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BUNCOMBE CO., C.S.C.

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*State of North Carolina
General Court of Justice
28th Judicial District*

BUNCOMBE COUNTY COURTHOUSE
ASHEVILLE, NC 28801-3583

J. Calvin Hill
Chief District Court Judge

District Court Judges
Patricia K. Young
Julie M. Kepple
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Ward D. Scott
Edwin D. Clontz
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Family Court Rules

EFFECTIVE IMMEDIATELY – Family Court Rules – 28th Judicial District

This the 13th day of February, 2017.



Honorable J. Calvin Hill
Chief District Court Judge

FAMILY COURT LOCAL RULES

DELINQUENT AND UNDISCIPLINED JUVENILES

JUVENILE COURT

28TH JUDICIAL DISTRICT

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RULE 1. SCOPE, CONSTRUCTION, DEFINITIONS, AND ENFORCEMENT

1. These rules apply to all cases in which a juvenile is alleged to be delinquent or undisciplined. The rules are intended to supplement and compliment the statutory requirements of Subchapter II of Chapter 7B of the North Carolina Juvenile Code. These rules shall not be applied or construed so as to restrict or modify the statutory procedures set for juvenile court in the North Carolina Juvenile Code.
2. These rules shall be liberally construed to accomplish the purposes set forth in the North Carolina Juvenile Code. The Court may impose sanctions for failure to comply with these rules. No rule shall be construed, applied or enforced in a manner that will endanger or harm a juvenile or prejudice the rights of any juvenile.
3. The Department of Public Safety-Adult Corrections and Juvenile Justice is hereinafter referred to as "DJJ". The Buncombe County Department of Health and Human Services is hereinafter referred to as "DHHS", and the Strategic Involvement Plan is hereinafter referred to as "SIP".

RULE 2. APPOINTMENT OF COUNSEL

The Office of the Public Defender for the 28th Judicial District shall be appointed to represent any juvenile alleged to be delinquent. The Public Defender shall be responsible for assignment of counselor from the Public Defender's Office. In any case where the Office of Public Defender has a conflict of interest, outside counsel shall be appointed by the Public Defender or by a Judge.

RULE 3. HEARING SCHEDULE

All juvenile delinquent and undisciplined matters, including but not limited to, delinquent and/or undisciplined adjudications, disposition hearings, secure custody hearings, probation violation hearings, probable cause hearings, first appearances and review hearings, shall be scheduled on Mondays at 9:30, and if needed on Thursdays at 2:00pm. in Juvenile Court.

Detention review hearings may also be scheduled for Thursday after 2:00pm as necessary to comply with time standards set forth in the N.C. General Statute 7B-1906.

RULE 4. CALENDAR AND JUDICIAL ASSIGNMENTS

The juvenile calendar shall be maintained by the Clerk assigned to Juvenile Court. Court calendars shall be provided to the DJJ, the Public Defender's Office and the District Attorney's Office, by placing calendars in the designated locations in the office of the Juvenile Clerk.

Cases involving juveniles alleged to be delinquent or undisciplined shall be assigned to a Family Court Judge. If there has been no prior involvement with the juvenile or the juvenile's family prior to the First Appearance then the juvenile's case will be assigned to the Family Court Judge based on the location of the child's school or their residence. If a Family Court Judge has

been assigned as the judge for a family and a juvenile subsequently is alleged to be delinquent or undisciplined, the same Family Court Judge shall be assigned the delinquent or undisciplined matter if at all possible.

Whenever possible any matter to be heard involving a juvenile shall be scheduled for hearing before the assigned Family Court Judge. However, nothing herein shall prevent a juvenile case from being heard by any judge whenever necessary.

At or before the conclusion of each hearing, the next hearing date shall be set and the date announced in open court.

RULE 5. SERVICE OF SUMMONS AND PETITION

When a juvenile and his/her parent(s) or guardian attend an Intake meeting and the decision is made to file a juvenile petition, the Court Counselor will serve a summons and a copy of the petition on the juvenile and parent(s) or guardian before they leave the Intake meeting.

If the juvenile and the parent(s) or guardian do not attend the Intake meeting and do not make themselves available for service of the petition and summons, the Buncombe County Sheriff's Department may assist the Court Counselor in serving the summons and petition on the juvenile and the parent(s) or guardians.

RULE 6. DUTY OF JUVENILE COURT COUNSELOR AND DHHS REGARDING SUSPICIONS OF ABUSE AND NEGLECT

Whenever a Juvenile Court Counselor has cause to suspect a juvenile is abused, neglected or dependent, the court counselor shall immediately make a Child Protective Services report to notify DHHS and document that the report was made in the record. The notification to DHHS shall include the date of any scheduled hearing in juvenile court. If DHHS accepts the report for investigation, DHHS shall follow the standard procedure for investigation of the report. At the next juvenile court hearing involving the juvenile, DHHS shall advise the Court of the status of the investigation. If DHHS substantiates the allegations of abuse, neglect or dependency, or finds need for involvement, a DHHS representative shall inform the Court of whether or not DHHS intends to file a juvenile petition. If at any time a Court Counselor believes that a recommendation will be made in a delinquency or undisciplined matter for a juvenile to be placed in DHHS Custody, a prior Strategic Intervention Planning (SIP) Committee meeting will be held first if at all possible, exhausting planning options and giving DHHS notice of such recommendations.

RULE 7. PLACEMENT OF JUVENILES IN DHHS CUSTODY

If at any stage of the proceedings the Court determines it is in the best interests of the juvenile that the juvenile be placed in the custody of the Buncombe County Department of Health and Human Services, the DJJ shall schedule a Strategic Intervention Planning (SIP) Committee meeting at the earliest available date to discuss issues of placement and services that could be provided to avoid the necessity of placement or to increase the likelihood of success of the placement. Notice of the SIP meeting shall be sent by DJJ to all participants as well as notice shall be sent to the District Attorney. The SIP meeting shall include the juvenile's parent(s), guardian, custodian, guardian ad litem, Court Counselor, DHHS, Counsel for the Juvenile, and representatives from mental health, the schools, the health department and any other agency or individual deemed necessary. Post adjudication, nothing shall restrict the right of the Court to make an immediate DHHS placement if necessary. If possible, the Court will inform the DHHS prior to the non-secure placement. If the Court enters an order placing a juvenile in the immediate non-secure custody of DHHS the DJJ shall contact DHHS and communicate all information involving the juvenile and the date of the next court hearing.

RULE 8. DETENTION HEARINGS

If a juvenile is placed in secure custody, the first detention hearing must be held within five days of placement in secure custody. As long as a juvenile remains in secure custody, further hearings to determine the need for continued secure custody must be held at intervals of no more than seven to ten calendar days. Additional non-secure custody hearings may only be waived with the consent of the juvenile, through counsel for the juvenile.

RULE 9. FIRST APPEARANCES

The First Appearance for juveniles alleged to have committed a delinquent offense that would be a felony if committed by an adult must be held within ten days of the filing of the juvenile petition. For juveniles in secure custody, the First Appearance will be incorporated in the juvenile's first Detention Hearing.

At the First Appearance the Judge shall:

1. Inform the juvenile of allegations in the petition;
2. Verify that counsel has been appointed for the juvenile unless the juvenile or the juvenile's family has retained private counsel for the juvenile;
3. Advise the juvenile of the date of the probable cause hearing which shall be scheduled within 15 days of the first appearance;
4. Advise the parent(s), guardian, or custodian that a parent, guardian or custodian must attend all scheduled court hearings and may be held in contempt for failure to attend any scheduled hearing.
5. The Court shall also advise the parent or guardian that he/she may be required to reimburse the State of North Carolina for all or part of the juvenile's legal fees.

RULE 10. PROBABLE CAUSE HEARINGS

Probable cause hearings shall be scheduled at the First Appearance and shall be held within 15 days after the First Appearance unless the Court continues the hearing for good cause. Whenever possible, the District Attorney shall inform the juvenile at the First Appearance of the intent to seek a transfer to Superior Court.

If the juvenile waives the probable cause or the court finds probable cause then the adjudication date shall be announced in open court.

RULE 11. ADJUDICATIONS AND DISPOSITIONS

Absent good cause, cases shall be adjudicated on the date first scheduled for adjudication of the juvenile petition. Consent of the parties alone is not good cause to continue the adjudication.

Motions to continue the adjudication hearing shall be in writing whenever possible and served on all parties at least one day prior to the scheduled hearing. Service may be by hand delivery, mail, e-mail or fax. A copy of the motion shall be provided to the Family Court Case Manager. All parties shall have the opportunity to be heard on the motion to continue.

The moving party is responsible for preparing the order granting the motion to continue. The order shall include the grounds for the continuance, the basis of any objections to the motion to continue, and the new court date.

Whenever possible, the disposition hearing shall be held immediately after the adjudication. However, the disposition may be continued to obtain any necessary information or evaluations concerning the juvenile.

RULE 12. PREDISPOSITION REPORTS

The Juvenile Court Counselor shall prepare a written pre-dispositional report to be presented to the Court if the juvenile is adjudicated to be delinquent or undisciplined. If feasible, the report shall include the following information when available:

- a. Critical History Form
- b. Delinquent History Points Form
- c. NCDPS-Conditions of Probation Recommendations
- d. Included in the above shall be the following information:
 - i. The results of any home study
 - ii. Information concerning both parents, including their location, their contact with the juvenile, any mental health or substance abuse history and any relevant information

- iii. The juvenile's educational history and present school placement
 - iv. An opinion as to whether or not there is reason to suspect that the juvenile is abused, neglected or dependent
- e. The pre-disposition report may be provided to the juvenile's attorney prior to the disposition but shall not be provided to the Court until after the adjudication. Pre-disposition and other court reports should be made available to the juvenile's attorney at least two days prior to the scheduled hearing date. If the report contains information that, in the Juvenile Court Counselor's opinion, should not be disclosed to the juvenile or the juvenile's parent(s) or guardian, the counselor shall so inform the court and the juvenile's attorney. The Court may enter protective orders, as necessary, restricting the release of certain information. The juvenile's attorney shall not disclose any such information to the juvenile or the parent so long as the protective order remains in effect.

RULE 13. RESPONSIBILITY OF ATTORNEYS

An attorney who represents a juvenile shall be in court for any scheduled court hearings. If an attorney has a conflict with another court, the attorney shall keep the Clerk informed of the attorney's location and when the attorney expects to be available for juvenile court.

RULE 14. REVIEW HEARINGS

A review hearing may be scheduled at any time by the NC Department of Public Safety-Adult Corrections and Juvenile Justice or by the Juvenile's attorney or the District Attorney. A copy of the motion for review shall be filed with the Clerk and served on every party. The Clerk shall schedule the motion and the moving party shall serve each party a notice of hearing on the motion.

RULE 15. ACCESS TO RECORDS

Pursuant to Rule 7B- 3000, the juvenile's attorney may examine and obtain copies of the juvenile's record without further order of this Court.
Pursuant to Rule 7B-3001, the juvenile's attorney may examine and obtain copies of the records held by the NC Department of Public Safety-Adult Corrections and Juvenile Justice without further order of this Court.

Revised 12/2016