

AMENDED LOCAL RULES FOR JUVENILE COURT
ABUSE, NEGLECT AND DEPENDENCY CASES
JUDICIAL DISTRICT 29A

SCOPE, PURPOSES, CONSTRUCTION AND ENFORCEMENT OF RULES

I. Scope

These rules apply to all cases in which a petition is filed alleging that a juvenile is abused, neglected or dependent.

II. 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 provide for judicial oversight of case planning;
- (2) To ensure a coordinated decision-making process;
- (3) To eliminate unnecessary delays in court proceedings; and
- (4) To encourage the involvement of families and children in the planning and decision-making process.

III. Construction and Enforcement

These rules shall be liberally construed to accomplish the purposes set forth in Rule II. 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.

IV. Definitions

Unless the context clearly requires otherwise, for purposes of these rules:

- (1) "Case manager" means a person deemed qualified and so designated by the chief district court judge as a juvenile case manager.
- (2) "Clerk" means the clerk or an assistant or deputy clerk of superior court.
- (3) "Court" means the district court or a district court judge.
- (4) "Day-one conferences" means a voluntary meeting with a case manager of the petitioner, the parent(s), the guardian ad litem, all attorneys involved in the case,

and other appropriate persons, held on the first business day after the juvenile is taken into custody.

- (5) “DSS” means the county department of social services.
- (6) “Judge” means a district court judge in the 29A judicial district.
- (7) “UCCJA” means the Uniform Child Custody Jurisdiction Act, Chapter 50A of the North Carolina General Statutes.

V. Appointment of Counsel

- a. When a petition is filed alleging abuse, neglect or dependency, the clerk shall appoint separate counsel to represent each parent named in the petition.
- b. 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:
 - (1) the parent may retain counsel;
 - (2) that the court, at the first hearing, will determine whether the parent qualifies for appointed counsel and, if the parent does, whether the parent waives the right to counsel; and
 - (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.
- c. Before appointing a specific attorney, the clerk shall ensure that the attorney will be available for the day-one 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.

VI. Responsibilities of Attorneys

- a. Before being eligible for appointment to represent parents, 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 to guardians ad litem; and
 - (4) that they have completed satisfactorily any initial or continuing training specified by the chief district court judge.
- b. Any attorney shall not accept an appointment pursuant to Rule 5 unless the attorney can be available for the day-one conference and the first hearing in the case and, to the best of the attorney's knowledge, for other stages of the proceedings.
- c. 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.
- d. An attorney who has a conflict in another court shall comply with the relevant rules relating to priority and when absent from juvenile court due to a conflict, shall keep the case manager or courtroom clerk informed of his or her location at all times.
- e. Leave of court for an attorney to withdraw from a case shall be granted only for compelling reasons.

VII. Appointment of Guardian ad Litem and Attorney Advocate

- a. When a petition is filed alleging abuse or neglect, a guardian ad litem shall be appointed by the court to represent the juvenile named in the petition. If the guardian ad litem is not an attorney, then an attorney advocate also shall be appointed. When a petition is filed alleging dependency, a guardian ad litem and attorney advocate may be appointed.
- b. Before assigning a specific guardian ad litem or attorney advocate, the district administrator of the Guardian ad Litem Program shall ensure that the guardian ad litem or attorney advocate will be available for the day-one conference and the first hearing in the case and for other stages of the proceedings.

VIII. 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's knowledge, he or she can be available for all stages of the proceeding, including the day-one conference.

- b. Any 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 case manager or courtroom clerk informed of his or her location at all times.

IX. 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 parent 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.
- b. Any motion for service by certified or registered mail shall be liberally granted.
- c. The *Notice of Appointment of Counsel* required by Rule 5 shall be served on each parent with the petition and summons.
- d. Any time a parent is served with a copy of a non-secure custody order on the day a juvenile is taken into non-secure custody, the parent also shall be served with a notice informing the parent of the nature, date, place and time of the day-one conference.

X. UCCJA Affidavit

The information required by G.S.50A-209 shall be included in the petition, in an affidavit attached to and served with 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.

XI. Day-One Conference

- a. Whenever a juvenile is taken into non-secure custody, a day-one conference shall be held on the first business day after the juvenile is taken into custody.
- b. The day-one conference shall be conducted by a case manager.
- c. At the day-one conference, the case manager shall:
 - (1) introduce himself or herself and the parties and advise the parties of their rights, of the fact that participation in the conference is voluntary, and of the fact that a non-secure custody hearing will be held before a district court judge;
 - (2) explain the nature of the proceeding and the purposes of the conference;
 - (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 that person has been served, and what steps need to be taken to identify, locate or serve any such person;
- (5) hear information from the parties, aiming at determining:
 - (a) what condition is alleged in the petition,
 - (b) what condition or risk precipitated the non-secure custody order, including considerations of the results of the petitioner's risk assessment,
 - (c) whether a condition or risk justifying non-secure custody under G.S.7B-503(a) exists, and
 - (d) what efforts the petitioner has made to prevent or eliminate the need for non-secure custody.
- d. After giving all parties an opportunity to present information and to ask questions of the other parties, the case manager shall determine whether there is agreement among the parties as to the need for the juvenile to remain in non-secure custody.
- e. If all parties agree that the juvenile does not need to remain in non-secure custody, the case manager shall:
 - (1) summarize in writing, in the form of a proposed consent order releasing the juvenile from non-secure custody, the basis for that agreement, including 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; and
 - (3) if all parties voluntarily sign the proposed consent order, present it as soon as possible to a district court judge, who shall determine whether to approve it as an order of the court.
- f. If the parties do not agree that the juvenile should be released from non-secure custody, the case manager shall explore the following with the parties:
 - (1) placement options for the juvenile, including possible relative placements and efforts to keep siblings together;

- (2) efforts needed to ensure that a school-aged juvenile's school placement and attendance are not disrupted,
 - (3) parental visitation,
 - (4) sibling visitation,
 - (5) service needs and referrals,
 - (6) financial support for the juvenile,
 - (7) whether a court order is needed to address the juvenile's immediate needs, such as an immediate need to medical treatment or evaluation, and
 - (8) specific steps the parties agree to take before the non-secure custody hearing.
- g. If a judge signs a consent order releasing the juvenile from non-secure custody, the case manager shall explore the following with the parties:
- (1) service needs and referrals, and
 - (2) specific steps the parties agree to take before the first hearing,
- h. Before the conclusion of the day-one conference, the case manager shall:
- (1) summarize what has occurred,
 - (3) give all parties an opportunity to ask questions,
 - (4) set a specific date for the first hearing,
 - (5) explain the purpose of the hearing,
 - (6) prepare and ensure that all parties have a copy of any order a judge has signed or any written agreement entered as a result of the day-one conference,
 - (7) 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.

XII. Non-secure Custody Hearing

- a. If a juvenile remains in non-secure custody after a day-one conference, the non-secure custody hearing required by G.S.7B-506 to determine the need for continued non-secure custody shall be held within seven calendar days after the juvenile was taken into non-secure custody.
- b. Non-secure custody hearings shall be held before a district court judge.
- c. At a non-secure hearing, the judge shall:

- (1) introduce himself or herself and the parties;
 - (2) review the nature of the proceeding and the purposes of the hearing;
 - (3) address any issues relating to adequacy of notice and service of process;
 - (4) follow up on any pending issue regarding the identity or whereabouts of any parent, guardian, or custodian of the juvenile, and
 - (5) hear sworn testimony from the parties aimed at determining:
 - (a) whether a condition or risk justifying continued non-secure custody exists under G.S.7B-503(a),
 - (b) what efforts the petitioner has made to eliminate the need for non-secure custody,
 - (c) what other steps the parties have taken since the day of the day-one conference.
- d. After giving all parties an opportunity to present evidence and to ask questions of other parties, the judge shall make appropriate findings of fact and conclusions of law, indicating:
- (1) whether there is reasonable factual basis to believe:
 - (a) that the matters alleged in the petition are true,
 - (b) that continued non-secure custody is supported by one or more of the criteria set forth in G.S.7B-503(a), and
 - (c) that there is no other reasonable means available to protect the juvenile;
 - (2) whether the petitioner has presented clear and convincing evidence that no less intrusive alternative will suffice to protect the juvenile; and
 - (3) whether the petitioner has made reasonable efforts to eliminate the need for the juvenile's placement.
- e. If the judge finds that continued non-secure custody is necessary, the judge shall review or explore with the parties the following:
- (1) the appropriateness of the juvenile's placement and other placement options, including possible relative placements and efforts to place or keep siblings together,
 - (2) any efforts needed to ensure that a school-aged juvenile's school placement and attendance are not disrupted,

- (3) parental visitation,
 - (4) sibling visitation,
 - (5) service needs and referrals,
 - (6) financial support for the juvenile,
 - (7) whether additional orders are needed to address the juvenile's immediate needs, such as an immediate need for medical treatment or clinical evaluations, and
 - (8) specific steps to be taken by the parties before the next hearing.
- f. If the judge finds that continued non-secure custody is not warranted, the judge shall explore with the parties the following:
- (1) service needs and referrals, and
 - (2) specific steps to be taken by the parties before the next hearing.
- g. Before the conclusion of the non-secure custody hearing the judge shall:
- (1) summarize what has occurred,
 - (2) give all parties a chance to ask questions,
 - (3) set specific dates for a pretrial conference and the adjudicatory hearing or, for good cause, another non-secure custody hearing,
 - (4) explain the purpose of the pretrial conference , if applicable, and of the next hearing,
 - (5) prepare and ensure that all parties have a copy of any order entered as a result of the non-secure custody hearing,
 - (6) 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 the order any steps that are to be taken to identify the parent, locate the parent, or establish paternity, and
 - (7) ensure that all documents introduced for consideration at the hearing become a part of the court file.
- h. 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 Rule 13.

- i. If an additional non-secure custody hearing is not scheduled pursuant to subsection g of this rule, any party may request an additional non-secure 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.

XIII. Stipulations Before Judge

- a. Before accepting a stipulation to findings, conclusions, or provisions of an order, the judge, in open court, shall determine that the stipulating parties understand the content and consequences of the stipulation and that they voluntarily consent to the stipulation. The judge shall inquire of the parties in order to determine that the stipulation is voluntary and knowing. The judge's findings shall be set forth on the record.
- b. The judge shall not be bound by any stipulation to which fewer than all of the parties who have appeared, including the guardian ad litem, have agreed.

XIV. Discovery

- a. Except as protected by privilege, all parties shall disclose all relevant material and information to all other parties as early as possible. This requirement applies to counsel for the parties, including the attorney advocate for the child, to any unrepresented party, and to the guardian ad litem.
- b. Any party, including the child, may file a motion to compel discovery of specific information or material. The motion shall be heard within five working days of the date it is served.
- c. All means of discovery permitted by the Rules of Civil Procedure shall be available. In order to coordinate the completion of discovery and to avoid unnecessary delay, however, no such discovery may be conducted without approval of the court and the establishment of expedited time lines for its completion.
- d. The court may take any action on motions to compel authorized by G.S.1A-1, Rule 37.

XV. Pre-Adjudication Conference

- a. A pre-adjudication conference shall be held within **thirty days** of the filing of the petition unless the judge, for good cause, orders that it be held at a later date.

- b. All parties and their attorneys shall attend the pre-adjudication conference.
- c. The purposes of the conference 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.
- d. At or before the conference, 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.
- e. At the pre-trial conference, the case manager or judge shall assist the parties in:
 - (1) sharing witness lists, exhibit lists and exhibits,
 - (2) defining the issues,
 - (3) identifying matters that can be stipulated and making stipulations,
 - (4) considering any proposed consent order.
- f. At the conclusion of the pre-adjudication hearing, the judge shall enter an order reflecting the outcome of the conference and ensure that each party is provided a copy of the order.
- g. If a parent's identity or whereabouts remain 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.

XVI. Adjudicatory Stipulations Before Judge

- a. Before accepting a stipulation to findings, conclusions, or provisions of the court's adjudication order, the judge, in open court, shall determine that the stipulating parties understand the content and consequences of the stipulation, including, if applicable, the possibility that the child may be removed permanently from the home, and that they voluntarily consent to the stipulation. The judge shall inquire of the parties in order to determine that the stipulation is voluntary and knowing. The judge's findings shall be set forth on the record.
- b. The judge shall not be bound by any stipulation to which fewer than all parties who have appeared, including the guardian ad litem, have agreed.

XVII. Adjudication

- 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. The adjudication hearing shall be held before a district court judge.
- c. At the conclusion of the adjudication hearing every party shall be provided a written memorandum of the judge's order.

XVIII. Predisposition Reports

- a. Whenever DSS files a petition, DSS shall prepare a predisposition report that includes at least the following:
 - (1) A description of the placement plan for the child and how that plan is appropriate to the child's needs;
 - (2) A description of the plan of services for the child and the child's family, and how that plan is appropriate to meet the child's needs;
 - (3) A statement of changes in parental behavior that are needed to correct the conditions that led to the abuse, neglect, or dependency, and the actions the parents must take;
 - (4) If there is a recommendation that the child be removed from the home:
 - (a) A statement of the efforts by DSS to prevent the need for placing the child outside the home;
 - (b) A description of the efforts by DSS to reunify the family, including services that have been offered, provided or rejected;
 - (c) A statement of why the child cannot be protected from the identified problems while remaining in the home;
 - (d) 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 results of those contacts;
 - (e) A suggested visitation plan for the child;
 - (f) A statement of the child's special needs and how they may be met;
 - (g) The identify and location of the child's siblings and a statement of steps required to maintain contact between the siblings and reunify the family, and

- (h) If applicable, a description of the child's school or day-care situation and any proposed changes related to it.
- b. The guardian ad litem for the child shall prepare a predisposition report to assist the court in reaching a disposition that will best served the child's needs.
- c. DSS and the child's guardian ad litem shall provide copies of their predisposition reports to all parties and their counsel before the pre-adjudication conference.
- d. Predisposition reports shall not be submitted to or considered by the court until the adjudication is completed or the parties have settled all adjudication issues.

XIV. Pre-disposition Conference

- a. If settlement is reached at the pre-adjudication conference, a pre-disposition conference shall be held immediately following the pre-adjudication conference. If disposition occurs on a date after the adjudication, a pre-disposition conference shall be held not more than **two weeks** before the dispositional hearing.
- b. All parties and their attorneys shall attend the pre-disposition conference.
- c. The purpose of the conference shall be to explore the possibility of settlement, to narrow the issues as much as possible, and to stipulate those facts or provisions of the dispositional order that are not in dispute.
- d. At or before the conference, each party shall provide to all other parties a written list of prospective witnesses and exhibits and copies of all available exhibit lists intended for use at the dispositional hearing. Any listed exhibit that is not available for distribution at or before the pre-dispositional conference shall be distributed as soon as it is available.
- e. At the pre-disposition conference, the case manager or judge shall assist the parties in:
 - (1) sharing witness lists, exhibit lists, and exhibits,
 - (2) defining the issues,
 - (3) identifying the matters that can be stipulated and making stipulations, and
 - (4) considering any proposed consent order.
- f. At the conclusion of the pre-disposition conference, the judge shall enter an order reflecting the outcome of the conference and ensure that each party is provided a copy of the order.

- g. If a parent's identity or whereabouts remain 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.

XV. Dispositional Stipulations

- a. Before accepting a stipulation relating to disposition, the judge, in open court, shall determine that the stipulating parties understand the content and consequences of the stipulation and that they voluntarily consent to it. The judge shall inquire of the parties in order to determine that the stipulation is voluntary and knowing. The judge's findings shall be set forth on the record.
- b. The judge shall not be bound by any stipulation to which fewer than all of the parties who have appeared, including the guardian ad litem, have agreed.

XVI. Services from Other Public Agencies

- a. Any time after adjudication, if it appears that the best interest of the juvenile may require, or that a party is recommending, 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 shall also be served on the county attorney.
- b. At the dispositional hearing 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.

XVII. Review Hearings

- 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 remains out of the home following the first review hearing, the judge shall determine and specify in the review hearing order an appropriate date for the next review hearing. In no event shall the second review hearing be held more than **six months** from the date of the first review hearing. A goal of the second review hearing shall be to develop a permanent plan for the juvenile.
- c. As long as the juvenile remains out of the home, subsequent review hearings shall be held at times the judge finds appropriate, but in no event more than **six months** from the date of the previous review hearing, unless the judge orders otherwise pursuant to G.S.7B-906. A goal of each review hearing shall be to develop a permanent plan for the juvenile.
- d. The DSS attorney shall deliver a written court summary to all counsel, unrepresented parties, and the Guardian ad Litem Office at least **fourteen (14) days** before each review hearing. The summary shall describe the progress in the case since the last hearing and include DSS's recommendations. At least **one week** before the review hearing, every other party shall deliver in writing to the DSS attorney and all other parties any and all of the party's disagreements with or objections to the DSS summary. If DSS receives any written disagreements or objections, DSS shall ask the clerk to schedule a pre-review conference and shall notify the other parties of the conference. The judge shall participate in the conference and all parties shall attend. If a party fails to disagree with or object to DSS's summary in writing, the party may present evidence contrary to the summary only if the court finds good cause for the party's failure to disagree or object.
- e. If a parent's identity or whereabouts remain unknown or the paternity of the child has not been legally established, the judge shall specify in the review hearing order any steps that are to be taken to identify the parent, locate the parent, or establish paternity.

XVIII. Priority of Juvenile Court

Juvenile cases involving abuse, neglect or dependency shall have priority over all other district court matters.

XIV. Maintaining Case on Court Calendar

- 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.

XV. Extensions of Time and Continuance

- a. Extensions of time and continuances beyond the times specified by statute, court order, or these rules shall be granted only for good cause, even if all parties are in agreement.
- b. Orders for extensions or continuances shall appear on the record and state supporting reasons.

This the _____ day of _____, 2006.

Honorable C. Randy Pool
Chief District Court Judge
29A Judicial District