

North Carolina
23rd Judicial District

In the General Court of Justice
District Court Division

**Administrative Order Revising Rules of Practice
In DSS Cases**

**To: District Court Judge David Byrd
District Court Judge Jeanie Houston
District Court Judge Michael Duncan
Clerks of Superior Court in the 23rd Judicial District
DSS Directors and DSS attorneys in 23rd Judicial District
Geoff Farmer, GAL District Administrator, 23rd Judicial District
GAL attorneys in the 23rd Judicial District
Private attorneys who represent parents in DSS cases filed in the 23rd Judicial District.**

**From: Chief District Court Judge Mitchell L. McLean
Date: January 31, 2008**

Consistent with the authority granted in G.S. 7A-146, I hereby order effective March 1, 2008, the attached rules shall be used in all Wilkes County and Ashe County DSS cases filed on or after said date as well as all pending Wilkes County and Ashe County DSS cases. These rules were developed as part of the Court Improvement Project for the 23rd Judicial District in an effort to enhance the efficiency, effectiveness, and quality of services we are currently providing the families and children of the 23rd Judicial District.

The attached rules shall be effective as of March 1, 2008 with Rule 10 omitted, in all pending DSS cases in Alleghany and Yadkin Counties as well as in all new DSS cases filed on or after March 1, 2008.

ENTERED in chambers in Wilkesboro, North Carolina, on the 31st day of January, 2008.



**Mitchell L. McLean
Chief District Court Judge
23rd Judicial District**

LOCAL RULES FOR DSS COURT
23 JUDICIAL DISTRICT

SCOPE, PURPOSES, CONSTRUCTION AND ENFORCEMENT OF RULES

Rule 1. Scope

These rules apply to all cases in which a petition is filed alleging that a juvenile is abused, neglected, or dependent, petitions to terminate parental rights, and petitions pursuant to 7B-303 [non-interference petition].

Rule 2. Purpose

These rules are designed to help achieve stable and secure homes for children who come into the court's juvenile jurisdiction. To that end, these rules serve the following purposes:

- (1) To make Juvenile Court and its proceedings accessible and understandable to families and children;
- (2) To help the parties present issues and evidence to the Court in an efficient and simple manner;
- (3) To provide for judicial oversight of case planning;
- (4) To ensure a coordinated decision-making process;
- (5) To eliminate unnecessary delays in court proceedings; and
- (6) To promote the integration of services for the parents and children involved in hearings, and to increase their access to community resources.

Rule 3. Construction and Enforcement

These rules shall be liberally constructed to accomplish the purposes set forth in 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.

Rule 4. Definitions

Unless the context clearly requires otherwise, the purpose of these rules:

- (1) "Child Planning Conference" means a meeting with a case manager of the petitioner, the respondent(s), the guardian ad litem, all attorneys involved in the case, and appropriate persons, such as mental health professionals, school

personnel or law enforcement, to be held within 7 days after a petition is filed for abuse, neglect, or dependency.

- (2) "Clerk" means the clerk or an assistant or deputy clerk of superior court.
- (3) "Conference facilitator" means a person meeting requirement of Rule 6 (2), (3), and (4) hereunder and deemed qualified and so designated by the chief district court judge.
- (4) "Court" means the district court or a district court judge.
- (5) "DSS" means the county department of social services.
- (6) "GAL" means guardian ad litem
- (7) "Judge" means a district court judge in the 23rd judicial district.
- (8) "UCCJA" means the Uniform Child Custody Jurisdiction Act, Chapter 50A of the North Carolina General Statutes.
- (9) "Respondent" means any parent, guardian, caretaker or custodian from whom a child has been removed that is named in the petition.

RULES APPLICABLE TO ABUSE, NEGLECT, AND DEPENDENCY PROCEEDINGS

Rule 5. Appointment of Counsel

- a. The clerk shall maintain a current list of attorneys eligible to be appointed.
- b. When a petition is filed alleging abuse, neglect, or dependency, the clerk shall immediately appoint separate counsel to represent each respondent named in the petition unless the respondent(s) request otherwise. When a petition is filed to terminate parental rights, the clerk shall appoint the same attorney who has represented the respondent in the prior proceedings.
- c. The clerk shall prepare a Notice of Appointment of Counsel to be served on the respondent 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 inform the respondent:
 - (1) that the respondent may retain counsel of his or her choosing;
 - (2) that the court will dismiss the appointed counsel if the respondent does not qualify for appointed counsel or the respondent waives the right to counsel.
- d. Before appointing a specific attorney, the clerk shall ensure that the attorney will be available for the child planning conference and the first hearing in the case and, to the best of the attorney's knowledge, for other stages of the proceeding. 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 to be maintained by the clerk.

- e. 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. If the parent fails to apply or qualify for court-appointed counsel, the appointment of counsel shall not be approved by the Court. In the event the termination of parental rights proceeding is filed as a Motion in the Cause, pursuant to North Carolina General Statute 7B-1102, the current appointed counsel, including the guardian ad litem, shall continue representation, unless that attorney has properly moved the court to withdraw.

Rule 6. Responsibilities of Attorneys

Before being eligible for appointment to represent respondents, attorneys must satisfy the court:

- (1) that they have sufficient experience and skills to provide competent representation;
- (2) that they have a good working knowledge of juvenile law and juvenile court procedures;
- (3) that they have a good understanding of child protective services and the related mandates that apply to DSS and guardian ad litem;
- (4) that they have completed satisfactorily any initial or continuing training specified by the chief district court judge.
 - a. An attorney shall not accept an appointment pursuant to Rule 5 unless the attorney can be available for the child planning conference and the first hearing in the case and, to the best of the attorney's knowledge, for other stages of the proceeding.
 - b. After the first hearing in a case, an attorney appointed to represent a respondent 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 respondent has been served.
 - c. An attorney who has a conflict in another court shall comply with the relevant rules relating to priority and when absent from juvenile court because of a conflict, shall keep the courtroom clerk informed of his or her location at all times.
 - d. The judge may allow an attorney to withdraw from a case and shall be granted only for compelling reasons.

Rule 7. Appointment of Guardian ad Litem and Attorney Advocate

- a. When a petition is filed alleging abuse or neglect, a guardian ad litem and an attorney advocate shall be appointed by the court to represent the juvenile named in the petition. When a petition is filed alleging dependency, the court in its discretion, may appoint a guardian ad litem and attorney advocate.
- b. Before assigning a specific guardian ad litem, the district administrator of the GAL program shall attempt to ensure that the guardian ad litem will be available for the child planning conference and the first hearing in the case and for other

stages of the proceeding. If at all possible, a guardian ad litem who will be available for all stages of the process shall be present for the child planning conference.

Rule 8. Responsibilities of Guardian ad Litem and Attorney Advocate

- a. A guardian ad litem or attorney advocate shall not accept an appointment pursuant to Rule 7 unless, to the best of the guardian ad litem's or attorney advocate's knowledge, he or she can be available for all stages of the proceeding, including the child planning conference.
- b. An attorney advocate who has a conflict in another court shall comply with the relevant rules relating to priority and, when absent from juvenile court because of a conflict, shall keep the courtroom clerk informed of his or her location at all times.

Rule 9. Service: Summons and Petition: Notice

- a. From the date the petition is filed until the adjudication hearing, the petitioner shall have a continuing duty to identify and locate any 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 respondent.
- b. The Notice of Appointment of Counsel required by Rule 5 shall be served on each [respondent] with the petition and summons.
- c. Any time a respondent or a child who is twelve years of age or older is served with a copy of a nonsecure custody order on the day a juvenile is taken into nonsecure custody, the parent or child also shall be served with a notice informing the respondent or child of the nature, date, place, and time of the child planning conference.

Rule 10. Child Planning Conference

Purpose

A child planning conference shall be held within 7 days after a petition is filed by DSS for abuse, neglect or dependency. The purpose of the child planning conference is to expedite the process of establishing stability for the child by bringing all the interested parties and community resources together in a timely fashion to begin the planning process for the child's well-being. The following issues are to be covered at the child planning conference:

- Placement
- Visitation
- Paternity
- Child Support
- Services
- Risk Assessment

- a. The child planning conference shall be conducted by a conference facilitator.
- b. At the child planning conference, the conference facilitator shall:
 - (1) explain the nature of the proceeding and the purposes of the conference and advise the parties of the nature and extent of confidentiality for the meeting; advise parties of their rights and of the fact that participation in

the conference is voluntary and, if the child(ren) are in DSS custody, a nonsecure hearing will be held before a district court judge, absent consent;

- (2) all parties will be required to sign a confidentiality agreement;
 - (3) review the adequacy of notice and service of process;
 - (4) attempt to ascertain the identity and whereabouts of any parent, guardian, or custodian of the juvenile who is not present, whether those persons have been served, and the steps to be taken to identify, locate, or serve any such person;
 - (5) hear information from the parties, regarding:
 - (a) the conditions alleged in the petition;
 - (b) the condition or risk that precipitated the petition, including consideration of the results of the petitioner's risk assessment;
 - (c) the condition or risk justifying the petition under G.S. 7B-503 and
 - (d) the efforts the petitioner has made to prevent or eliminate the need for nonsecure custody, if applicable, and whether the conditions established at the time of the petition continue.
- c. All parties will be given an opportunity to present information and to ask questions of the other parties.
- d. The conference facilitator shall determine whether there is agreement or disagreement among the parties as to the need for the juvenile to be placed or to remain in nonsecure custody.

If parties agree that the juvenile does not need to be placed in nonsecure custody or remain in nonsecure custody, the conference facilitator shall explore the following issues with the parties:

- (1) service needs and referrals;
 - (2) specific steps the parties will take before the first hearing;
 - (3) give all parties opportunity to ask questions;
 - (4) set a specific date for the first hearing and explain the purpose of the hearing;
 - (5) in any case in which a parent's identity or whereabouts are unknown or the paternity of the child has not been legally established, specify in writing any steps that are to be taken to identify the parent, locate the parent or establish paternity.
- e. Before the conclusion of the Child Planning Conference, the facilitator shall:
- (1) summarize in writing, in the form of a consent order, the proposed plan for the child pending a hearing;
 - (2) give all parties an opportunity to review the proposed consent order and to decide whether to sign it;
 - (3) if all parties voluntarily sign the proposed consent order, present it as soon as possible to a district court judge.
- f. **If the juvenile is placed or remains in nonsecure custody, the conference facilitator shall explore the following issues with the parties:**

- (1) placement options for the juvenile, including possible relative placements, efforts to keep siblings together and efforts to keep them in their school;
 - (2) other school issues;
 - (3) family visitation;
 - (4) financial support of juvenile;
 - (5) service needs, including medical, psychological and developmental;
 - (6) specific steps to be taken by the parties before the next hearing.
- g. Before the conclusion of the Child Planning conference the facilitator shall:
- (1) construct a memorandum of understanding if the parties can agree on specific steps to take or services to provide before the nonsecure hearing;
 - (2) give all parties an opportunity to review the memorandum of understanding and decide whether to sign it;
 - (3) ensure that all parties will receive a copy of an order a judge has signed or any written agreement entered as a result of a child planning conference.

Rule 11. Nonsecure Custody Hearing

Purpose

If a juvenile is placed in nonsecure custody before or after a child planning conference, absent an agreement to the contrary, a nonsecure hearing shall be held within seven calendar days after the juvenile was taken into nonsecure custody pursuant to G.S. 7B-506. Absent compelling necessity, where possible, nonsecure hearings will be held on the regularly scheduled DSS court day. The purpose of the nonsecure custody hearings is to determine the need for continued nonsecure custody.

- a. Nonsecure custody hearings shall be held before a district court judge.
- b. At a nonsecure custody hearing, the judge will:
 - (1) review the nature of the proceeding and the purposes of the hearing;
 - (2) address issues of adequacy of notice and service of process;
 - (3) address any pending issue of identity or whereabouts of any parent, guardian, or custodian of the juvenile;
 - (4) approve consent orders relating to continued nonsecure custody.
- c. At a nonsecure custody hearing, the Court may hear other sworn testimony, arguments of counsel or information from the parties to determine:
 - (1) whether a condition or risk justifying continued nonsecure custody exists under G.S. 7B-503;
 - (2) efforts the petitioner has made to eliminate the need for nonsecure custody;
 - (3) steps taken since child planning conference.
- d. After all parties have had an opportunity to present evidence and ask questions, the judge shall make appropriate findings of fact and conclusions of law.
- e. **If the judge finds that continued nonsecure custody is necessary, the judge will explore the following issues:**

- (1) placement options for the juvenile, including possible relative placements, efforts to keep siblings together and efforts to keep them in their school;
 - (2) other school issues;
 - (3) family visitation;
 - (4) financial support of juvenile;
 - (5) service needs, including medical, psychological and developmental;
 - (6) specific steps to be taken by the parties before the next hearing.
- f. **If the judge find that continued nonsecure custody is not warranted, the judge shall explore the following issues:**
- (1) service needs and referrals;
 - (2) specific steps to be taken by the parties before the next meeting.
- g. Before the conclusion of the nonsecure custody hearing, the judge shall;
- (1) give all parties an opportunity to ask questions and to summarize what has occurred;
 - (2) ensure that all parties will receive a copy of any order entered and that they become a part of the court file;
 - (3) set specific dates for future hearings or pre-trial conferences.
- h. Any party may request an additional nonsecure custody hearing by filing a written request with the clerk, who shall calendar the hearing. The requesting party shall provide at least five days notice of the hearing to all other parties.

Rule 12. Stipulations or Consent Judgments

If there is a consent to the adjudication, that order shall be read into the record.

Rule 13. Discovery

Purpose

The purpose of discovery is to promote the expeditious exchange of information between parties that is in the best interest of the child.

- a. When a child is in custody of DSS, discovery of the DSS records, including but not limited to medical records, psychological reports, evaluations and treatment summaries obtained by DSS, shall be available to the respondent parents and their attorneys by the service of Motion or Request for Voluntary Discovery by the respondent(s)' attorney and subsequent discovery order.
- b. The attorney for DSS shall present the original and copies of the Discovery Order, with or without objections as provided for in the Order, to the District Court Judge sitting at the next session of juvenile court after the Motion for Discovery has been served on her by the attorney for the respondent parent. The attorney for DSS will notify the attorney for the respondent parent whether or not DSS will make objections to the requested discovery prior to presenting the Order for signature. The Clerk of Court or her assistant will notify the attorney for the respondent parent that the Order has been signed.
- c. All means of discovery permitted by the Rules of Civil Procedure shall be

available.

- d. Any party, including the child, may file a motion to compel discovery of specific information and material. The motion shall be heard at the next session of district juvenile court following the date of the signed Order, or earlier with the consent of all parties.

Rule 14. Pre-Adjudication and Pre-Disposition Conferences

Purpose

The court at its discretion may order a pre-trial conference at the request of any and all parties. The purpose of pre-trial conferences shall be to explore the possibility of settlement, to narrow the issues as much as possible, and to stipulate those facts that are not in dispute.

- a. At the pre-trial conference, all the parties shall:
 - (1) share witness lists, exhibit lists, and exhibits;
 - (2) define the issues;
 - (3) identify matters that can be stipulated and make stipulations, and
 - (4) consider any proposed consent order.
- b. Pre-trial conferences may be held in any case.

Rule 15. Adjudication

Purpose

The court shall determine whether a juvenile is abused, neglected, or dependent.

- a. The adjudication hearing shall be held within sixty days from the filing of the petition unless the judge, for good cause, orders that it be held at a later time.
- b. Every party shall be provided a copy of the judge's order

Rule 16. Court Reports

- a. Whenever DSS files a petition, DSS will prepare a report, whenever possible, for the adjudicatory hearing that supports the allegations that are set forth in the petition. The report shall review the history of the DSS involvement including the information obtained during the course of the investigation and treatment. Relevant information and attachments are included. DSS shall prepare disposition reports that include:
 - (1) the reasonable efforts made to prevent removal, or the immediate threat of harm to the child that prevented such reasonable efforts;
 - (2) information to support that continuation in the home is contrary to the safety, health and best interest of the child;
 - (3) the efforts to identify relative resources who may be willing and able to provide proper care and supervision of the child, and the results of those contacts;
 - (4) the effort to identify and locate a missing parent;
 - (5) the identity and location of the child's siblings and the steps taken to maintain contact;
 - (6) the child's emotional well-being, health, and developmental and educational

- information;
- (7) the independent living plan and goals for youth in custody who are 16 years or older;
 - (8) a statement of the parental behavior that needs to change to correct the conditions that resulted in the petition and a summary of services offered, provided, or rejected;
 - (9) a summary of the recommendations to the court. DSS will make a good faith effort to provide disposition/adjudication reports to the respondent's attorney one business day before the hearing.
- b. The guardian ad litem for the child shall prepare a court report to assist the court in reaching disposition that will best serve the child's needs. The guardian ad litem will make a good faith effort to provide disposition reports to the respondent's attorney one business day before the hearing.
 - c. All scheduled review reports shall be delivered to the attorney(s) and GAL 10 days prior to the review hearings. The GAL report shall then be delivered to the attorney(s) 5 days prior the review hearings.

Rule 17. Service from Other Public Agencies

- a. Any time after adjudication, if it appears that the best interest of the juvenile may require, or that it is recommended, that the juvenile receive services from a public agency, the court may direct the clerk or a party to serve the director or other appropriate representative of the agency with a notice of the dispositional hearing or a subsequent hearing and of the issues to be addressed that involve that agency. If the notice is served on a county agency, it also shall be served on the county attorney.
- b. At the dispositional or subsequent hearing for which the agency has been served with notice, the court may hear evidence and enter orders relating to the level and type of services that the agency can and should provide to meet the juvenile's needs.
- c. After proper notice, the court shall have jurisdiction to order a public agency to provide specific services to the juvenile as provided by law.

Rule 18. Disposition

Purpose

To design an appropriate plan to meet the needs of the juvenile.

- a. The dispositional hearing shall be held immediately following the adjudication or within 30 days thereafter unless the Court orders otherwise.
- b. If the juvenile remains out of the home at the conclusion of the dispositional hearing, the judge shall specify in the order a specific time for a review hearing.
- c. Court reports and court orders will be shared with the appropriate agencies providing services to the child.

- d. Each party shall receive a copy of the judge's order.
- d. If a parent's identity or whereabouts remains unknown or the paternity of the child has not been legally established, the judge shall specify in the order any steps that are to be taken to identify the parent, locate the parent, or establish paternity.

Rule 19. Review Hearings

Purpose

To review the custodial status of child and the continuing need for placement outside of the home and the compliance to previous orders of the court.

- a. When a juvenile remains out of the home following a dispositional hearing, a review hearing shall be held at a time the judge designates in the dispositional order, but in no event more than ninety days from the date of the dispositional hearing.
- b. When a juvenile continues to remain out of the home following the first review hearing, a second hearing shall be held no more than six months from the date of the first hearing.
- c. If the juvenile continues to remain out of the home following the second review, a hearing will be set at the one year anniversary of the dispositional hearing to address a permanency plan.
- d. As long as the juvenile remains out of the home, subsequent review hearings shall be held no more than six months from the date of the previous hearing.
- e. If the court relieves DSS of reunification efforts at a review hearing, a Permanency Planning Hearing must be held within 30 days.

Rule 20. Permanency Planning Hearings

Purpose

To facilitate the movement toward permanence for children and to allow the persons who are currently caring for the child to have a voice in the review hearings.

- a. Permanency Planning Hearings may be combined with any review hearing but shall be held no later than 12 months after the petition was filed and must be held no less than every 6 months thereafter to review the progress made in finalizing the permanent plan.
- b. Notice must be given to the parent, child who is 12 years and older, guardian, foster parent, involved relatives, pre-adoptive parent, custodian, guardian ad litem or any other person or agency the court may specify.
- c. When the return of the child to the home is not likely within the next 6 months, the court must:

- (1) determine if either custody with a relative or adoption should be pursued;
 - (2) determine if the child should remain in the current placement or be placed in another permanent living arrangement;
 - (3) determine whether DSS has made reasonable efforts to implement the permanent plan and consider any other criteria it deems necessary.
- d. During Permanency Planning Hearings the court may direct DSS to initiate a Termination of Parental Rights. [See 7B-907]
 - d. If the court determines that a Termination of Parental Rights proceeding is necessary, DSS shall file a petition to terminate parental rights within 60 calendar days from the date of the Permanency Planning Hearing unless the court makes findings as to why petition cannot be filed within 60 days.

Rule 21. Termination of Parental Rights Hearings

Purpose

To provide a procedure to effect a permanent plan for a child when returning home cannot be achieved and the goal is adoption.

- a. Termination hearings are bifurcated: adjudication (criteria) and disposition (best interest). The rules of evidence in each hearing apply.
- b. 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. If the parent fails to apply or qualify for court-appointed counsel, the appointment of counsel shall not be approved by the Court. In the event the termination of parental rights proceeding is filed as a Motion in the Cause, pursuant to North Carolina General Statute 7B-1102, the current appointed counsel, including the guardian ad litem, shall continue representation, unless that attorney has properly moved the court to withdraw.
- c. Pre-trial conferences shall be scheduled on contested Termination of Parental Hearings but the rules for the Child Planning Conferences do not apply.
- d. Termination of Parental Rights Hearings may be filed as Motions in the Cause. When the respondent parent(s) were served in the original summons and the form has specified the possibility of termination, the respondents' attorneys may be served the motion. Service on the attorney in a Motion in the Cause with accompanying summons will constitute service of the respondent. The respondent's attorney shall file any answer within 30 days.
- e. Rules for discovery apply as outlined in custody hearings.
- e. Post Termination Review Hearings must be held at least every 6 months until a Petition for Adoption is filed.

PRIORITY OF JUVENILE COURT AND SCHEDULING OF PROCEEDINGS

Rule 22. Priority of Juvenile Court

Juvenile cases involving abuse, neglect, dependency, termination of parental rights or delinquency have priority over all district court matters.

Rule 23. Maintaining Case on Court Calendar, Notices of Hearing and Transfer of Cases

- a. Each case shall be maintained on the court calendar at all times as long as juvenile court jurisdiction in the case continues.
- b. At or before the conclusion of each hearing, a subsequent hearing date shall be set.
- c. A calendar shall be distributed on Wednesday (for the next weeks session) before any scheduled court dates to the following persons:
 - (1) DSS case worker/supervisor for the case
 - (2) DSS attorney
 - (3) GAL
 - (4) GAL attorney
 - (5) Attorney(s) for the respondent(s)
- d. When an order has been signed by a judge transferring a case to another jurisdiction, the clerk shall transfer the case within two weeks of the date of the signed order.

Rule 24. Extensions of Time and Continuances

- a. Extensions of time and continuances beyond the times specified by statute, court order, or these rules shall be granted for good cause, even if all parties are not in agreement.
- b. Orders for extension or continuances shall appear on the record and state the supporting reasons.

These Rules as Revised are effective on

This order entered and signed on this the 29 day of Jan., 2008



MITCHELL L. MCLEAN
CHIEF DISTRICT COURT JUDGE
23RD JUDICIAL DISTRICT