

COUNTY OF PITT
3A JUDICIAL DISTRICT

DISTRICT COURT DIVISION
FAMILY COURT

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PITT CO., C.S.C.

BY _____

ORDER ADOPTING RULES
FOR FAMILY COURT
JUVENILE ABUSE/NEGLECT/DEPENDENCY

Pursuant to Rule 2 of the General Rules of Practice for Superior and District Courts, and N.C.G.S. 7B-100 the attached Local Rules for Juvenile Abuse/Neglect/Dependency Court are hereby adopted effective August 15, 2018, and shall apply to all cases filed on or after that date and, insofar as practical, to all pending cases. These Rules supersede all previous Rules for Juvenile Abuse/Neglect/Dependency Court cases in the District Court Division of the 3A Judicial District, Pitt County.

It is so ordered this 7 day of August, 2018.


G. Galen Braddy
Chief District Court Judge

**3A JUDICIAL DISTRICT
FAMILY COURT
JUVENILE ABUSE/NEGLECT/DEPENDENCY RULES
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Rule 1: Scope

These rules apply to all cases in which a petition is filed alleging that a juvenile is abused, neglected or dependent or a petition or motion is filed for termination of parental rights.

Rule 2: Purpose

These local rules establish procedures for Juvenile Court, which are designed to fulfill the purposes of Family Court and the North Carolina Juvenile Code.

To that end, these rules serve the following purposes:

- (1) To efficiently utilize time to ensure the best interest of the children and the reunification of the family;
- (2) To help the Court oversee case planning;
- (3) To help eliminate unnecessary delays in Court proceedings in order to reach permanency in a timely manner;
- (4) To help the parties present issues and evidence to the Court in an efficient and simple manner; and
- (5) To otherwise ensure compliance with Chapter 7B of the North Carolina General Statutes.

Rule 3: Construction and Enforcement

These rules shall be construed to accomplish the purposes set forth in Rule 2. These rules shall not be construed in any manner which is in conflict with the Constitution of the United States nor the Constitution of the State of North Carolina nor any of federal or state statutes and laws nor any rules promulgated by the North Carolina Supreme Court. Matters not covered by these rules shall be governed by existing laws and rules. 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. Sanctions may be addressed in specific provisions of these Rules as applicable.

Rule 4: Appointment of Counsel

4.1 General: The Clerk shall maintain a current list provided by the Public Defender's office of attorneys eligible to be appointed 1) to represent parents of children alleged to be abused, neglected or dependent; 2) to represent parents in a termination of parental rights proceedings; 3) to act as the Guardian ad Litem for parents pursuant to Rule 17 of the Rules for Civil Procedure; and 4) to act as the Guardian ad Litem for minor children when the Guardian ad Litem program has a conflict. To be included on any list an attorney must comply with training specified in the current Administrative Order by the Chief District Court Judge, have a local working telephone number at which he or she can be contacted, and maintain a mailbox in the Clerk's Office of the Pitt County Courthouse.

4.2 Abuse/Neglect/Dependency: When a petition is filed alleging abuse, neglect, or dependency, the Clerk shall assign separate provisional counsel to represent

each parent named in the petition. The summons shall include the attorney's name and telephone number and shall direct the parent to contact the attorney. The summons shall also inform the parent:

- (1) That the parent may retain counsel;
- (2) That the court, at the first hearing, if the parent appears, will determine whether the parent qualifies for appointed counsel and, if the parent does, whether the parent waives the right to such counsel;
- (3) 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; and
- (4) Of the date and time of the non-secure hearing, if applicable, and the Adjudication hearing.

After the first hearing in a case, the provisional attorney assigned to represent a parent who has not been served and/or who does not appear at the hearing or fails to apply for court appointed counsel shall be relieved as a matter of course as attorney of record, unless extraordinary circumstances exist as determined by the Court, and will not be responsible for further appearances until the Clerk notifies the attorney that the parent has been served and the attorney is reappointed.

If the parent has been served and the provisional attorney appointed to represent a parent has been unable to establish contact with the parent, the appointed attorney shall be permitted to withdraw from the case at the call of the adjudication hearing.

If an attorney appointed to represent a parent has been unable to maintain contact with the parent subsequent to the adjudication hearing, the appointed attorney shall be permitted to withdraw from the case at the first review hearing, absent a compelling reason. Further, an attorney appointed to represent a parent may be permitted to withdraw at any time upon filing of a motion with good cause.

Any order to withdraw as counsel shall include the last known address of the parent for the purpose of service of future pleadings in the case.

Should a parent be located by the Department of Social Services (hereinafter referred to as DSS) after the filing of the petition, the DSS shall provide the name and last known address of the parent to the Clerk and the DSS shall send notice of the next court date to the last known address of the parent. A provisional attorney shall be appointed by the Court for that parent. If the parent does not appear in court or contact his or her attorney, the Court may relieve counsel for the parent either at the next hearing of the matter or upon a motion to withdraw filed by counsel.

4.3 Termination of Parental Rights: In any case in which a petition for termination of parental rights is filed by DSS, the Clerk shall provisionally 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 provide the attorney a copy of the summons and petition or the motion and notice of hearing. If the parent fails to apply or to qualify for court-appointed counsel by the date of the hearing on the petition, or waives court-appointed counsel, the appointment of court-appointed counsel shall not be approved by the Court and that attorney shall have no further responsibility in the case. In the event the termination of parental rights proceeding is filed as a Motion in the Cause, pursuant to G.S. 7B-1102 and served as by law provided in G.S. 7B-1106.1, the current appointed counsel, including the guardian ad litem, shall continue representation, unless that attorney has properly moved the court to withdraw.

In any case where the petitioner is DSS, the following rules shall apply:

- (1) A summons shall be issued and shall include Notice that if the parent is indigent and is not already represented by an appointed counsel, the parent is entitled to appointed counsel, that provisional counsel has been appointed, and that the appointment of provisional counsel shall be reviewed by the court at the first hearing after service.
- (2) If the parent fails to apply or to qualify for court-appointed counsel by the date of the hearing on the petition, or waives court-appointed counsel, the appointment of court-appointed counsel shall not be approved by the Court.
- (3) As soon as is practicable, the Clerk shall forward a copy of the appointment order, the summons and the petition to the appointed attorney and the attorney for the petitioner.
- (4) If the Guardian ad Litem previously represented the juvenile(s), then as soon as is practicable, the Clerk shall forward a copy of the summons and the petition to the Guardian ad Litem office, which shall then assume the responsibility for having the appointment order completed and filed.
- (5) In all other cases, if an answer or response filed by a parent denies any material allegations of the petition, the Court shall appoint a Guardian ad Litem for the juvenile from the list of eligible attorneys maintained by the Clerk. As soon as is practicable, the petitioner shall forward a copy of the Guardian ad Litem appointment order, the summons and the petition to the appointed Guardian ad Litem attorney.

4.4 GAL Attorney for Juveniles: Appointment of a Guardian Ad Litem attorney shall occur upon the filing of a petition and in accordance with G.S. 7B-601 and G.S. 7B-1108.

4.5 Rule 17 GAL Attorney: The Judge shall appoint a Rule 17 Guardian at the first non-secure hearing or at any hearing thereafter if the Judge determines that the respondent parent is in need of such a Guardian. The Rule 17 Guardian shall remain in the case until released by the Judge.

Rule 5: Responsibilities of Attorneys

5.1 Priority: An attorney who represents a party in a case scheduled for hearing shall appear at the time set for his or her case unless excused by the Court. An

attorney who has a conflict in another Court shall comply with the relevant rules relating to priority, and it shall be the responsibility of the attorney to keep the Courtroom Clerk informed of his or her location at all times and to provide a cell number where he or she can be called or sent a text to inform the attorney of the status of their case. In order to resolve conflicts, any attorney or represented party should call upon the judge presiding or to be presiding in juvenile court to communicate with the presiding judge of other courts which counsel represents to be in conflict with the juvenile setting. Contested issues in juvenile court shall have priority among the other courts as set forth in Rule 3.1 of the General Rules of Practice for Superior and District Courts.

5.2 Continuation of Representation: After a parent's attorney enters an appearance or accepts an appointment in a case, he or she shall represent his or her client through all stages of the proceedings as long as the child continues within the jurisdiction of the Court. Leave of Court to withdraw from a case shall only be granted for good cause or as allowed in Rule 4.2 herein.

Rule 6: Hearing Timelines

6.1 Non-secure Custody: If a child is placed in non-secure custody, a hearing to determine the need for continued non-secure custody shall be held within seven (7) days, unless an earlier hearing is required by G.S. 7B-506. Subsequent review of non-secure custody shall be held as required by G.S. 7B-506.

6.2 Pre-Adjudication: Pre-adjudication hearings shall transpire in accordance with G.S. 7B-800.1. Prior to the adjudicatory hearing, the court shall consider the following:

- (1) Retention or release of provisional counsel.
- (2) Identification of the parties to the proceeding.
- (3) Whether paternity has been established or efforts made to establish paternity, including the identity and location of any missing parent.
- (4) Whether relatives, parents, or other persons with legal custody of a sibling of the juvenile have been identified and notified as potential resources for the placement or support.
- (5) Whether all summons, service of process, and notice requirements have been met.
- (5a) Whether the Petition has been properly verified and invokes jurisdiction.
- (6) Any pretrial motions, including (i) appointment of a guardian ad litem in accordance with G.S. 7B-602, (ii) discovery motions in accordance with G.S. 7B-700, (iii) amendment of the petition in accordance with G.S. 7B-800, or (iv) any motion for a continuance if the adjudicatory hearing in accordance with G.S. 7B-803.
- (7) Any other issue that can be properly addressed as a preliminary matter.

The Pre-Adjudication hearing may be combined with a hearing on the need for non-secure custody or any pretrial hearing or conducted in accordance with local

rules. The hearing also shall be allowed to be conducted the same day as the adjudicatory hearing, provided it is heard prior to the adjudication.

The parties may enter stipulations in accordance with G.S. 7B-807 or enter a consent order in accordance with G. S. 7B-801.

6.3 Adjudication: The adjudication hearing shall be scheduled for the earliest possible date and in no event more than sixty (60) days after the filing of the petition pursuant to G.S. 7B-801(c), unless the Court finds such cause as may be required by G.S. 7B-803.

6.4 Disposition: Whenever possible, the disposition shall take place immediately following adjudication and in no event more than thirty (30) days from the adjudication, unless the Court finds extraordinary circumstances.

Rule 7: Calendar

The juvenile calendar shall be prepared and made available for the parties by the Juvenile Clerk, to the extent possible, on the Monday prior to a scheduled court session. With the exception of Non-secure Custody hearings, "emergency" situations, motions to publish for an unknown parent, or corrections to the calendar, no cases will be added or removed after the calendar is created. Requests for continuances must take place in open court before the presiding judge as set forth herein.

Rule 8: Discovery

Parties shall comply with the provisions of G.S.7B-700(c) in filing and serving motions for discovery.

Rule 9: Pre-Hearing Conferences

Should the Court find it necessary, a pre-hearing conference may be held. The purposes of the conference shall be to explore the possibility of settlement, to narrow the issues as much as possible, to estimate the time the matter will take for hearing and to set the order of cases for the next session of juvenile court. Further, any attorney considering a pre-trial motion shall put all other counsel on notice of same at the pre-hearing conference.

Rule 10: Stipulated Adjudications

If the parties agree to stipulate to certain factual findings and/or provisions of the Court's decree, the Court shall determine, before accepting the stipulations in open Court, that the parties understand the content and consequences of the stipulation, that they voluntarily consent to the stipulation and that they had the opportunity to seek legal counsel. This shall be done in writing by the parties pursuant to a Stipulation/Consent Form.

Rule 11: Early Submission of Court Reports and Evidence

11.1 Submission of Court Reports: Court reports for review by the presiding judge shall be delivered to all parties and to the Family Court Office on or before the Monday of the week of the scheduled court hearing. Information obtained after the submission of a report may be updated by an addendum on a case by case basis as circumstances require or as agreed upon by the parties.

11.2 Types of Reports to be Submitted: The court reports submitted shall include, but are not limited to, court summary reports from DSS, the Guardian ad Litem Program or Conflict Guardian ad Litem Attorney-Advocate, the parent attorney, and mental health, psychological, substance abuse and any other evaluations or records previously ordered by the Court.

11.3 Unrepresented Parties: If a parent is unrepresented by counsel, then a copy shall be mailed by the party submitting the report to the parent's last known address if the parent is believed to still reside at that residence. If the parent's last known address is not currently valid, no report shall be mailed.

11.4 Review of Reports: All individuals receiving a copy of the court reports based on the Early Submission deadlines shall read the reports prior to the day of the hearing to ensure the most efficient use of court time. An attorney for a parent shall also make efforts to review the report with the parent prior to the day of the hearing. It is the intent of these rules that early submission of reports to the Court shall be sought whenever possible.

11.5 Submission of Evidence: Evidence, such as lease agreements, drug tests results, pay stubs, etc., to the extent that such evidence is available to the attorneys, shall be exchanged between the parties on or before the Monday of the week of the scheduled court hearing or as soon as such evidence is available.

Rule 12: Review of Cases

12.1 Periodic Reviews: The Court shall conduct a review of each case, as provided by statute. If DSS is not relieved of court-ordered responsibility, the case shall be re-docketed for further review pursuant to statute.

12.2 Scheduling of Reviews: The Court may set a review hearing for any case at any time, on its own motion, or upon motion of any party. A notice of the hearing shall be prepared by the moving party, signed and issued by the Clerk and served by the moving party at least fifteen (15) days prior to the date set for the review hearing to such persons as may be involved in the case and any other person or agency specified by Court Order.

12.3 Scheduling of Motions: If a motion is filed by a party requesting relief, the moving party shall serve the motion and a notice of hearing at least five (5) days prior to the hearing date in accordance with Rule 6 of the North Carolina Rules of Civil Procedure. When service is by facsimile, the sending attorney shall confirm

receipt of same by the receiving attorney. Any party filing a motion for emergency relief with less than five (5) days notice to the parties shall show good cause for said failure. A copy of the motion and notice of hearing shall be delivered to the juvenile clerk.

In accordance with G.S. 7B-200(c)(1), when the juvenile court has obtained jurisdiction over a juvenile as the result of a juvenile petition, any other civil action in which the custody of the juvenile is an issue is automatically stayed as to that issue, unless the juvenile proceeding and the civil custody action or claim are consolidated or the court in the juvenile proceeding enters an order dissolving the stay. Motions pertaining to juvenile court matters shall not be heard in courts designated for the hearing of Chapter 50 custody cases.

Rule 13: Permanency Planning Hearings

13.1 Calendaring: The court shall conduct a permanency planning hearing in each case, as provided by G.S. 7B-906.1.

13.2 Notice: A notice of the hearing shall be requested by DSS and issued, signed and served by the Clerk at least fifteen (15) days prior to the date set for the permanency planning hearing to such persons as required by G.S. 7B-906.1(b) as may be involved in the case and any other person or agency specified by Court Order. Notice of the continuance of permanency planning hearing may be given in open court.

Rule 14: Writs

Any party wishing to have an inmate brought to the Court should contact the Inmate Coordinator with the Sheriff's Office located in the District Attorney's office.

Rule 15: Continuances

15.1 Good Cause: No extension of time or continuance beyond the time specified by statute, order, or these Rules shall be granted, except for good cause. The consent of the parties alone is not good cause for an extension or continuance. Absence of reports which are dispositional in nature may be good cause to continue the disposition, but not good cause to continue the adjudication. In considering granting a continuance, the Court should consider the availability of the parties and all witnesses, whether such continuance would promote the purposes of these rules, protect the rights of the parties and the best interest of the juvenile, and promote the ends of justice.

15.2 Orders: All orders for extension or continuance shall appear on the record, state supporting reasons, and set the next hearing date.

Rule 16: Efficient Use of Court Time

16.1 Court Session: All attorneys and/or parties are expected to be in Court as scheduled on the calendar. Contested issues in juvenile court shall have priority

among the other courts as set forth in Rule 3.1 of the General Rules of Practice for Superior and District Courts.

16.2 Consent Orders and Stipulations (Not Adjudications): The use of consent orders and stipulations is encouraged. Proposed consent orders, stipulations, and/or court reports may be circulated among the parties in advance of the scheduled hearing. Parties are encouraged to contact each other to ascertain the possibility of a consent order or stipulation. Attorneys should urge their clients to maintain contact with the attorney before the scheduled hearing date(s) so that proposed consent orders, stipulations, and/or court reports may be reviewed prior to the scheduled court hearing and issues narrowed whenever possible.

Rule 17: Preparation and Entry of Orders

17.1 Preparation of Orders: In cases involving DSS, the DSS Attorney's Office shall prepare all orders, unless otherwise provided herein or instructed by the presiding judge. On a motion for review, the attorney or party filing the motion shall be responsible for the filing of the order unless otherwise directed by the Judge. If further hearings are calendared in the case, then the order shall designate the date, time, place and purpose of the next hearing, which shall serve as notice of hearing to all parties served with a copy of the order.

17.2 Time Standards for Entry of Order: All orders should be filed within thirty (30) days following the hearing. A draft of each order must be circulated among the attorneys (and any unrepresented parties who appeared at the hearing) involved in the proceeding within seven (7) days prior to the submission of the final order to the Court for signature. If the order was not circulated in compliance with this Rule, this must be brought to the Court's attention when the final order is submitted for signature.

17.3 Orders: Orders must be reduced to writing, signed, and entered within thirty (30) days of the completion of the hearing. If the order is not entered within thirty (30) days following completion of the hearing, the clerk of court for juvenile matters shall schedule a subsequent hearing at the first session of court scheduled for the hearing of juvenile matters following the 30-day period to determine and explain the reason for the delay and to obtain any needed clarification as to the contents of the order. The order shall be entered within ten (10) days of the subsequent hearing required by this subsection.

Rule 18: Amendments and Modifications

These Rules are subject to amendment or modification as experience dictates and as changes in statutory law and case law may require.