. If not, proceed with questioning.]**
- Are you satisfied with the help you have received from [your guardian ad litem/me]?
- [Has/Have] [he/she/I] answered all your questions so that you understand your rights and choices?
- [Has/Have] [he/she/I] done the things you've asked [him/her/me] to do for you?
- Do you and [your guardian ad litem/I] agree about what you want the court to do at this hearing?
- **[If not, question extensively with respect to the appointment of advocacy counsel upon reaching section 3.24 , infra.]**

[If the guardian ad litem fees are to be paid by the adoptive parents or the agency:]

- Do you understand that the [adoptive parents/agency] will be paying [your guardian ad litem's/my] fees?
- Does this method of payment of the fees make you concerned about [your guardian ad litem's/my] representation of your best interests and [his/her/my] loyalty to you?
- Do you understand that [your guardian ad litem's/my] fees will be paid whether or not you consent to the termination of your parental rights?

Representation by Counsel

§

3.22

- Are you represented by *[a lawyer/a lawyer other than your guardian ad litem, called advocacy counsel]*?
- **[If so, continue with section 3.23 . If not, proceed to section 3.24 .]**

Parent Represented by Counsel

§

3.23

- Who is your *[lawyer/advocacy counsel]*?
- How did you choose *[him/her/me]*?
- When did you first meet *[him/her/me]*?
- How often have you met with *[him/her/me]* before this hearing?
- How much time have you spent with *[him/her/me]*?
- Do you feel that you have had enough time to talk with *[him/her/me]* about the termination of your parental rights and any other issues relating to these proceedings?
- Do you understand that if you need more time, the court will stop the hearing to give you the opportunity to meet with *[your lawyer/your advocacy counsel/me]*?
- Do you want such a break to talk with *[your lawyer/your advocacy counsel/me]*?
- **[If so, request a recess in the proceedings. If not, proceed with questioning.]**
- Will you ask for a break if you decide you need more time to talk with *[your lawyer/your advocacy counsel/me]*?
- Are you satisfied with the help you have received from *[your lawyer/your advocacy counsel/me]*?
- *[Has/Have]* *[he/she/I]* answered all your questions so that you understand your rights and choices?
- *[Has/Have]* *[he/she/I]* done the things you've asked *[him/her/me]* to do for you?
- Do you understand that you could have a different *[lawyer/advocacy counsel]* of your choice to represent you?

[If the legal fees are to be paid by the adoptive parents or the agency:]

- Do you understand that the *[adoptive parents/agency]* will be paying your legal fees?
- Does this method of payment of your fees make you concerned about *[your lawyer's/your advocacy counsel's/my]* loyalty to you?
- Do you understand that *[your lawyer's/your advocacy counsel's/my]* fees will be paid whether or not you consent to the termination of your parental rights?

Parent Not Represented by Counsel

§

3.24

- **[Ask the following question only if the birth parent is represented by a guardian ad litem:]**
- Do you understand that you have the right to be represented by an attorney called advocacy counsel who will represent your wishes, as well as by a guardian ad litem who represents your best interests?
- Would you like to have *[a lawyer/advocacy counsel]* represent you?
- Do you understand that *[the judge/the agency lawyer/the adoptive parents' lawyer/your guardian ad litem/the child's guardian ad litem]* *[does/do]* not represent you?
- **[In the following question, use the alternative fee payment phrase that accurately reflects the circumstances of the case.]**
- Do you realize that you are entitled to be represented by *[a lawyer/advocacy counsel]* *[to be retained at your own expense/to be appointed by the court and compensated at public expense/whose fees would be paid by the adoptive parents or the agency]*?
- Do you understand that you could ask the judge to appoint a lawyer to represent you at no cost to you?
- Do you want to ask the judge to appoint such a lawyer?
- Do you understand that this *[lawyer/advocacy counsel]* could explain your legal rights to you and represent you in court on any matters relating to these proceedings?
- Why have you decided to proceed without being represented by a lawyer?
- Do you want the court to stop the hearing to give you time to talk to *[a lawyer/advocacy counsel]*?
- **[If so, request a continuance of the proceedings. If not, proceed with questioning.]**
- Will you ask to have the hearing stopped later if you decide you want to be represented by *[a lawyer/advocacy counsel]*?
- Do you give up your right to have *[a lawyer/advocacy counsel]* represent you?

Child's Guardian ad Litem

§

3.25

- Who is your child's guardian ad litem?
- What is the guardian ad litem supposed to do?
- Have you had an opportunity to meet with *[your child's guardian ad litem/me]*?
- When did you first meet *[him/her/me]*?
- How often have you met with *[him/her/me]*?
- How much time have you spent with *[him/her/me]*?
- Is there any information you would like from *[the guardian ad litem/me]* at this time?

- [If so:] Would you like the court to stop the hearing to give you a chance to meet with [the guardian ad litem/me]?

[If so, request a recess in the proceedings. If not, proceed with questioning. If the guardian ad litem fees are to be paid by the adoptive parents or the agency:]

- Do you understand that the [adoptive parents/agency] will be paying [the guardian ad litem's/ my] fees?
- Does this method of payment of the fees make you concerned about [the guardian ad litem's/my] representation of your child's best interests?
- Are you satisfied that [he/she/I] [has/have] represented your child's best interests?
- Do you understand that [the guardian ad litem's/my] fees will be paid whether or not you consent to the termination of your parental rights?
- [Continue with section 3.26 only if one of the birth parents is the petitioner. If neither birth parent is the petitioner, proceed to section 3.29.]

➤ *Comment.* Only one parent need answer the questions in sections 3.26 to 3.29 .

Verification of TPR Petition

§
3.26

- Has a Petition for Termination of Parental Rights been filed?

§
3.27

- Is this the petition?
- What does the petition ask the court to do?
- Are the statements in the petition true to the best of your knowledge?
- [If not:] What changes need to be made in the petition for it to be accurate?
- Is this your signature on the petition?

Request for Hearing

§
3.28

- Do you want the court to hold a hearing on the petition?

Adjudication of Paternity

§
3.29

- Has any court ever issued an order determining the identity of the child's father?

- [If so, continue questioning regarding the paternity judgment.]

➤ *Comment.* Only the birth mother need answer questions in sections 3.30 to 3.37.

Sexual Partners During Conceptive Period (Birth Mother)

§
3.30

- What did your child weigh at birth?

§
3.31

- Because your child weighed ____ pounds at birth, it is presumed that [he/she] was conceived between (date) and (date).
- [Note: Use the statutorily presumed conceptive period. See *infra* Appendix A. If the child's birth weight was under 5½ pounds, expand the conception period as appropriate.]
- With whom did you have sexual intercourse between (date) and (date) ?
- [Note: Use the statutorily presumed conceptive period. See *infra* Appendix A.]
- Is there anyone else?

Marital History (Birth Mother)

§
3.32

- Have you ever been married?
- [If so, continue with section 3.33 . If not, proceed to section 3.48 .]

§
3.33

- Are you currently married?

[If not, proceed to section 3.34. If so:]

- To whom are you married?
- When were you married?

§
3.34

- Were you ever married to someone from whom you are now divorced?

[If so:]

- To whom were you married?

- When were you married?
- When were you divorced?
- **[If the birth mother was not married at the time of conception or birth, proceed to section 3.48. If she was married at the time of conception or birth and named her husband in section 3.31, proceed to section 3.48; if she did not name her husband in section 3.31, continue with section 3.35.]**

§
3.35

- Is it correct that you didn't have sexual intercourse with your *[husband/ex-husband]* between (date) and (date) ?
- **[Note: Use statutorily presumed conceptive period. See *infra* Appendix A.]**
- From what date to what date did you and your *[husband/ex-husband]* not have sexual intercourse?
- Were you separated?
- **[If so:]** From what date to what date were you separated?

§
3.36

- Is your *[husband/ex-husband]* aware of the birth of this child?
- **[If so, continue with section 3.37 . If not, request a continuance of the proceedings in order to give proper notice.]**

§
3.37

- Will your *[husband/ex-husband]* appear today before this court to give testimony relating to this child's paternity?
- **[If so, proceed to section 3.38. If not:]** Has he appeared before another court of record?
- **[If so, the court should be provided with a signed Presumed Father's Statement Rebutting Presumption of Paternity and Voluntary Consent to Termination of Parental Rights and/or a Certificate of Judge with the appropriate findings regarding the rebuttal of the presumption of paternity. Proceed to section 3.48. If not, the record should reflect that the presumed father has been properly served with a copy of the summons and petition or that service has been attempted without success and that copies of the summons and petition have been mailed to his last known address.**

➤ **Comment.** It is the author's opinion that the court can proceed on the birth mother's testimony, with or without the presumed father's signed Statement and Consent or presence in court, to find that the presumption of paternity has been rebutted. To permit a man to whom a presumption of paternity applies to hold absolute veto power over a proposed adoption by his failure to appear at the hearing would be unconscionable.

Neither the statutes nor the case law offers any guidance as to whether the presumed nonbiological father must consent to the termination of parental rights; it would appear that he or the child's birth mother may simply need to provide testimony in support of rebutting the presumption of paternity. This handbook takes a modified, cautious approach by asking a few relevant questions. Certain circumstances might compel the court or counsel to question the presumed father more extensively.

Only the mother's husband or ex-husband who is not the child's biological father need answer questions in sections 3.38 to 3.47.

Presumption of Paternity (Birth Mother's Husband)

§
3.38

- What is your name?

§
3.39

- What is your address?
- In what county do you live?

§
3.40

- Are you married to (name) ?
- Were you married to (name) at the time (name of child) was born?
- Were you married to (name) between (date) and (date) ?
- [Note: Use the statutorily presumed conceptive period. See *infra* Appendix A.]

§
3.41

- Did you have sexual intercourse with (name) between (date) and (date) ?
- [Note: Use the statutorily presumed conceptive period. See *infra* Appendix A.]

§
3.42

- Do you understand that by virtue of your marriage to (name), the law presumes you to be the father of your wife's child?

§
3.43

- Are you this child's father?

§
3.44

- Do you understand that, absent any further court proceedings, you would be considered this child's father?

§
3.45

- Do you know what your parental rights would be if the presumption of paternity were not rebutted?
- What are these rights?

§
3.46

- Do you give up any parental rights you may have to this child by virtue of your marriage to [his/her] mother?

§
3.47

- Have you reviewed the Presumed Father's Statement Rebutting Presumption of Paternity and Voluntary Consent to Termination of Parental Rights before today's hearing?
- Do you understand and agree with everything that is stated in it?
- [Do you wish to sign/Have you signed] this document?
- Do you want the court to receive this document and determine that the presumption of paternity has been rebutted, that you are not this child's father, and that any parental rights you might have are terminated?
- [If previously signed:] Is this your signature on the last page?

> *Comment.* Only the birth mother need answer questions in sections 3.48 to 3.50.

Possible Birth Father(s)

§
3.48

- Have you ever claimed that anyone other than the [man/men] named today is the father of your child?
- [If so:] Who did you claim is the father?
- [Continue questioning regarding this claim.]

§
3.49

- To your knowledge, is there anyone else who claims or who has claimed to be the father of this child?
- [If so:] Who [claims/has claimed] to be the father?

§
3.50

- Are you satisfied that (name(s)) [is/are] the only possible father[s] of this child?
- [If the birth father does not appear, proceed to section 3.57 .]

➤ *Comment.* Only the birth father need answer the questions in sections 3.51 to 3.56.

Marital History (Birth Father)

§
3.51

- Have you ever been married to the mother of this child?
- [If so, continue with section 3.52 . If not, proceed to section 3.53 .]

§
3.52

- Are you currently married to her?
- Were you married to her at the time the child was conceived?
- Were you married to her at the time the child was born?

§
3.53

- Did you have sexual intercourse with (name) between (date) and (date) ?
- [Note: Use the statutorily presumed conceptive period. See *infra* Appendix A.]

§
3.54

- Have you ever denied being this child's father?

§
3.55

- To your knowledge, is there anyone else who claims or who has claimed to be this child's father?
- [If so:] Who claims or has claimed to be the father?

§
3.56

- Are you satisfied that you are this child's father?

Sworn Testimony of Agency Worker

Name and Agency Position

§
3.57

- What is your name?

§
3.58

- Where are you employed?
- In what capacity are you employed?
- Is the agency by which you are employed licensed by the state of Wisconsin as a child welfare agency?

➤ *Comment.* Continue with section 3.59 only if the agency worker is the petitioner. If not, proceed to section 3.60.

Verification of TPR Petition

§
3.59

- Is this the Petition for Termination of Parental Rights you signed in this matter?
- Are the statements in the petition true to the best of your knowledge?
- [If so:] What changes need to be made in the petition for it to be accurate?
- Is this your signature on the petition?

Contact with Birth Parent(s)

§
3.60

- Have you had an opportunity to interview the birth mother and the [alleged] birth father[s] of the child who is the subject of these proceedings?
- Were you present in court today when the birth [mother/father/parents] testified?
- Was [his/her/their] testimony consistent with the information you have gathered in working with the [mother/father/parents]?

Declaration of Paternal Interest

§
3.61

- Have you filed the Court Inquiry on Paternal Interest Declaration Response?
- Has anyone filed a Declaration of Paternal Interest?

[If so:]

- Who has filed the declaration?

- Has he received notice of these proceedings?
- [If so, continue with section 3.63 . If not, request a continuance of the proceedings in order to give proper notice.]

➤ *Comment.* Make sure all notice and termination requirements are met for any person who has filed a Declaration of Paternal Interest. See *supra* §§ 2.7, 14-15.

Additional Alleged Father(s)

§

3.62

- Do you have any reason to believe that anyone other than (name(s)) is the father of this child?
- [If so:] In your opinion, who is the father?
- [If necessary, question the birth mother about additional alleged birth fathers and request a continuance of the proceedings to provide notice to such alleged fathers, if appropriate. Otherwise, if a nonpetitioning birth parent (usually the birth father) does not appear, continue with section 4.1. If he or she does appear, proceed to section 6.1 . If this is an independent adoptive placement where both birth parents appear and both are petitioners, proceed to section 5.1.]

➤ *Comment.* In an independent adoptive placement, the nonpetitioning birth parent's rights are technically to be terminated before the adoptive placement hearing, whether or not the nonpetitioning birth parent is present in court. See Wis. Stat. § 48.837(4)(e); see also *supra* § 2.37. This is not a problem if the nonpetitioning birth parent does not appear. If he or she does appear, however, it means that the court or counsel must ask the questions in chapter 6 of the nonpetitioning birth parent before the adoptive placement hearing and then ask essentially the same questions of the petitioning birth parent after the adoptive placement hearing. This procedure tends to be quite time-consuming and is annoying to some judges. Nonetheless, this author recommends that the statutory order of proceedings be followed. If the court decides to deviate from the statutory order of proceedings and have both birth parents consent after the adoptive placement hearing, the petitioning birth parent must give his or her full, informed consent on the record.

A product of P I N N A C L E

4

Nonappearing Birth Parent's TPR

➤ *Comment.* The questions in this chapter are appropriate for a nonpetitioning birth parent who does not appear at the hearing. For a nonpetitioning birth parent who does appear, the questions in chapter 6 apply. Before testifying, all witnesses should be reminded that they are still under oath.^[1]

Sworn Testimony of Appearing Birth Parent

Voluntary Consent by Nonappearing Birth Parent(s)

§

4.1

- [Has/Have] (name(s)) signed [a] Voluntary Consent[s] to Termination of Parental Rights?
- [If so, continue with section 4.2 . If not, proceed to section 4.5 .]

§

4.2

- Would you recognize [his/her/their] signature[s]?
- When have you seen the signature[s] before today?
- Do you recognize [his/her/their] signature[s] on [this/these] Voluntary Consent[s] to Termination of Parental Rights?
- [If the nonappearing birth parent is the mother or an adjudicated or marital father, continue with section 4.3 . If the nonappearing birth parent is a nonadjudicated, nonmarital father, proceed to section 4.4 .]

➤ *Comment.* See *supra* § 2.14 (consent of nonappearing birth parent).

§

4.3

- Would it have been difficult or impossible for (name(s)) to have appeared today at this hearing?

§

4.4

- Have you had any conversations with (name(s)) about the termination of [his/her/their] parental rights?
- [If so:] What was said during these conversations?
- [Proceed to section 4.9 if grounds for involuntary TPR will not be established.]

Grounds for Involuntary TPR [§ 4.4]

➤ *Comment.* The questions in sections 4.5–.8 are necessary only when grounds for involuntary TPR are alleged under section 48.415(1)(a)3., (4), (6), or (7), and there is no voluntary consent. See *supra* § 2.15 (involuntary TPR of nonconsenting birth parent). In some cases, it may be prudent to take testimony regarding grounds even when there is a voluntary consent.

Involuntary TPR: Abandonment

§
4.5

- Did (name(s)) leave the child with another person?

➤ *Comment.* If the proceedings pertain to more than one child, all references in these questions to *child* should be changed to *children*, and all related pronoun references should be changed from the singular to the plural.

- Did (name(s)) know or could [he/she/they] have discovered the child's whereabouts?
- [Has/Have] (name(s)) failed to visit or communicate with the child for a period of six months or longer?
- [If there has been some contact:] Was the contact merely incidental?
- [Continue questioning to fill in details relating to abandonment.]

Involuntary TPR: Continuing Denial of Physical Placement or Visitation

§
4.6

- [Has/Have] (name(s)) been denied periods of physical placement or visitation by court order in a family court case or in a case brought under chapter 48 or 938?
- Has at least one year gone by since the order denying periods of physical placement or visitation was issued?
- [If so:] During that time, did the court change the order so as to permit periods of physical placement or visitation?
- [Continue questioning to fill in details relating to denial of periods of physical placement or visitation.]

Involuntary TPR: Failure to Assume Parental Responsibility

§
4.7

- Did (name(s)) help you or the child in any way (financially or otherwise) during the pregnancy or after the birth?
- [Has/Have] (name(s)) had any contact with your child?

[If so:]

- When and where did *[he/they]* see the child?
- When was the last time *[he/they]* saw the child?
- How much time *[has/have]* *[he/they]* spent with the child?
- *[Does/Do]* (name(s)) have a substantial parental relationship with the child?
- *[Has/Have]* *[he/they]* taken responsibility for your child's care and support?
- **[If so:]** What specific responsibility *[has/have]* *[he/they]* taken?
- **[Continue questioning to fill in details relating to failure to assume parental responsibility.]**

Involuntary TPR: Incestuous Parenthood

➤ **Comment.** The ground in section 4.8 is available if the person whose parental rights are sought to be terminated is related, by blood or adoption, to the child's other parent in a degree of kinship closer than second cousin.

§
4.8

- Are you related by blood or adoption to this child's birth *[father/mother]*?
- How are you related?
- **[Continue questioning to fill in details relating to incestuous parenthood.]**

Disposition

§
4.9

- Do you believe the termination of (name('s/s')) parental rights would be in your child's best interest?

§
4.10

- Do you request that the court grant the petition to terminate (name('s/s')) parental rights?
- **[If this is a stepparent adoption, continue with section 4.11. If this is an agency or independent adoption, proceed to section 4.17 .]**

Stepparent Adoption

§
4.11

- Does your *[husband/wife]* intend to adopt this child if the court grants this petition?
- Do you agree with this proposed adoption?

§
4.12

- Is your child healthy?

§
4.13

- Does your child have a substantial relationship with (name) ?
- Does your child have substantial relationships with (name's) family members?
- [If so:] With whom does [he/she] have substantial relationships?
- [If the child has substantial relationships with the nonpetitioning birth parent or other family members, continue questioning regarding these relationships. If the child has substantial relationships:]
- Would it be harmful to sever these relationships?
- [If so, continue questioning regarding these relationships.]

§
4.14

- Have you discussed the termination of (name's) parental rights with your child?
- Do you know what [his/her] wishes are relating to this proposed termination?
- [If so:] What are [his/her] wishes?
- Does [he/she] have a good relationship with your [husband/wife]?
- Do you think your child is in favor of the termination of (name's) parental rights so that your child can be adopted by your [husband/wife]?

§
4.15

- How long has your child been separated from (name) ?

§
4.16

- Do you believe your child will be able to enter into a more permanent and stable family relationship if the court grants this petition?
- [This concludes the proceeding in a stepparent adoption because the agency worker generally does not appear. The court should be informed as to whether a Declaration of Paternal Interest has been filed. It is recommended that the court not terminate parental rights until the hearing on the Petition for Adoption so that the agency screening can be reviewed and testimony relating to the adoption can be taken. This procedure also reduces the risk that the child will be left with only one parent.]

Sworn Testimony of Agency Worker Counseling

§
4.17

- Have you had an opportunity to provide counseling for (name(s)) ?
- [If so, continue with section 4.18 . If not, proceed to section 4.19 (if the nonappearing parent has consented to the termination of parental rights) or to section 4.20 (if the nonappearing parent has not consented to the termination of parental rights).]

§
4.18

- What issues did you address in counseling?
- [Has/Have] (name(s)) been able adequately to resolve these issues?
- When did counseling begin?
- How often did you meet?
- Approximately how much time was spent in counseling?
- Do you believe the counseling provided was sufficient to meet the birth [mother's/father's/parents'] needs?

Evaluation of Nonappearing Birth Parent's Decision to Consent

➤ *Comment.* The questions in section 4.19 are appropriate only if the nonappearing birth parent has consented to the termination of parental rights.

§
4.19

- Have you had any conversations with (name(s)) about the termination of [his/her/their] parental rights?
- [If so:] Is it your belief, based on your conversation[s] with (name(s)), that [his/her/their] consent [s] to the termination of [his/her/their] parental rights [is/are] informed and voluntary?
- [Proceed to section 4.21.]

Evaluation of Testimony Regarding Involuntary TPR

➤ *Comment.* The questions in section 4.20 are appropriate only if the nonappearing birth parent has not consented to the termination of parental rights.

§
4.20

- Were you present in court today to hear the testimony regarding the termination of (name('s/s')) parental rights?
- Was the testimony consistent with the information you have gathered in working with the birth [mother/father/parents]?

- Are the differences important or substantial?

[If not, proceed to section 4.21. If so:]

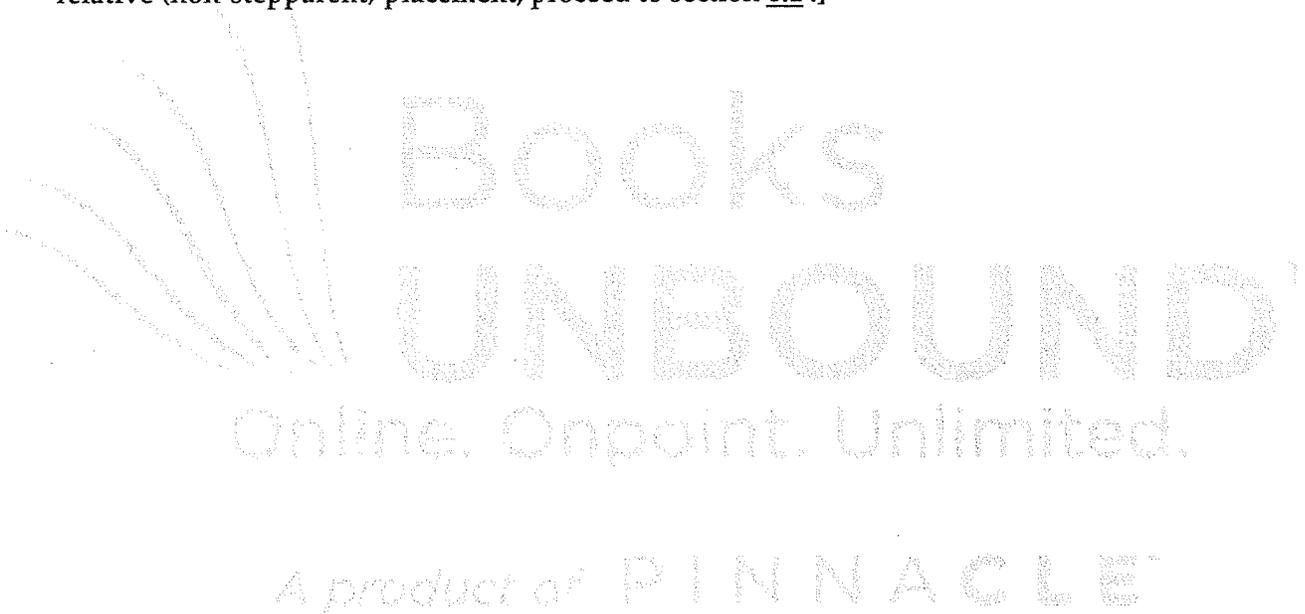
- What are the differences?
- To what do you attribute these differences?

§
4.21

- Do you believe the termination of (name('s/s')) parental rights would be in the child's best interest?

§
4.22

- In your opinion, is there any reason why the court should not terminate (name('s/s')) parental rights?
- [If this is an independent adoptive placement, continue with section 5.1. If this is an agency or relative (non-stepparent) placement, proceed to section 6.1.]



5

Independent Adoptive Placement

➤ *Comment.* This chapter applies only to independent adoptions. See Wis. Stat. § 48.837; see also *supra* §§ 2.31–38. All witnesses must be sworn before testifying or reminded that they are still under oath.^[1]

Sworn Testimony of Petitioning Birth Parent(s)

➤ *Comment.* If both birth parents are petitioners (which is unusual), the questions may be asked of both parents together, but each parent must answer completely and individually.

Verification of Petition for Approval of Adoptive Placement

§

5.1

- Is this the Petition for Approval of Adoptive Placement signed by you and the prospective adoptive parents in this matter?
- Are the statements in the petition true to the best of your knowledge?

[If not:]

- What changes need to be made to make the petition accurate?
- Is this your signature on the petition?

Acquaintance with Adoptive Parents

§

5.2

- How did you and the prospective adoptive parents find out about each other?
- Did anyone put you in contact with each other?
- [If so:] Who?

§

5.3

- Have you and the prospective adoptive parents met before this hearing?
- [If so, continue with section 5.4. If not, proceed to section 5.5.]

§

5.4

- How and when did you meet?
- How often have you met?

- Have you discussed the adoptive placement of your child with the prospective adoptive parents?
Note that if the proceedings pertain to more than one child, all references in these questions to *child* should be changed to *children*, and all related pronoun references should be changed from the singular to the plural.
- **[Proceed to section 5.6.]**

§
5.5

- Whose choice was it not to meet?
- Have you talked on the phone with the prospective adoptive parents or corresponded with them?
- Do you want to meet with the prospective adoptive parents?
- **[If so:] Do you want to stop this hearing to take time to meet with the prospective adoptive parents?**
- **[If so, request a recess in the proceedings for such a meeting to take place. If not, continue with section 5.6 .]**

Information Received on Adoptive Parents

§
5.6

- Do you know the prospective adoptive parents' names and address?
- **[If not, continue with section 5.7 . If so, proceed to section 5.8 .]**

§
5.7

- Do you realize that if you request this information today, you are entitled to receive it, but if you do not request it and the court terminates your parental rights, you may not be able to get it in the future?
- Do you want this information?
- **[If so, request a recess in the proceedings to contact the prospective adoptive parents before disclosing such information.]**

§
5.8

- Have you read the agency's home study on the prospective adoptive parents?
- **[If so, continue with section 5.9 . If not, proceed to section 5.10 .]**

§
5.9

- Are you satisfied with what you read?
- **[If so, proceed to section 5.11 . If not, first ask what concerns he or she has regarding the home study and whether additional information is needed from the prospective adoptive parents or the agency worker, and then proceed to section 5.11.]**

§
5.10

- Would you like to read it at this time?
- **[If so, request a recess in the proceedings to permit the birth parent(s) to read the home study.]**

§
5.11

- Have you received all the information you feel you need about your child's placement with the prospective adoptive parents?
- **[If not:]** What other information would you like to receive?

Payments, Gifts, and Promises Made to Birth Parent(s)

§
5.12

- What payments have the prospective adoptive parents made or will they make on your behalf?
 > *Comment.* For a listing of allowable payments, see section 2.33, *supra*.

§
5.13

- Do you understand that *[your attorney's/your guardian ad litem's/the child's guardian ad litem's]* fees will be paid by the prospective adoptive parents?
- Are you worried about the loyalty of any of the lawyers involved in this case because their fees are being paid by the prospective adoptive parents?

§
5.14

- Have the prospective adoptive parents or has anyone on their behalf given you anything of value in the form of money, gifts, or anything else to get you to place your child with them?
- Have they or has anyone on their behalf promised you anything of value in the form of money, gifts, or anything else to get you to place your child with them?

Threats Made to Birth Parents

§
5.15

- Have the prospective adoptive parents or has anyone on their behalf put any pressure on you or anyone close to you or threatened you or anyone close to you in any way to get you to place your child with them?
- Have the prospective adoptive parents or has anyone on their behalf said anything that might make you feel bad if you decided not to place your child with them?

Agreements with Adoptive Parents

§

5.16

- Have you made any arrangements with the prospective adoptive parents to have them send you photographs or information about your child at any time in the future?
- **[If so, continue with section 5.17 . If not, proceed to section 5.18 .]**

§

5.17

- What arrangements have you made?
- Do you understand that you must rely on the adoptive parents' goodwill in this matter and that if they do not send you the photographs or information, there is no way your lawyer or the court can force them to do so?
- Do you realize that the agreement is purely voluntary and that you will not be able to get your child back if the prospective adoptive parents do not provide you with the photographs or information as promised?

Religious Preference

§

5.18

- Are the prospective adoptive parents of the same religion as you?
- **[If so, proceed to section 5.19 . If not:]** Do you know that you may request that the adoptive parents be of the same religion as you and that the agency must honor this request if practicable?
- Would you like the agency to try to place your child in a home of the same religion as yours if one can be found rather than have the court approve this proposed adoptive placement?

Control Over Future Placements and Adoption

§

5.19

- Do you understand that if for some reason after today's hearing the adoptive parents with whom your child is placed cannot adopt *[him/her]*, the agency will select a new adoptive couple, and you will have no say in this selection?
- Do you understand that you will not get your child back if the adoptive parents you have selected do not adopt this child?

- Do you understand that you will have no right to know whether or when the final adoption goes through?

Reasons for and Satisfaction with Decision

§
5.20

- Why have you decided to place your child with these prospective adoptive parents?

§
5.21

- Have you had enough time to consider whether these are the right adoptive parents for your child?

§
5.22

- Are you satisfied with your selection of these adoptive parents?

Request for Approval of Adoptive Placement

§
5.23

- Is it your request that the court grant the Petition for Approval of Adoptive Placement?

Sworn Testimony of First Prospective Adoptive Parent

Name and Address

§
5.24

- What is your name?

➤ *Comment.* The witness need not state his or her last name if this information is to be kept confidential.

§
5.25

- What is your address?

➤ *Comment.* The witness need not state his or her address if this information is to be kept confidential.

Verification of Petition for Adoptive Placement

§
5.26

- Is this the Petition for Approval of Adoptive Placement that you signed in conjunction with your [husband/wife] and the birth [mother/father/parents] in this matter?
- Are the statements made in the petition true to the best of your knowledge?
- [If not:] What changes need to be made to make the petition accurate?
- Can you recognize your [husband's/wife's] signature?
- Are these your and your [husband's/wife's] signatures on the petition?
- [If the witness did not disclose his or her name and address in sections 5.24 and 5.25:] Are your and your [husband's/wife's] names and address accurately stated in the petition?

Home Study

§
5.27

- Have you and your [husband/wife] participated in a home study conducted by a licensed child welfare agency?
- Were you honest and forthcoming in providing the agency with accurate and complete information for the home study?

Child's Health

§
5.28

- Have you and your [husband/wife] seen the child?

§
5.29

- Is [he/she] healthy?
- Do either of you have any concerns about [his/her] physical or mental health?
- [If so:] What are your concerns?

§
5.30

- Has the child been seen by a pediatrician?
- Have you had an opportunity to discuss the child's health with your physician or any other physician, the foster parents, the agency worker, or anyone else?

Commitment to the Child

§
5.31

- What would your response be if the child were to develop physical or mental problems after *[his/her]* placement with you, before the completion of formal adoption proceedings?

§
5.32

- Do you intend to adopt this child?

Health Insurance Coverage

§
5.33

- Will the child be covered under your health insurance policy if the court grants the petition?

Financial Obligations

§
5.34

- Are you aware of your financial obligations with respect to this adoptive placement?
- What do you understand these financial obligations to be?
- Is it your intention to pay all uninsured birth-related medical expenses of the birth mother and the child?
- **[If applicable:]** Is it your intention to pay all foster-care costs for the child?
- Is it your intention to pay the agency fees that have been incurred for purposes of this adoptive placement?
- Is it your intention to pay for the counseling provided to the birth *[mother/father/parents]* in conjunction with the termination of *[her/his/their]* parental rights?
- Is it your intention to pay all attorney fees for your attorney, the *[attorney[s]/and/guardian[s] ad litem]* for the birth *[mother/father/parents]*, and the guardian ad litem for the child?
- Have you made or agreed to make any other payments?
- **[If so:]** What additional payments have you made or agreed to make?

Fees and Expenses

§
5.35

- What payments have you made to date?
- Do you have an estimate of the amount of the fees and expenses not yet paid?
- Have you placed funds into a trust account to cover unpaid fees and expenses?

[If so:]

- How much money have you placed in trust?

- What fees and expenses are to be covered by these funds?

Additional Financial Commitments, Promises, and Gifts

§

5.36

- Have you made any additional financial commitments, promises, or payments relating to this proposed adoptive placement?

➤ **Comment.** For a listing of allowable payments, see section 2.33, *supra*.

§

5.37

- Have you or has anyone on your behalf promised anything of value to the birth [mother/father/parents] to encourage [her/him/them] to place the child with you?
- Have you or has anyone on your behalf given anything of value to the birth [mother/father/parents] to encourage [her/him/them] to place the child with you?

Threats Made to Birth Parent(s)

§

5.38

- Have you or has anyone on your behalf said anything to the birth [mother/father/parents] or anyone close to [her/him/them] that could be interpreted as a threat to get [her/him/them] to place the child with you?
- Have you or has anyone on your behalf said anything that might make the birth [mother/father/parents] feel bad if the child were not placed with you?

Agreements with Birth Parent(s)

§

5.39

- Have you agreed to provide any photographs or information to the birth [mother/father/parents] in the future?
- [If so:] Are you comfortable with the agreement?

- Will you abide by it?

Understanding of Birth Parents' Right to Appeal

§

5.40

- Do you understand what the appeal period is for birth parents with respect to the termination of their parental rights?
- In the event of an appeal, will you abide by any orders issued by this court?

Request for Approval of Adoptive Placement

§
5.41

- Is it your request that the court grant the Petition for Approval of Adoptive Placement?

Sworn Testimony of Second Prospective Adoptive Parent

Name and Address

§
5.42

- What is your name?
 - *Comment.* The witness need not state his or her last name if this information is to be kept confidential.

§
5.43

- What is your address?
 - *Comment.* The witness need not state his or her address if this information is to be kept confidential.

Changes or Additions to First Adoptive Parent's Testimony

§
5.44

- Were you present in court to hear the testimony of your [husband/wife] regarding the adoptive placement of this child?
- Is there anything that your [husband/wife] stated that you feel should be modified in any way?
- Is there anything you wish to add to [his/her] testimony?

Additional Financial Commitments, Promises, and Gifts

§
5.45

- With the exception of the fees and costs about which your [husband/wife] testified, have you or has anyone on your behalf made any promises or financial commitments to the birth [mother/father/parents]?
 - *Comment.* For a listing of allowable payments, see section 2.33, *supra*.
- Have you or has anyone on your behalf promised anything of value to the birth [mother/father/parents] to encourage [her/him/them] to place the child with you?
- Have you or has anyone on your behalf given anything of value to the birth [mother/father/parents] to encourage [her/him/them] to place the child with you?

Threats Made to Birth Parent(s)

§
5.46

- Have you or has anyone on your behalf said anything to the birth *[mother/father/parents]* or anyone close to *[her/him/them]* that could be interpreted as a threat to get *[her/him/them]* to place the child with you?
- Have you or has anyone on your behalf said anything that might make the birth *[mother/father/parents]* feel bad if the child were not placed with you?

Commitment

§
5.47

- Do you join your *[husband/wife]* in *[his/her]* commitment to this child and to the court?

Request for Approval of Adoptive Placement

§
5.48

- Is it your request that the court grant the Petition for Approval of Adoptive Placement?

Sworn Testimony of Agency Worker

Home Study

§
5.49

- Did your agency conduct the investigation and home study of the prospective adoptive parents?
 - Has your report been filed with the court?
 - Is this the report you filed?
 - Is there anything you wish to add to or change in your report at this time?
 - Is it accurate to the best of your knowledge?
-
- If you were to testify to all the issues raised in this report, would your testimony be consistent with the statements made in the report?

§
5.50

- Were you present in court today to hear the birth *[mother/father/parents]* and prospective adoptive parents testify with respect to the Petition for Approval of Adoptive Placement?
- Was their testimony consistent with the information you received in conducting the home study and in interviewing the parties?

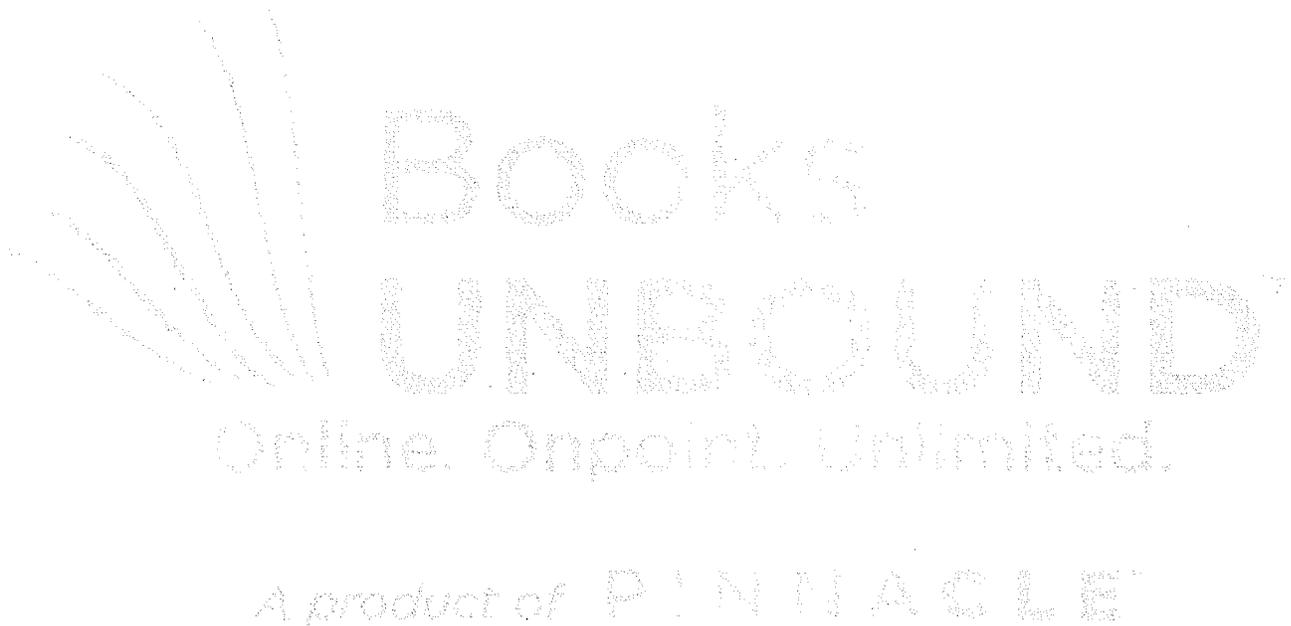
Evaluation of Adoptive Placement

§
5.51

- Is it your opinion that the birth *[mother/father/parents]* *[has/have]* made an informed, voluntary decision to place *[her/his/their]* child with the prospective adoptive parents?

§
5.52

- Is it your opinion that the granting of the Petition for Approval of Adoptive Placement would be in the child's best interest?
- **[Continue with section 6.1.]**



6

Appearing Birth Parent's Consent to TPR

Sworn Testimony of Birth Parent(s)

- *Comment.* Before testifying, all witnesses should be reminded that they are still under oath.^[1]
- *Comment.* Questions may be asked of both birth parents together, but each birth parent must answer individually and completely.

Contact with Child

§

6.1

- Have you had any contact with your child?
 - *Comment.* If the proceedings pertain to more than one child, all references in these questions to *child* should be changed to *children*, and all related pronoun references should be changed from the singular to the plural.

[If so:]

- When and where have you had contact with [him/her]?
- How much time have you spent with [him/her]?

§

6.2

- Have you been prohibited or discouraged in any way from having contact with your child?

§

6.3

- Have any of your family members or the family members of the birth [father/mother] had contact with your child?

[If so:]

- When and where [have/has] [they/he/she] had contact with your child?
- How much time [have/has] [they/he/she] spent with your child?
- Do you believe that it would be harmful to sever your child's relationship with your family members or the family members of the birth [father[s]/mother]?

Concerns and Need for Information About Child

§

6.4

- Do you have any concerns about your child's physical and/or mental health?

§
6.5

- Have you received all the information you want about your child?
- Is there any more information about your child that you would like to receive?
- [If so:] Would you like the court to stop this hearing so that you can get any additional information?
- [If so, request a recess in the proceedings to allow time for the parent(s) to obtain the requested information. If not, continue with section 6.6.]

Child in Foster Care

§
6.6

- Is your child in foster care?
- [If so, continue with section 6.7. If not, proceed to section 6.8.]

§
6.7

- Have you had a chance to meet with or speak to your child's foster parents?
- Have you been given the opportunity to see your child at the foster home?
- Do you have any concerns about the care your child is receiving in the foster home?
- Do you understand that [he/she] can continue to live with the foster parents if you want more time to think about your decision to consent to the termination of your parental rights?
- Are you worried that it might be harmful for your child to continue living in the foster home while you think about your decision?

Counseling

§
6.8

- Have you received counseling about consenting to the termination of your parental rights?
- [If not, continue with section 6.9. If so, proceed to section 6.10.]

§
6.9

- Was counseling offered to you?
- Why didn't you receive counseling?
- Would you like to receive counseling before consenting to the termination of your parental rights?

- [If so, request a continuance of the proceedings in order for counseling to be provided. If not, proceed to section 6.11.]

§
6.10

- Who provided the counseling?
- How much time did you spend in counseling?
- How often did you meet with the counselor?
- Did you discuss what rights you give up when you consent to the termination of your parental rights?
- Did you discuss the choices you have for caring for your child other than termination of your parental rights?
- Did you feel the counselor was trying to influence your decision or were you able to make your own decision?
- How did the idea of adoption come up?
- What were your feelings when you first started counseling with the agency?
- Are you satisfied with the counseling you received?
- Do you want to receive more counseling before continuing with this hearing?
- [If so, request a continuance of the proceedings in order for additional counseling to be provided. If not, continue with section 6.11.]

Understanding of Rights

§
6.11

- Do you understand what rights you are giving up by consenting to the termination of your parental rights?
- [If so, continue with section 6.12 . If not, request a recess in the proceedings to give the birth parent(s) time to learn about these rights.]

§
6.12

- Who talked to you about your rights?
- Did you spend enough time talking about these rights so that you understand them?
- What are the rights you are giving up by proceeding with this termination?
- [If the response is not adequate, continue with section 6.13. Otherwise, proceed to section 6.14 .]

➤ *Comment.* Wisconsin case law, *T.M.F. v. Children's Service Society of Wisconsin (In the Interest of D.L.S.)*, 112 Wis. 2d 180, 332 N.W.2d 293 (1983), requires the birth parent(s) to answer in complete sentences. See *supra* § 2.13; see also *infra* Appendix G (text of D.L.S.).

§
6.13

- What right do you think you will have to see your child at any time after this hearing?
- What right do you think you will have to have custody of or visitation with your child?
- What right do you think you will have to make decisions about your child's medical care, religious upbringing, education, activities, or lifestyle?
- What right do you think you will have to receive information about your child's name, whereabouts, activities, health, or well-being?
- What right do you think your child will have to know your name, whereabouts, activities, health, or well-being?
- What right do you think you will have to inherit from your child or [he/she] will have to inherit from you?
- What financial responsibility do you think you will have for your child?

§
6.14

- Do you think you will have any parental rights after today's hearing if the judge grants the petition?
- Do you have any questions about the parental rights you are giving up?
- [If this is an independent adoption, proceed to section 6.22. If not, continue with section 6.15.]

Adoptive Parent Selection

§
6.15

- Have you selected adoptive parents for your child?
- [If not, continue with section 6.16 . If so, proceed to section 6.18 .]

§
6.16

- Has anyone explained that you can select adoptive parents through the agency or by independent adoption?
- [If so, continue with section 6.17. If not, first explain how birth parents can select adoptive parents and then proceed to section 6.17.]

§
6.17

- Do you wish to select adoptive parents?
- **[If so, request a continuance of the proceedings for the birth parent(s) to select adoptive parents. If not, continue with section 6.22.]**

Agreements with Adoptive Parents

§ 6.18

- Have you made any arrangements with the *[prospective adoptive parents/agency]* to have photographs or information about your child sent to you at any time in the future?
- **[If so, continue with section 6.19. If not, proceed to section 6.21.]**

§ 6.19

- What arrangements have you made?
- Do you understand that you must rely on the adoptive parents' goodwill in this matter and that if they do not send you the photographs or information, there is no way your lawyer or the court can force them to do so?
- Do you realize that the agreement is purely voluntary and that you will not be able to get your child back if the adoptive parents do not provide you with the photographs and/or information as promised?

§ 6.20

- Do you understand that if for some reason after today's hearing the adoptive parents with whom your child is placed cannot adopt *[him/her]*, the agency will select a new adoptive couple, and you will have no say in this selection?
- Do you understand that you will not get your child back if the adoptive parents with whom the child is placed do not adopt this child?
- Do you understand that you will have no right to know whether or when the final adoption goes through?

§ 6.21

- Do you know that you may request that the adoptive parents be of the same religion as you and that the agency must honor this request if practicable?
- Do you wish to make such a request?
- **[If so:]** What is your religion?

Alternatives to Voluntary TPR

§

6.22

- Do you understand what the available alternatives are to consenting to the termination of your parental rights?
- **[If so, continue with section 6.23 . If not, request a recess in the proceedings to give the birth parent(s) time to learn about the available alternatives.]**

§

6.23

- Who talked to you about these alternatives?
- Did you spend enough time talking about the available alternatives so that you understand them?
- What are the alternatives to termination of parental rights?
- **[If the response is not adequate, continue with section 6.24. Otherwise, proceed to section 6.25.]**

➤ *Comment.* Wisconsin case law, *T.M.F. v. Children's Service Society of Wisconsin (In the Interest of D.L.S.)*, 112 Wis. 2d 180, 332 N.W.2d 293 (1983), requires the birth parent(s) to answer in complete sentences. See *supra* § 2.13; see also *infra* Appendix G (text of D.L.S.).

§

6.24

- **[If applicable:]** What is your understanding about placing your child in foster care?
 - **[If applicable:]** For how long a period of time could you place your child in foster care without a court order?
 - **[If applicable:]** What is your understanding about your ability to place your child in foster care for longer than six months with a court order?
 - **[If applicable:]** What is your understanding about your ability to have visitation with your child in foster care?
 - What is your understanding about being able to place your child with a relative without a court order?
 - What is your understanding about your ability to request a guardianship for your child rather than adoption?
-
- Would a guardianship, placement with a relative, or foster care require you to consent to terminate your parental rights?
 - What is your understanding about your child's being able to receive residential care or to be institutionalized, if appropriate?
 - What is your understanding about your child's being able to remain in your physical custody and to receive in-home services from the county social-service agency?
 - What is your understanding about being able to receive financial aid, medical coverage, homemaker services, energy assistance, child-care grants, low-cost housing, food stamps, WIC,

and nutritional supplements if you decide not to consent to the termination of your parental rights?

- Do you understand what all these services are?
- What is your understanding about your being able to seek child support?

§
6.25

- Have you given these alternatives thorough consideration in making your decision?
- Have you made your decision with these alternatives in mind?

§
6.26

- Why did you decide against these alternatives and to consent to the termination of your parental rights?

Understanding of Involuntary TPR

§
6.27

- Do you know what involuntary termination of parental rights is?
- [If so, continue with section 6.28 . If not, first explain involuntary TPR and then continue with section 6.28.]

§
6.28

- Has a petition for the involuntary termination of your parental rights ever been filed or has anyone ever threatened to file such a petition?
- [If so, continue with section 6.29 . If not, proceed to section 6.30 .]

§
6.29

- Why [was such a petition filed/were you threatened with the filing of such a petition]?
- What happened?

§
6.30

- Are you consenting to the termination of your parental rights because you fear that an involuntary termination of your parental rights might occur?
- How likely do you think it is that your parental rights would be terminated involuntarily?
- Who talked to you about the likelihood of an involuntary termination?

- What did *[he/she/I]* tell you?
- Do you realize that it would be very difficult to terminate your parental rights involuntarily?
- Do you understand that if a petition for the involuntary termination of your parental rights were filed, you would have the right to have your case decided by a jury or by the judge?
- Do you understand that you could decide what kind of trial you would have—to the judge or a jury?
- Do you understand that even if the jury were to decide that grounds existed to terminate your parental rights, the judge could decide not to terminate your rights?
- Do you understand that you would have the right to a substitution of judge?
- Do you understand that you would have the right to be represented by a lawyer, and that a lawyer would be appointed to represent you at no cost to you if you could not afford to pay for your own lawyer?
- Do you understand that you or your lawyer would have the right to ask questions of the witnesses who would testify against you?
- Do you understand that you or your lawyer would have the right to call witnesses at trial and make them come to court to testify for you?
- Do you understand that the state or county would have to prove at trial, by clear and convincing evidence, that the statements made against you in the petition were true?
- Do you understand that you wouldn't have to prove anything?

§
6.31

- Do you give up, by your consent to the termination of your parental rights, the right to a jury trial, to a substitution of judge, to be represented by a lawyer at public expense, to ask questions of the witnesses against you, to call witnesses and to make them come to court to testify for you, and to have the state or county prove its case by clear and convincing evidence?

§
6.32

- Do you understand what these rights are?

§
6.33

- Have you discussed the termination of your parental rights with friends, family, or anyone else other than the professionals involved in this case?
- **[If not, proceed to section 6.34. If so:]**
- Have you discussed this matter with your child's *[father/mother]*?
- With whom else have you had these discussions?

- What do the people with whom you have had these discussions think about your consenting to the termination of your parental rights?
- What would be their response if you changed your mind and decided not to consent?

§
6.34

- Whose idea was it for you to consent to the termination of your parental rights?
- How did the idea come up?
- When did [you/he/she] first have the idea?
- Were you influenced by the hospital staff or the agency worker?
- Would you have the courage to leave this courthouse today if you changed your mind and decided not to consent?
- Do you think your family or friends would be upset with you if you decided not to consent?
- Do you feel that the decision to consent to the termination of your parental rights is anyone's other than yours? Whose decision is it?
- Do you understand that no one can force you to consent to the termination of your parental rights?
- **[If the other birth parent is consenting:]**
- Do you understand that you are not required to consent just because the child's [father/mother] is consenting?
- **[If this is an independent adoption, proceed to section [6.37](#). If not, continue with section [6.35](#).]**

Financial Assistance

➤ *Comment.* Only the birth mother need answer the questions in sections [6.35](#) and [6.36](#).

§
6.35

- Have you received or do you expect to receive any financial assistance relating to your pregnancy or this child's birth?
- **[If so, continue with section [6.36](#). If not, proceed to section [6.37](#).]**

§
6.36

- From whom?
- What expenses [were/are to be] paid?
- How much [was/will be] paid?
- What happens if you decide not to consent to the termination of your parental rights?
- Do you have to pay any of the money back?

- Has the [payment/promise of payment] of these expenses influenced your decision to consent to the termination of your parental rights?

➤ *Comment.* For a listing of allowable payments, see section 2.33, *supra*.

Gifts Received, Promises Made, or Threats Used to Compel Consent

§

6.37

- Have you or has anyone close to you received any gifts, personal property, real estate, automobiles, cash, or any other item to get you to consent to the termination of your parental rights?

§

6.38

- Has anyone promised that you or anyone close to you will get something after today's hearing if you consent to the termination of your parental rights?

§

6.39

- Has anyone pressured or threatened you or anyone close to you to get you to consent to the termination of your parental rights?
- Has anyone said anything that could make you or anyone close to you feel bad if you do not consent to the termination of your parental rights?
- Do you have the feeling that anyone would try to make you feel bad if you decided not to consent to the termination of your parental rights?

Understanding of Right to Appeal

§

6.40

- When do you think your decision to consent to the termination of your parental rights is final?
- Is this a final hearing?
- Do you understand that you cannot expect to get your child back if you change your mind after this hearing?
- Do you understand that you cannot take back your consent after today's hearing?

Understanding of Proceedings' Finality

§

6.41

- What is the appeal period for these proceedings?
- Do you understand that the appeal period cannot be expanded?

- Do you understand that the appeal period is not a grace period that would permit you to think about your decision, change your mind, and then get your child back?

§
6.42

- Do you understand that you have an absolute right to appeal?

§
6.43

- Do you understand under what circumstances you might expect to win if you decide to appeal after today's hearing?
- Do you understand that after this hearing you could expect to win on appeal only if you could show that there was a substantial legal error made as part of these proceedings?
- Do you realize that you might be able to get your child back if you could show the court of appeals that you did not understand what you were doing or that your consent was not voluntary?
- Do you understand what you are doing today and what will happen after this hearing?
- Are you consenting voluntarily, of your own free will?

§
6.44

- If you decided to appeal the court's decision, how would you do it?
- Do you have any questions about the final nature of this hearing or how you might expect to win on appeal?

Adoption Search and Disclosure

§
6.45

- Has anyone discussed with you the opportunity to file an affidavit with the Wisconsin Department of Children and Families so that your child can find you when *[he/she]* is 18 years old?
- Do you understand that you can file this affidavit at any time?
- Do you understand that it can be updated or revoked at any time?
- Do you understand that it is your child's right to try to find you, not your right to try to find *[him/her]*?
- Do you understand that you can get information about how to file an affidavit from the agency?

§
6.46

- Has anyone discussed with you the opportunity to file an authorization with the adoption agency that would permit the agency to release, before your child reaches 18 years of age, information about your identity and location to your child's adoptive parents?

- Has anyone informed you that the adoptive parents may file a similar authorization permitting the agency to release, before your child reaches 18 years of age, information about the adoptive parents' identity and location to you?
- Do you understand that you may revoke your authorization at any time?
- Do you understand that the adoptive parents may revoke their authorization at any time?

Opportunity to Ask Questions and Reconsider Decision

§
6.47

- Do you understand that the petition to terminate your parental rights is not binding on the court and that you can still change your mind?

§
6.48

- Do you further understand that if the court terminates your parental rights after this questioning, the order will be final and you will not be able to get your child back just because you have changed your mind?

§
6.49

- Do you want more time to consider your decision to consent to the termination of your parental rights and/or to discuss your decision with anyone?
- **[If so, request a recess in the proceedings to give the birth parent(s) sufficient time for discussion and/or reconsideration. If not, continue with section 6.50.]**

§
6.50

- Do you have any questions you want to ask your *[lawyer/guardian ad litem]*, the child's guardian ad litem, the agency worker, or the judge?

Consent to Voluntary TPR

§
6.51

- Have you reviewed the Birth *[Mother's/Father's]* Statement of Rights, Responsibilities, and Options and Voluntary Consent to Termination of Parental Rights?
- **[If so, continue with section 6.52 . If not, request a recess in the proceedings to allow the birth parent(s) to review the document.]**

§
6.52

- Is this the document you reviewed?

- Do you understand everything that is stated in this document?
- Do you agree with everything that is stated in this document?
- Are you prepared to sign the document at this time?
- Do you wish the court to receive this document into evidence and to make a determination that your consent has been given freely and voluntarily, with full understanding of what you are doing?

§
6.53

- Do you feel that it would be in your child's best interest for the court to terminate your parental rights?

§
6.54

- Do you feel that it would be in your best interest for the court to terminate your parental rights?

§
6.55

- Do you give up your right to receive a written notice that the court order has been entered?

§
6.56

- After having considered the questions asked today and the information provided to you before this hearing, do you request that the court grant the petition to terminate your parental rights?

Sworn Testimony of Agency Worker

Court Report

§
6.57

- Has your agency prepared a court report in this case?
- Does the court report address the standard and factors set forth in subsections 48.426(2) and (3) of the Wisconsin Statutes?
- Is this the court report prepared by your agency?
- Is it accurate and complete?
- Do you wish to amend or modify it in any way?
- If you were to testify to everything set forth in the court report, would your testimony be substantially the same as the statements made in the report?

Counseling

§
6.58

- Have you had an opportunity to provide counseling for the child's birth *[mother/father/parents]*?
- **[If so, continue with section 6.59. If not, proceed to section 6.60.]**

§
6.59

- What issues did you address in counseling?
- *[Has/Have]* (name(s)) been able to resolve these issues?
- Do you believe the counseling provided was sufficient to meet the birth *[mother's/father's/parents']* needs?

Child's Health

§
6.60

- Is the child healthy?

Evaluation of Decision by Parent(s) to Consent to Termination of Parental Rights

§
6.61

- Have you had any conversations with (name(s)) about the termination of *[his/her/their]* parental rights?
- **[If so:]** Is it your belief, based on your conversation[s] with (name(s)), that *[his/her/their]* consent *[s]* to the termination of *[his/her/their]* parental rights *[is/are]* informed and voluntary?
- Have you been present in court today to hear all the testimony?
- *[Has/Have]* your conversations with (name(s)) been consistent with the testimony given in court?
- **[If so, proceed to section 6.62. If not:]** Are the differences important and/or substantial?
- **[If not, proceed to section 6.62. If so:]** What are the differences?
- To what do you attribute these differences?

§
6.62

- Do you believe that the termination of (name('s/s')) parental rights would be in the child's best interest?

§
6.63

- Do you believe that the termination of (name('s/s')) parental rights would be in *[his/her/their]* best interest?

§
6.64

- In your opinion, is there any reason why the court should not terminate (name('s/s')) parental rights?
- Does your agency support the court's granting the petition?

Agency Guardianship After TPR

§
6.65

- If the birth parent *['s/s']* parental rights are terminated by the court, will your agency accept guardianship of this child, conduct the postplacement study, report as required to the court, and provide any necessary counseling?
- **[The hearing is now concluded. See *infra* chapter 7 (TPR checklist for the court, counsel, and agency worker).]**

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7

TPR Checklist for the Court, Counsel, and Agency Worker

Responsibilities of the Court

Prehearing

§

7.1

- Appoint a guardian ad litem for the child. If the proceedings pertain to more than one child, all references in this chapter to *child* should be understood to include *all* children who are the subject of the proceedings. Wis. Stat. § [48.235\(1\)\(c\)](#); see Form GF-131 (Order Appointing Guardian ad Litem or Attorney).^[1]

➤ **Caution.** The Wisconsin Judicial Conference updates the mandatory court forms periodically, so attorneys should use the most recent form. This and other forms are available on the Wisconsin Court System's website, at <http://www.wicourts.gov/forms1/circuit/index.htm>. Attorneys should be aware that the official forms sometimes lag behind changes in the law. Therefore, if an attorney knows that the law has been changed since the last revision to the official form, the attorney should supplement the form as needed.

§

7.2

- Appoint a guardian ad litem for a minor birth parent. Wis. Stat. § [48.235\(1\)\(b\)](#); see Form GF-131.

§

7.3

- Consider whether a guardian ad litem should be appointed for any other party and appoint, if appropriate. Wis. Stat. § [48.235\(1\)\(a\)](#); see Form GF-131. Appoint a guardian ad litem for a birth parent who is found incompetent. Wis. Stat. § [48.235\(1\)\(g\)](#).

§

7.4

- Appoint counsel, if appropriate. Wis. Stat. § [48.23\(4\)](#); see Form GF-131.

§

7.5

- Hold the hearing on the Petition for Termination of Parental Rights within 30 days after the petition is filed. Wis. Stat. § [48.422\(1\)](#). The time period is 30 days in independent adoptions. Wis. Stat. § [48.837\(4\)\(a\)](#).

§

7.6

- Order the agency investigation and adoptive placement hearing in an independent adoption. Wis. Stat. § 48.837(4)(a), (c); see Form JC-1641 (Order for Hearing and Investigation–Adoptive Placement/Adoption).

§
7.7

- Order notice by publication if an interested party cannot, with reasonable diligence, be served personally with notice of the hearing. Wis. Stat. § 48.42(4)(b); see Form JC-1635 (Notice and Order of Hearing (for Publication)).

§
7.8

- Order waiver of the requirement of constructive notice to an unknown father if such notice will not substantially increase the likelihood of notice to that person. Wis. Stat. § 48.42(4)(b)3.

Hearing: Notice

§
7.9

- Determine whether all known interested parties have been properly notified pursuant to sections 48.42(2) to (4) and 822.08. Wis. Stat. § 48.422(6)(a); see *infra* § 7.11.

§
7.10

- If any known interested parties have not been properly notified, adjourn the hearing and order that appropriate notice be given. Wis. Stat. § 48.422(6)(a).

§
7.11

- If an unknown person may be the child's father and notice to that person is required and has not been waived, determine whether constructive notice will substantially increase the likelihood of notice to that person. Wis. Stat. § 48.422(6)(b).
- If constructive notice would substantially increase the likelihood of notice and the petitioner has not already caused notice to be published, or the publication used was not sufficient, adjourn the hearing for a period not to exceed 30 days and order constructive notice. *Id.*
- If constructive notice would not substantially increase the likelihood of notice to that person, order that the hearing proceed. *Id.*

Hearing: Ascertainment of Paternity

§
7.12

- If the child is a nonmarital child and paternity has not been established, hear testimony concerning the child's paternity. Wis. Stat. § 48.422(6)(a).

§
7.13

- Determine whether the child's paternity has been acknowledged or adjudicated in this state or another jurisdiction. Wis. Stat. §§ 48.837(4)(e), 48.91(2). The responsibilities outlined in sections 7.14 to 7.15, *infra*, appear in the sections of the statutes concerning nonrelative placement, Wis. Stat. § 48.837(4)(e), and adoption, Wis. Stat. § 48.91(2). They should be handled at any TPR proceeding, however, to avoid complications at a later date.

§
7.14

- Determine whether any person has filed a Declaration of Paternal Interest, and if such a declaration has been filed, determine the rights of the person who filed it. Wis. Stat. §§ 48.837(4)(e), 48.91(2); *see also* Wis. Stat. § 48.025.

§
7.15

- If the child's paternity has not been acknowledged or adjudicated, attempt to ascertain the child's paternity. Wis. Stat. §§ 48.837(4)(e), 48.91(2).

Hearing: Jurisdiction, Venue, Grounds, and Consent

§
7.16

- Determine whether the jurisdictional and venue requirements of chapter 48 have been met. Wis. Stat. §§ 48.027, 48.185, 48.83.

§
7.17

- Determine whether the proceeding is subject to the provisions of any of the following: the Indian Child Welfare Act, 25 U.S.C. §§ 1901–1963; the Wisconsin Indian Child Welfare Act, Wis. Stat. § 48.028; the Servicemembers Civil Relief Act, 50 U.S.C. app. §§ 501–597b; the Hague Convention on Intercountry Adoption. *See supra* §§ 2.50, .51, .53; *see also infra* Appendices B–D.

§
7.18

- Determine the preference(s), if any, of the birth parent(s) for the adoptive parents' religion. Wis. Stat. § 48.82(3).

§
7.19

- Determine whether the consent of any birth parent to the termination of his or her parental rights is informed and voluntary. Wis. Stat. §§ 48.41(2), 48.422(7)(a).

- **[If a birth parent appears personally at the hearing:]** Accept the appearing birth parent's consent only after explaining the effect of termination of parental rights; questioning, or permitting the attorneys to question, the parent as specified in Chapters 3 to 6, supra; and being satisfied that the consent is informed and voluntary. Wis. Stat. §§ 48.41(2)(a), 48.422(7)(a).
- **[If a nonpetitioning birth parent does not appear personally before the court:]** *If the nonpetitioning birth parent is the mother or adjudicated or marital father, find that it would be difficult or impossible for the parent to appear in person at the hearing, and accept the parent's written consent given before an embassy or consul official, a military judge, or a judge of any court of record in another county or state or a foreign jurisdiction, if the written consent (1) is accompanied by signed findings of the embassy or consul official or judge who accepted the parent's consent and (2) recites that the embassy or consul official or judge accepted the consent after questioning the parent and that the consent was informed and voluntary.* Wis. Stat. § 48.41(2)(b).
- **[If a nonpetitioning birth parent does not appear personally before the court:]** *If the nonpetitioning birth parent may be, but has not been adjudicated as, the father of a nonmarital child, accept the written consent as set forth above, or accept the signed, notarized consent that recites that the possible birth father has been informed of and understands the effect of an order to terminate parental rights and that he voluntarily disclaims any rights that he may have to the child, including the right to notice of the proceedings.* Wis. Stat. § 48.41(2)(c).
- **[If a nonpetitioning birth parent does not appear personally before the court:]** *If the proceeding to terminate parental rights is held before adoption proceedings in which the petitioning adoptive parent is the child's stepparent, or in which the child's birth parent is a resident of a foreign jurisdiction, accept the nonpetitioning birth parent's signed, notarized statement, witnessed by two persons, stating that he or she has been informed of and understands the effect of an order terminating parental rights and that he or she voluntarily disclaims all rights to the child, including the right to notice of the proceedings.* Wis. Stat. § 48.41(2)(d).

§
7.20

- Ensure a complete and accurate record about the informed, voluntary consent(s) of the birth parent(s). *T.M.F. v. Children's Serv. Soc'y of Wis. (In the Interest of D.L.S.)*, 112 Wis. 2d 180, 332 N.W.2d 293 (1983).

§
7.21

- If this is an involuntary TPR, determine the specific statutory grounds that exist to terminate parental rights and, except under section 48.415(6), find the parent unfit. Wis. Stat. §§ 48.415, 48.424(4).

§
7.22

- Before accepting an admission of the alleged facts in the petition, address the parties and make inquiries relating to the alleged facts. Wis. Stat. § 48.422(7)(a), (c).

§

7.23

- Determine whether the allegations in the petition have been proven. Wis. Stat. §§ 48.422(7)(c), 48.424(1).

Hearing: Disposition — Factors

§

7.24

- Determine whether there is a likelihood the child will be adopted should the parental rights of the birth parent(s) be terminated. Wis. Stat. § 48.426(3)(a).

§

7.25

- Determine the child's age and health at the time of the hearing and, if applicable, at the time the child was removed from the home. Wis. Stat. § 48.426(3)(b).

§

7.26

- Determine whether the child has substantial relationships with the birth parent(s) or other family members, and if so, whether it would be harmful to the child to sever these relationships. Wis. Stat. § 48.426(3)(c).

§

7.27

- Determine the child's wishes, if doing so is appropriate. Wis. Stat. § 48.426(3)(d).

§

7.28

- Determine the duration of separation of the birth parent(s) from the child. Wis. Stat. § 48.426(3)(e).

§

7.29

- Determine whether the child will be able to enter into a more stable and permanent family relationship as a result of the termination, taking into account the conditions of the child's current placement, the likelihood of future placements, and the results of prior placements, if applicable. Wis. Stat. § 48.426(3)(f).

Hearing: Disposition — Standard

§

7.30

- Determine whether the child's best interests will be served by the termination of the parental rights of the birth parent(s). Wis. Stat. § 48.426(2).

Hearing: Disposition — Minor Birth Parent

§
7.31

- Determine whether a minor birth parent's best interests will be served by the termination of his or her parental rights. *See* Wis. Stat. § 48.235(3).

§
7.32

- Determine whether the minor birth parent is capable of giving an informed, voluntary consent, if the guardian ad litem has informed the court that he or she has reason to doubt the birth parent's capacity to consent. Wis. Stat. § 48.41(3).

Hearing: Disposition Orders

§
7.33

- In an independent adoption, order placement into the proposed adoptive home. Wis. Stat. § 48.837; *see* Form JC-1642 (Order for Adoptive Placement).

§
7.34

- Terminate parental rights based on the statutory standard and factors, Wis. Stat. § 48.427(3), or dismiss the petition, Wis. Stat. § 48.427(2). *See supra* §§ 7.24-30; *see* Form JC-1638 (Order Concerning Termination of Parental Rights (Voluntary)), Form JC-1639 (Order Concerning Termination of Parental Rights (Involuntary)).

§
7.35

- **[In a proceeding under section 48.833 or 48.837 :]** If a guardian has not been appointed under section 48.977, transfer guardianship to the Department of Children and Families (DCF), an appropriate county department, or a licensed child welfare agency. Wis. Stat. § 48.427(3m)(a)1., 3., 4., (b).
- If a guardian has been appointed under section 48.977, enter one of the orders specified in section 48.427(3m), *see supra*, and terminate the guardianship under section 48.977. Wis. Stat. § 48.427(3p).
- **[In a proceeding under section 48.835 :]** Transfer guardianship to the relative with whom the child resides if the relative has filed a petition for adoption, Wis. Stat. § 48.427(3m)(a)5., (3p), unless this is a stepparent adoption in which no transfer of guardianship is required or unless the adoption will be granted at the same time that the TPR order is entered, Wis. Stat. § 48.835(4).

§
7.36

- If the TPR petition is filed by an agency, order the agency to submit a report to the court, if one has not already been submitted. Wis. Stat. § 48.422(8).

- If the TPR petition is filed by a person other than an agency, or if the court waives the required report, order any parent whose rights may be terminated to file with the court the required medical and genetic record of the child and family. Wis. Stat. § 48.422(9)(a).
- If a birth parent does not comply with the requirements of the preceding paragraph, order any health-care provider known to have provided care to the birth parent(s) to provide the court with any health-care records of the birth parent(s) relevant to the child's medical condition or genetic history. Wis. Stat. § 48.422(9)(b).

§
7.37

- Order the preparation of the permanency plan and related reporting to the court. Wis. Stat. § 48.43(1)(c), (5)(a).

§
7.38

- Inform the birth parent(s) of the provisions of sections 48.432, 48.433, and 48.434. Wis. Stat. § 48.427(6)(a).

Posthearing

§
7.39

- Furnish the guardian agency with a certified copy of the TPR order, and, upon request, furnish the agency with a certified copy of the child's birth certificate and a transcript of the testimony in the TPR hearing. Wis. Stat. § 48.43(4).

§
7.40

- Forward to the DCF the child's name and date of birth, the names and current addresses of the child's birth parents, guardian, and legal custodian, and the medical and genetic information obtained from the birth parents or the court report. Wis. Stat. § 48.427(6)(b).

Responsibilities of Counsel

Prehearing

§
7.41

- Provide competent legal counsel to the client(s); be supportive, but do not engage in social work.

§
7.42

- Refer the client(s) to an agency early in the process.

§

7.43

- Communicate with the agency to provide consistent, thorough services to the client(s).

§

7.44

- If the child was not born in the United States, ensure that the adoption complies with the Hague Convention on Intercountry Adoption. *See supra* § 2.53.

§

7.45

- If there is a nonbiological presumed father, prepare a Presumed Father's Statement Rebutting Presumption of Paternity and Voluntary Consent to Termination of Parental Rights for his signature as early as possible. *See* Form JC-1637 (Consent to Termination of Parental Rights).

§

7.46

- Prepare the Petition for Termination of Parental Rights (Form JC-1630) and, in an independent adoption, the Petition for Adoptive Placement (Form JC-1640).

§

7.47

- File the petition(s) and schedule the hearing in a timely manner.

§

7.48

- Prepare the Order Appointing Guardian ad Litem or Attorney (Form GF-131).

§

7.49

- In an independent adoption, prepare the Order for Hearing and Investigation (Form JC-1641).

§

7.50

- In cases in which an order for publication or an order waiving the requirement of constructive notice is necessary, prepare the Motion for Order for Publication, Affidavit, Order for Publication, and Notice of Hearing. *See* Form JC-1635 (Notice and Order of Hearing (for Publication)).

§

7.51

- In a case in which the adoption will take place immediately following the TPR, prepare and file the Petition for Adoption (Form JC-1645) and Order for Hearing and Investigation (Form JC-1641).

§

7.52

- File the orders described in sections 7.48 to 7.51, *supra*, with a request for the return of conformed copies.

§

7.53

- Provide copies of all documents to counsel, including the guardian(s) ad litem, and to the agency worker.

§

7.54

- Prepare and arrange for service of a summons to all parties. *See* Form JC-1633 (Summons (Termination of Parental Rights)).

§

7.55

- In appropriate circumstances, prepare the Birth Father's Statement of Rights, Responsibilities, and Options and Voluntary Consent to Termination of Parental Rights and Form JC-1637 to be signed before the hearing by a nonadjudicated birth father. *See infra* Appendix F.

§

7.56

- If the court has ordered publication, make sure the notice of hearing is published in a timely fashion and request an Affidavit of Publication.

§

7.57

- Prepare the client(s) for the hearing.

§

7.58

- If serving as guardian ad litem for the child or birth parent, investigate the circumstances of the case. The role of the guardian ad litem is comprehensive, especially with respect to protecting the record to ensure a permanent placement for the child. *See* Wis. Stat. § 48.235(3), (5); *Waukesha Cnty. Dep't of Soc. Servs. v. C.E.W. (In the Interest of C.E.W.)*, 124 Wis. 2d 47, 368 N.W.2d 47 (1985); *A.B. v. P.B. (In the Interest of A.B.)*, 151 Wis. 2d 312, 444 N.W.2d 415 (Ct. App. 1989); Joan N. Alschuler et al., *The Guardian ad Litem Handbook* § 2.8, at § 4.75 (State Bar of Wisconsin PINNACLE 3d ed. 2007 & Supp.).

§

7.59

- Prepare the orders, consents, disclosures, and acknowledgments for the court.

§

7.60

- Prepare carefully for the hearing.

Hearing

§

7.61

- Ensure a complete and accurate record about the informed, voluntary consent(s) of the birth parent(s). *T.M.F. v. Children's Serv. Soc'y of Wis. (In the Interest of D.L.S.)*, 112 Wis. 2d 180, 332 N.W.2d 293 (1983).

§

7.62

- If serving as guardian ad litem for the child or a birth parent, state a position about the child's or parent's best interests. *Waukesha Cnty. Dep't of Soc. Servs. v. C.E.W. (In the Interest of C.E.W.)*, 124 Wis. 2d 47, 368 N.W.2d 47 (1985).

§

7.63

- If serving as guardian ad litem for the child or a birth parent, inform the court if the child's or parent's best interests are substantially inconsistent with his or her wishes. Wis. Stat. § 48.235(3).

§

7.64

- If serving as guardian ad litem for a minor birth parent, inform the court if there is reason to doubt the parent's capacity to give a voluntary and informed consent. Wis. Stat. § 48.41(3).

§

7.65

- Request that the appearing birth parent(s) sign the Birth Mother's or Birth Father's Statement of Rights, Responsibilities, and Options and Voluntary Consent to Termination of Parental Rights. See *infra* Appendices E, F.

§

7.66

- Provide copies of the Order Concerning Termination of Parental Rights (Form JC-1638 or JC-1639), the Notice of Medical Information and Birth/Adoptive Parent Identifying Information Disclosure (Form JC-1631), and the notice of entry of order (Form JC-1644, Notice of Right to Seek Postdisposition Relief) to the appearing birth parent(s) and request the signing of an Acknowledgment of Receipt of Documents.

Posthearing

§

7.67

- Send copies of the Order Concerning Termination of Parental Rights (Form JC-1638 or JC-1639), the Notice of Medical Information and Birth/Adoptive Parent Identifying Information Disclosure (Form JC-1631), and the notice of entry of order (Form JC-1644, Notice of Right to Seek Postdisposition Relief) with a cover letter to any birth parent who did not appear at the hearing and whose address is known.

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7.68

- Provide copies of any cover letters to the court, counsel, and the agency worker.

Responsibilities of the Agency Worker

Prehearing

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7.69

- Counsel the birth parent(s) and the extended family about the available alternatives to and the consequences of TPR.

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7.70

- Refer the birth parent(s) to an attorney for legal representation.

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7.71

- If the child was not born in the United States, consult with an immigration attorney on the applicability of the Hague Convention on Intercountry Adoption. *See supra* § 2.53.

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7.72

- Become familiar with the legal process, but do not give legal advice or draft legal documents.

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7.73

- Communicate with the attorneys involved, including the guardian(s) ad litem, to provide consistent, thorough services to the birth parents and the adoptive parents.

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7.74

- Assist the birth parent(s) with practical concerns and referrals during the pregnancy and after the birth.

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7.75

- Arrange for appropriate foster care for the child, if needed.

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7.76

- Assist the birth parent(s) in providing required medical and genetic information.

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7.77

- Counsel the birth parent(s) regarding selection of and relationship with the prospective adoptive parents.

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7.78

- Prepare the court report.

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7.79

- In an independent adoption or a case in which the adoption will occur immediately following the TPR, prepare the home study.

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7.80

- Provide the court and counsel with copies of the court report and the home study at least five days before the hearing. Wis. Stat. § 48.837(4)(c).

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7.81

- Inquire of the DCF as to the filing of a Declaration of Paternal Interest (tel.: (608) 266-2744) and file a Court Inquiry on Paternal Interest Declaration Response with the court. Wis. Stat. §§ 48.837(4)(e), 48.91(2); *see supra* § 2.12.

Hearing

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7.82

- Provide testimony for the court.

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7.83

- Provide emotional support to the birth parent(s).

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7.84

- Accept guardianship of the child. Wis. Stat. § 48.427(3m)(a)1., 3., 4., (3p).

Posthearing

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7.85

- Provide counseling to the birth parent(s) and the extended families.

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7.86

- Conduct the postplacement home study.

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7.87

- Prepare the permanency plan and report to the court, as appropriate. Wis. Stat. § 48.43(1)(c), (5)(a).

