

Confidential Client Work Sheet

Preparation of Hearing or Trial

Conservatorship and/or Possession & Access are At Issue

Best Interest of Child

In making decisions with regard to conservatorship, possession and access the courts are required to follow a standard known as the “best interest” rule. Meaning, the “best interest” of the child is always the court’s paramount consideration when deciding these issues. Tex. Fam. Code § 153.002. As a result, it is necessary for us at your hearing or trial to present evidence on the various factors the court can consider.

These factors are known in the Courtroom as the “Holley” factors, based on a nonexclusive list that was enumerated by the Texas Supreme Court in 1976, in a case known as *Holley v. Adams*, 544 S.W.2d 367 (Tex. 1976).

These factors fall into three general categories:

- (1) Caring for the Child;
- (2) Maintaining family relationships; and
- (3) Parental Fitness

In this worksheet, I have broken down each of the three general categories and the factors which fall under each. At the end of each comment appear blank lines. In order to assist us with the preparation of your hearing or trial, in the blank lines please provide any relevant information, evidence, or otherwise which you think relates to that category. Further, list the names of any witness which can testify or sources of evidence which can corroborate the same. Please do not skip and leave any category blank. Rather, indicate to us that it is not an issue or not something we need to consider in the presentation of your case.

There are two perspectives to consider when responding to each of these. The first, is whether any of these categories are relevant as against the other parent in this case. The other, is whether or not you believe that the other parent will allege or bring evidence of any of these categories against you. For any of these categories which you believe do not apply as against the other parent, please so indicate. For any category which you believe the parents will allege or attempt to bring evidence about you, please so indicate.

(1) Caring for the Child.

(a) Physical and Emotional Needs. The court can consider which party will best provide for the child's physical, psychological, and emotional needs and development now and in the future (esp. children with disabilities, special needs, or special or unique medical conditions requiring substantial supervision).

As you Believe The Evidence Applies Against the other parent.

As you Believe the Other Parent Will Bring Evidence or Testimony Against You

(b) Physical & Emotional Danger. The court can consider whether either party poses any physical or emotional danger to the child now or in the future.

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(c) Stability of Home. The court can consider the stability of each party's home (i.e. work history, residency history, eviction history, non payment of utilities or other essential or "necessary" services).

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(d) Plans for Child. The court can consider each party's future plans for the child – such as living, education, physical needs, social and family support, medical services/treatment, or any other special considerations such as those for a special needs child.

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(e) Cooperation between Parents. The court can consider each party's ability to give the child first priority and reach shared decisions in the child's best interest. In other words, how cooperative are the parents in sharing decisions with regard to their child and in making the child their first priority? (i.e. unilaterally acting or not informing the other regarding appointments for medical or mental health services, in cases of emergencies, education or extra curricular, planning summer activities that infringe upon the other parent's time etc ...)

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(f) Parenting Skills. The court can consider each party's parenting skills, training, devotion and family support and relaxed parenting behavior. Any special training or skills, i.e. infant cpr, medical training, parenting skills classes or training, mental health or educational training or expertise etc...

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(g) Primary Caregiver. The court can consider which party was the child's primary caregiver before the suit (also including prenatal care, pre-birth and after birth).

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(2) Maintaining family relationships

(a) Geographic Proximity. The court can consider where the parties reside in relation to each other, as this can complicate decisions related to school, after school activities, ability to reasonably exercise visitation, health care providers, and other daily issues. Also factor whether a parent has relocated prior to, during, or after separation or while the suit is pending rendering geographic proximity a real issue in the case.

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(b) Siblings. The court can consider what effect separation would have on the siblings, if divided or split conservatorship is requested.

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(c) Promoting relationships between child & the other parent. The court can consider the extent to which each party can encourage and accept a positive relationship between the child and the other party or parties. To what degree do you or the other parent encourage the child to maintain and promote a positive relationship with the other parent? Or, to what extend does the other party undermine this?

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(e) False report of child Abuse. The court can consider whether either party ever knowingly made a false report of child abuse. Tex. Fam. Code § 153.013(b); Tex. Fam. Code § 261.107(b). Have there been any false reports of child abuse?

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(f) International Child Abduction. The court can consider the need for measures to protect the child from being abducted by a parent to a foreign country. Are there any reasons for the court to be concerned that the other parent may abduct a child or children to a foreign country?

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(3) Parental Fitness

(a) History or pattern of Abuse. The court must consider any credible evidence of a history or pattern of past or present child neglect or PHAB or SXAB by one parent directed against the other parent, a spouse, or a child.

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(b) Intentional use of Abusive Physical Force. The court must consider any evidence of the intentional use of physical force by a party against the party's spouse, a parent of the child, or any person under 18 years old committed while the suit is pending or in the two years before the suit was filed.

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(c) Family Violence. The court must consider the commission of family violence.

As you Believe The Evidence Applies Against the other parent.

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(4) Optional or “Any other Relevant Factors” The parties should address the following as the relate to each party’s fitness to act as a parent:

(a) Present fitness & recent past conduct. The court can consider each party’s present fitness to care for the child. The court can consider a party’s recent past conduct as a reasonable predictor of the party’s behavior and fitness in the future, including but not limited to criminal history, mental health related issues (suicidal threats, individual therapy/psychiatric or psychological treatment).

As you Believe The Evidence Applies Against the other parent.

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(b) Drug or Alcohol Abuse. The court can consider whether either party has a drug or alcohol history and the court can deny a party conservatorship based on a recent drug or alcohol abuse. In re C.R.T., 61 S.W.3d 62 (Tex. App. – Amarillo 2001, pet denied).

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(c) Sexual Conduct. The court can consider whether either party's sexual conduct renders that party unfit to act as a parent and is generally relevant only if the child or children were exposed to or had access to evidence of the parent's conduct.

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