

## LOCAL RULES FOR JUVENILE COURT - 27B JUDICIAL DISTRICT

### I. GENERAL RULES

#### Juv Rule 1. Scope; Effective Date.

- 1.1 Scope. These rules apply to all cases in which a petition is filed alleging that a juvenile is abused, neglected, dependent, delinquent and/or undisciplined.
- 1.2 Effective date. Unless otherwise stated herein, these rules shall be effective 1/1/2016 and supersede the rules promulgated in 1997 by the Honorable J. Keaton Fonvielle.

#### Juv Rule 2. Purpose; Atmosphere of Mutual Respect.

- 2.1 Purpose. These rules are designed to help achieve stable and secure homes for children who come into the court's juvenile jurisdiction, and serve the following purposes:
  - a) To provide for judicial oversight of case planning;
  - b) To ensure a coordinated decision-making process;
  - c) To eliminate unnecessary delays in court proceedings;
  - d) To encourage early involvement of families in the planning and decision-making process; and
  - e) To achieve results that truly reflect the best interests of children.
- 2.2 Atmosphere of Mutual Respect. The court and all parties – including, but not limited to, DSS, the GAL, parent(s), juvenile(s), district attorney, court counselors, service providers and their attorney(s) - shall at all times show respect to one another. Differences and disagreements regarding the proper course to be taken on a particular issue shall be addressed in a dignified manner. When the court, a party or attorney, believes in good faith that a child's interests have been adversely affected by the conduct or omission of a party, social worker, mental health professional, attorney, or any other person, the matter should be addressed, whenever possible, outside the public arena of the courtroom. When the facts necessitate debate or hearing on such issues in a courtroom setting, such shall occur in a dignified, respectful manner with due regard for the legitimate concerns, interests and responsibilities of the person or agency whose conduct is being questioned. Nothing herein shall prevent any party from having matters heard in court when the same is necessary.

#### Juv Rule 3. Priority of Juvenile Court.

- 3.1 Juvenile cases shall have priority over **ALL** other District Court matters. Attorneys are expected to be in the juvenile courtroom and ready to proceed at the start of each session of juvenile court wherein that attorney has a matter to be heard that day.
- 3.2 Regardless of trial division, any of the following trial court matters shall prevail over any trial court matter **not** listed below.
  - a) any trial or hearing in a capital case;
  - b) the trial in any case designated pursuant to Rules 2.1 of the General Rules of Practice for the Superior and District Courts;

- c) the trial in a civil action that has been peremptorily set as the first case for trial at a session of superior or district court;
- d) the trial of a criminal case in superior court, when the defendant is in jail or when the defendant is charged with a Class A through E felony and the trial is reasonably expected to last for more than one week; and
- e) the trial in an action or proceeding in district court in which any of the following is contested: termination of parental rights; child custody; adjudication of abuse, neglect or dependency or disposition following adjudication; interim or final equitable distribution; alimony or post-separation support.

There is no priority among the matters listed above. Where conflicts arise, judges in conflicting courts should communicate to facilitate the most efficient disposition of the cases.

- 3.3 At times it shall be necessary to schedule abuse, neglect and dependency matters on a non-DSS court day(s). In these circumstances, the juvenile matter shall be given some priority on the next available civil term of court.

**Juv Rule 4. Construction and Enforcement.**

- 4.1 These rules shall be liberally construed to accomplish the purposes of **Juv Rule 2**. The court may impose sanctions against a party or attorney who fails to comply with these rules; however, no rule shall be construed, applied, or enforced in a manner that will endanger or harm a child or prejudice the rights of a party.

An example of a possible sanction to be imposed for failing to heed these rules is that the attorney may be held in contempt and fined the total amount of "wait time" to be paid to fellow attorneys as a result of some act or omission of the attorney to be fined.

**Juv Rule 5. Extension of Time and Continuances.**

- 5.1 Good cause required. Extensions of time and continuances beyond the times specified by statute, Court order or these rules shall be granted only for good cause. The consent of all parties alone is not good cause for a continuance or an extension of time.
- 5.2 In considering granting a continuance or extension, the Court shall take into account the best interests of the juvenile, the availability of parties or witnesses, whether such a continuance or extension would promote the purpose of these rules, the rights of the parties and the ends of justice.

**Juv Rule 6. Sharing of Information by Agencies.**

- 6.1 Information involving juveniles alleged or adjudicated to be Abused, Neglected, Dependent, Delinquent or Undisciplined shall be shared between agencies as authorized by statute.

## II. RULES APPLICABLE TO ABUSE, NEGLECT & DEPENDENCY CASES.

### Juv Rule 7. Appointment of Counsel.

- 7.1 Separate counsel. When a petition alleging abuse, neglect or dependency is filed, the clerk shall immediately appoint provisional counsel to each parent named in the Petition.
- 7.2 Notice of appointment. The clerk shall prepare a Notice of Appointment of Counsel to be served on the parent with the petition and summons. The notice shall include the attorney's name, business address and telephone number and shall encourage the parent to contact the attorney. The notice shall also inform the parent:
- a) That the parent may retain counsel of their choosing;
  - b) That the court or the clerk, at the first hearing will determine whether the parent qualifies for appointed counsel and whether the parent waives said right; and
  - c) That the court will dismiss the appointed counsel if the parent does not qualify for appointed counsel or the parent waives the right to counsel.
- 7.3 Attorney must be available. Before appointing an attorney, the clerk shall ensure that the attorney will be available for the first hearing and, to the best of the attorney's knowledge, for other stages of the case. The clerk may make this determination either by talking with the attorney or by pre-arrangement with one or more attorneys on the appointment list.
- 7.4 Same attorney appointed. In any case in which a petition for termination of parental rights is filed, the Clerk shall appoint the same attorney to represent the parent in the termination proceeding if the parent whose rights are sought to be terminated has been represented by an appointed attorney in a prior abuse, neglect or dependency proceeding. The petitioner shall mail the attorney a copy of the summons and petition. In the event the termination of parental rights proceeding is filed as a Motion in the Cause, the current appointed counsel, if any, and the attorney advocate for the GAL shall continue representation, unless the attorney has been permitted to withdraw by the Court.

### Juv Rule 8. Responsibilities of Attorneys.

- 8.1 Attorneys to be qualified. Before being eligible for appointment to represent parents, attorneys must:
- a) Make a request to the County Bar Indigent Appointment Committee;
  - b) Have sufficient experience and skills to provide competent representation;
  - c) Have a good working knowledge of juvenile law and juvenile court procedures;
  - d) Have an understanding of child protective services and the related mandates that apply to DSS and to guardians ad litem;
  - e) Be a member of the Cleveland or Lincoln County Bar;
  - f) Maintain a mailbox in the Clerk's Office; and
  - g) Have a commitment to working with parents.
- 8.2 Attorneys to be available. Except for unforeseen conflicts, an attorney should not accept an appointment unless the attorney can be available for the first hearing in the case and, to the best of the attorney's knowledge, for other stages of the proceedings.

- 8.3 When client remains unserved. After the first hearing in a case, an attorney appointed to represent a parent who has not been served and who does not appear at the hearing shall not be responsible for further appearances until the clerk notifies the attorney that the parent has been served.
- 8.4 Duty when conflict occurs. An attorney who has a conflict in another court shall comply with the relevant rules relating to priority in **Juv Rule 3**. As soon as the attorney becomes aware of a conflict, but no later than 3:00 p.m. on the day before DSS court, he/she shall advise every attorney of record on their matters scheduled the next day, as well as any pro se litigants. When absent from juvenile court because of a conflict, the attorney shall keep the courtroom clerk informed of his or her location **at all times**. An attorney who has a conflict has the burden of proving the conflict and that the court having priority refuses to allow the attorney to be present.
- 8.5 Withdrawal. Leave of court for an attorney to withdraw from a case shall be granted only for compelling reasons. Oral motions to withdraw will rarely be granted.

**Juv Rule 9. Appointment of Guardian Ad Litem and Attorney Advocate.**

- 9.1 Judge shall appoint. When a petition is filed alleging abuse and/or neglect, the Judge shall appoint a guardian ad litem and, if the guardian ad litem is not an attorney, also an attorney advocate, to represent the juvenile named in the petition.
- 9.2 Judge may appoint. For petitions filed alleging dependency only, the court may appoint a guardian ad litem and/or attorney advocate.
- 9.3 Release. At any point in the proceeding, if the Judge determines that a guardian ad litem or attorney advocate is not necessary for a juvenile who is alleged only to be dependent, the Judge may dismiss the guardian ad litem or attorney advocate or both.

**Juv Rule 10. Service; Summons and Petition; Notice.**

- 10.1 Identification and location of parents. From the date the petition is filed until the adjudication hearing, the petitioner shall have a continuing duty to identify and locate **any** parent or other respondent who has not been served with a copy of the summons and petition and to have the summons and petition served on any such parent or other respondent. At each hearing the court shall make inquiry as to the progress in these areas and shall direct the petitioner as appropriate in these efforts.
- 10.2 Hearing required when parent unknown. If the identity or location of a parent is unknown, the court shall make necessary inquiries in order to ascertain any relevant information which would assist the Petitioner in locating the unknown parent and shall direct the Petitioner regarding specific efforts which should be made to locate said parent.
- 10.3 Law Enforcement must give priority. The law enforcement agency responsible for serving summonses, petitions, notices, subpoenas and other legal documents in juvenile cases shall give priority to the timely service of such documents.

**Juv Rule 11. UCCJEA Affidavit.**

11.1 The information required by N.C.G.S. 50A-209 shall be included in the petition, in an affidavit attached to the petition, or in a separate affidavit filed with the court and served on the parties as soon as feasible after the petition is filed.

**Juv Rule 12. Non-Secure Custody Hearing.**

12.1 Duties when non-secure continued. If the Judge finds that continued non-secure custody is necessary, the Judge shall review or explore the following:

- a) The appropriateness of the juvenile's placement and other placement options, including possible relative placements and efforts to place or keep siblings together;
- b) Any efforts needed to ensure that a school-aged juvenile's school placement and attendance are not disrupted, unless a change is in the juvenile's best interest;
- c) Parental visitation;
- d) Sibling visitation;
- e) Services needed and referrals;
- f) Financial support for the juvenile;
- g) Whether additional orders are needed to address the juvenile's immediate needs, such as an immediate need for medical treatment or evaluation or the juvenile's need to secure any personal items; and
- h) Specific steps to be taken by the parties before the next hearing.

12.2 Duties when non-secure discontinued. If the Judge finds that continued non-secure custody is not warranted, the Judge shall explore the following:

- a) Service needs and referrals, and
- b) Specific steps to be taken by the parties before the next hearing.

12.3 Stipulations at non-secure. At a non-secure custody hearing, the Judge may accept stipulations and approve consent orders relating to continued non-secure custody, subject to the provisions of **Juv Rule 13.**

**Juv Rule 13. Stipulations to the Court.**

13.1 Must be knowing, voluntary. Before accepting a stipulation, the Judge, in open court, shall determine that the parties understand the content and consequences of the stipulation and that they voluntarily consent to the stipulation. The court shall, if necessary, make inquiry to determine that the stipulation is voluntary and knowing.

13.2 Court not bound. The court shall not be bound by any stipulation in which:

- a) Fewer than all of the parties *who have appeared*, including the GAL, have agreed, or
- b) The court finds that such stipulation is not supported by the facts in the case or that such stipulation is not in the best interests of the juvenile(s) in the case.

**Juv Rule 14. Discovery.**

14.1 Matters not discoverable. Unless specifically allowed by statute or court order, the following matters are not discoverable:

- a) Privileged communications or work product of attorneys;
- b) Identity of reporters of abuse, neglect or dependency;
- c) Notes, dictation of DSS social workers and GAL; and
- d) Information in DSS file relating to collateral parties.

- 14.2 Initial disclosures required. At the pretrial conference for all contested hearings, all parties shall provide a witness list with contact information including witnesses to be called at trial, as well as a list of any exhibits to be introduced at trial. If available at the time of said conference, each party shall provide a copy of said exhibits. If the information is known, any contested allegations shall be identified. Failure to provide witness information and exhibits not available at the time of the conference shall not prevent their use at trial.
- 14.3 Compelling discovery. Parties may request discovery in addition to that in Rule 14.2.
- 14.4 Means of discovery. In general, all means of discovery permitted by the Rules of Civil Procedure shall be available. All requests for discovery should be made in writing outlining the specific information requested. If the request is made more than twenty-one (21) days after the filing of the petition, the party from whom the information is requested shall provide the information within **seven (7) business days** or provide within such time written notification of the reason such information cannot or should not be provided.
- 14.5 Sanctions. The court may take any action on motions to compel authorized by RCP 37.
- 14.6 Restricting discovery. Upon written motion, hearing and a finding of good cause, the court may at any time order that discovery be denied, restricted or deferred. The court may also enter such orders as may be necessary to prohibit a party, attorney or agency from divulging information to a juvenile, a juvenile's parent(s)/guardian(s)/custodian(s) or to a particular party where appropriate.

**Juv Rule 15. Pre-Adjudication Conference; Petitions and TPR's.**

- 15.1 Purpose of Conference. The purposes of the conference shall be to explore the possibility of settlement, to narrow the issues as much as possible, and to stipulate to the introduction of evidence and to facts that are not in dispute.
- 15.2 Lists, exhibits to be provided. At or before the conference in each contested hearing, each party shall provide to all other parties a written list of prospective witnesses and exhibits and copies of all available listed exhibits intended for use at the adjudication hearing. Any listed exhibit that is not available for distribution at or before the pre-adjudication conference shall be distributed as soon as it is available.
- 15.3 Managing pre-trials. The court must consider the following:
- a) Retention or release of provisional counsel;
  - b) Identification of the parties to the proceeding;
  - c) Paternity issues, including the identity and location of a missing parent;
  - d) Whether relatives have been identified/notified as potential placement;
  - e) Whether all summons, service of process, and notice requirements have been met;

At the conference, the Judge should assist the parties in:

- a) Sharing witness lists, exhibit lists, and exhibits;
- b) Defining the issues;
- c) Estimating the time necessary to hear the matter;
- d) Establishing a time schedule for the case on the hearing date;
- e) Identifying matters than can be stipulated and making stipulations, and
- f) Considering any proposed Consent Order.

**Juv Rule 16. Adjudication of Petitions (Abuse, Neglect and Dependency).**

16.1 Copies of Orders, memos distributed. Following any contested adjudication hearing, the party preparing the Order shall circulate to attorneys for all represented parties a copy of the proposed Order and shall allow at least three (3) full business days for comments and requested revisions before submitting to the Judge for signature.

**Juv Rule 17. Disposition Reports (Abuse, Neglect and Dependency Petitions).**

17.1 Contents of dispositional, review reports. In each case, DSS shall prepare a disposition report that includes at least the following:

- a) A placement plan and how that plan addresses the child's needs;
- b) A plan of services for the family, and how that plan meets the child's needs;
- c) A statement of changes in parental behavior needed to correct the conditions that led to the abuse, neglect, and/or dependency, and the actions the parents must take;
- d) Efforts by DSS to prevent removing the child from the home;
- e) Efforts by DSS to reunify the family, including services that have been offered, provided, or rejected;
- f) A statement of why the child cannot be protected from the identified problems while remaining in the home;
- g) The identity of all relatives and friends who have been contacted about providing a placement for the child, and a description of the nature and result of those contacts;
- h) A suggested visitation plan for the child;
- i) A statement of the child's special needs and how they may be met;
- j) The identity and location of the child's siblings, and a statement of steps required to maintain contact between the siblings;
- k) Information about the child's school or daycare situation and any proposed changes related to it; and
- l) The status of any treatment previously ordered.

17.2 GAL Reports. The guardian ad litem for the child shall prepare a disposition report to assist the Court in reaching a disposition that will best serve the child's needs.

17.3 When reports provided. All parties with written disposition reports shall provide copies of their reports to all other parties or their counsel by Thursday at 5:00 p.m. the week prior to the hearing. Every effort should be made to include all attachments to said reports. Necessary changes and additions to said reports shall be made in the form of an

addendum to the report. Failure of the party to follow the time guidelines may be grounds for a continuance if requested by any other party.

- 17.4 Reports considered after adjudication. Disposition reports shall not be submitted to, or considered by the court, until the adjudication is completed.
- 17.5 Respondent reports. Respondent parents or their attorneys may submit written reports setting forth relevant information. Said reports shall also be provided by Thursday at 5:00 p.m. the week prior to the hearing.

**Juv Rule 18. Disposition (Abuse, Neglect and Dependency Petitions).**

- 18.1 Sending information to other agencies. At the conclusion of the dispositional hearing, the Judge shall determine whether any person or agency not present or represented at the dispositional hearing needs information about the disposition in order to help meet the child's needs. The judge may order that either a copy of the dispositional order or a summary of appropriate portions of the order be provided to any such person or agency. The court also may order the parties to share specified types of information on an ongoing basis with designated persons or agencies.
- 18.2 Unknown or unlocated parent. If a parent's identity or whereabouts remain unknown or the paternity of the child has not been legally established at the disposition stage, the judge shall specify in the order any steps that are to be taken to identify the parent, locate the parent, or establish paternity.

**Juv Rule 19. Review Hearings.**

- 19.1 Reports due. All parties with written reports shall provide copies of their reports to all other parties by 5:00 p.m. on the Thursday prior to the review hearing. Every effort should be made to include all attachments to said reports at that time. Necessary changes and additions to said reports shall be made in the form of an addendum to the report. Failure of a party to submit their report by 5:00 p.m. the preceding Thursday may be grounds for continuance if requested by any other party.
- 19.3 Notice of review hearings. Unless a person or his/her attorney was present and given notice at a prior hearing, the clerk shall give written notice at least ten (10) days prior to the hearing, if possible, to the following individuals:
- a) Parent(s) directly or through their attorney(s);
  - b) Juvenile, if twelve (12) years of age or older;
  - c) Guardian(s) of juvenile;
  - d) Foster Parent(s);
  - e) Relative(s) or pre-adoptive parent(s) providing care for the juvenile;
  - f) Custodian(s) or agency with custody;
  - g) GAL;
  - h) Attorney(s) for any of these designated persons;
  - i) Any other person or agency specified by the court.



### III. RULES APPLICABLE TO DELINQUENCY & UNDISCIPLINED CASES.

#### **Juv Rule 20. Appointment of Counsel.**

- 20.1 When appointed. When a petition is filed alleging that a juvenile is delinquent, or in any proceeding wherein a juvenile is alleged to be in contempt of court, or to have violated the terms of probation, the clerk shall appoint said juvenile counsel immediately unless the juvenile has retained counsel. Further, whenever custody of a juvenile adjudicated undisciplined or delinquent is placed by dispositional order with DSS, person(s) from whom such custody is taken shall be given an opportunity to apply for court-appointed counsel whether or not a petition for abuse, neglect or dependency is filed.
- 20.2 Notice. The clerk shall prepare a *Notice of Appointment of Counsel* to be served on the juvenile with the petition and summons. The notice shall include the attorney's name, address and telephone number and shall direct the juvenile to contact the attorney.

#### **Juv Rule 21. Responsibilities of Attorneys.**

- 21.1 Before being eligible for appointment to represent parents, attorneys must:
- a) Make a request to the County Bar Indigent Appointment Committee;
  - b) Have sufficient experience and skills to provide competent representation;
  - c) Have a good working knowledge of Juvenile Law and Juvenile Court procedures;
  - d) Have a good understanding of the Department of Juvenile Justice and the related mandates applicable to those divisions;
  - e) Be a member of the Lincoln or Cleveland County Bar;
  - f) Maintain a mailbox in the Clerk's Office; and
  - g) Have a commitment to working with juveniles.
- 21.2 Duty when conflict occurs. An attorney who has a conflict in another court shall comply with the relevant rules relating to priority in **Juv Rule 3**. As soon as the attorney becomes aware of a conflict, but no later than 3:00 p.m. on the day before DSS court, he/she shall advise every attorney of record on their matters scheduled the next day, as well as any pro se litigants. When absent from juvenile court because of a conflict, the attorney shall keep the courtroom clerk informed of his or her location **at all times**. An attorney who has a conflict has the burden of proving the conflict and that the court having priority refuses to allow the attorney to be present.

#### **Juv Rule 22. Filing of Petition; Commencement of Actions.**

- 22.1 How petitions commenced. Petitions shall be commenced/filed in accordance with the juvenile code.
- 22.2 DJJ approval required. In every case, a petition shall not be issued or filed except upon the approval of an intake counselor as defined by Chapter 7B of the General Statutes. The clerk may assist the intake counselor in this process.

**Juv Rule 23. Scheduling of Cases – First Appearance for Felony Cases.**

- 23.1 Juvenile not in Secure Custody. The first appearance for a juvenile who is alleged to have committed a felony shall take place at the first session of juvenile court scheduled for the hearing of delinquency cases in the county wherein the petition arose.
- 23.2 Juvenile in Secure or Non-Secure Custody. If the juvenile who is alleged in a petition to have committed a felony is in secure or non-secure custody, the first appearance shall take place at the initial hearing.
- 23.3 First appearance required. The first appearance in such cases shall be conducted in accordance with the juvenile code.

**Juv Rule 24. Scheduling of Cases; Juveniles in Secure or Non-Secure Custody.**

- 24.1 Initial hearing for juveniles in custody. An initial hearing for juveniles in secure or non-secure custody shall be scheduled by the clerk at the next session of juvenile court after such juvenile has been taken into custody unless said session is greater than **five (5) days** from the time of initial custody. In that event, the clerk shall contact the Chief District Court Judge who shall schedule such matter **within five (5) days**.
- 24.2 Juveniles in custody by delegated authority. If the juvenile was taken into secure or Non-Secure custody pursuant to delegated authority, the clerk shall schedule such initial hearing on the day of the next regularly scheduled session of District Court in the county where the order was entered.
- 24.3 Maximum delay. In no event shall the hearing be delayed longer than the time specified in **Juv Rule 24.1** above.
- 24.4 Waiver not allowed. The initial hearing may **not** be waived.
- 24.5 The appointed attorney for a juvenile in secure custody due to a felony petition shall advise the DA's office of their appointment prior to the initial secure custody hearing such that any available discovery can be disseminated.
- 24.6 Subsequent hearings to review secure custody. If a juvenile remains in secure or non-secure custody after the Initial Hearing, the court must hold additional hearings within the times prescribed by Chapter 7B of the North Carolina General Statutes.

THESE RULES ARE ADOPTED ON THIS THE 5 DAY OF NOVEMBER 2015, AND ARE EFFECTIVE FOR ALL JUVENILE MATTERS HEARD IN THE 27B JUDICIAL DISTRICT ON OR AFTER JANUARY 1, 2016.

This the \_\_\_\_ day of 11/5/, 2015.

  
\_\_\_\_\_  
Larry J. Wilson, Chief District Court Judge