

# TERMINATION OF PARENTAL RIGHTS

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## **TERMINATION OF PARENTAL RIGHTS**

Effective October 1, 1999

### **RULE 1 PURPOSE**

- (a) The general purpose of this Article is to provide expeditious judicial procedures for terminating the legal relationship between a child and his or her biological or legal parents when such parents have demonstrated that they will not provide the degree of care which promotes the healthy and orderly physical and emotional well-being of the child.
- (b) It is the further purpose of this Article to recognize the necessity for the child to have a permanent plan of care at the earliest possible age, while at the same time recognizing the need to protect all children from the unnecessary severance of a relationship with biological or legal parents.
- (c) Action which is in the best interest of the child should be taken in all cases where the interests of the child and those of his or her parents or other persons are in conflict.

Statutory reference: G.S. 7B-1100

### **RULE 2 JURISDICTION AND VENUE**

- (a) The district court shall have exclusive original jurisdiction to hear and determine any petition relating to termination of parental rights to any child who resides in, is found in, or is in the legal or actual custody of a county department of social services or licensed child-placing agency in the district at the time of filing of the petition.
- (b) The court shall have jurisdiction to terminate the parental rights of any parent irrespective of the age of the parent.
- (c) Before exercising jurisdiction in a termination of parental rights proceeding, the court shall find that it would have jurisdiction to make a child custody determination under the provisions of the Uniform Child Custody Jurisdiction Enforcement Act, N.C.G.S. 50A.

Statutory reference: G.S. 7B-1101

*Comments:*

*1. The UCCJEA does not require personal jurisdiction over an absent parent. See, however, In re Finnican, 104 N.C. App. 157 408 S.E. 2nd 742 (1991), in which the Court of Appeals imposed that requirement. Be alert to the implications of this case whenever a respondent does not have minimum contacts with North Carolina.*

### **RULE 3 PETITIONER**

A petition to terminate the parental rights of either or both parties to his, her or their minor child may only be filed by:

- (a) Either parent seeking termination of the right of the other parent; or
- (b) Any person who has been judicially appointed as the guardian of the person of the child; or
- (c) Any county department of social services or \*licensed child-placing agency to whom custody of the child has been given by a court of competent jurisdiction; or
- (d) Any county department of social services or licensed child-placing agency to which the child has been surrendered for adoption by one of the parents or by the guardian of the person of such child, pursuant to G.S. 48-9(a)(1); or
- (e) Any person with whom the child has resided for a continuous period of two years or more next preceding the filing of the petition; or
- (f) Any guardian ad litem appointed to represent the minor child pursuant to G.S. 7B-601, who has not been relieved of this responsibility and who has served in this capacity for at least one continuous year; or
- (g) Any person who has filed a petition for adoption pursuant to Chapter 48 of the General Statutes.

Statutory Reference: G.S. 7B-1103

### **RULE 4 PETITION**

The petition shall be verified by the petitioner and shall be entitled "In re (Last name of child), a minor child; and shall set forth such of the following facts as are known; and with respect to the facts which are unknown the petitioner shall so state:

- (a) The name of the child as it appears on the child's birth certificate, the date and place of birth, and the county where the child is presently residing.
- (b) The name and address of the petitioner and facts sufficient to identify the petitioner as one entitled to petition under G.S. 7B-1103.
- (c) The name and address of the parents of the child. If the name or address of one or both parents is unknown to the petitioner, the petitioner shall set forth with particularity the petitioner's efforts to ascertain the identity or whereabouts of the parent or parents. Such information may be contained in an affidavit attached to the petition and incorporated therein by reference.
- (d) The name and address of any person appointed as guardian of the person of the child pursuant to the provisions of Chapter 35A of the General Statutes, or of G.S. 7B-600.
- (e) The name and address of any person or agency to whom custody of the child has been given by a court of this or any other state; and a copy of such custody order shall be attached to the petition.
- (f) Facts which are sufficient to warrant a determination that one or more of the grounds for terminating parental rights exist.
- (g) That the petition has not been filed to circumvent the provisions of Chapter 50-A, the Uniform Child Custody Jurisdiction Enforcement Act.

Statutory Reference: G.S. 7B-1104

## **RULE 5 GROUNDS FOR TERMINATING PARENTAL RIGHTS**

The court may terminate parental rights upon a finding of one or more of the grounds as defined in G.S. 7B-1111.

## **RULE 6 UNKNOWN PARENT**

- (a) If either the name or identity of any parent whose parental rights the petitioner seeks to terminate is not known to the petitioner, the court shall within 10 days from the date of filing of the petition, or during the next term of court in the county where the petition is filed if there is no court in said county in that 10 day period, conduct a preliminary hearing to ascertain the name or identify of such parent.

- (b) The court may, in its discretion, inquire of any known parent of the child concerning the identity of the unknown parent and may appoint a guardian ad litem for the unknown parent to conduct a diligent search for the parent. Should the court ascertain the name or identify of the parent, it shall enter a finding to that effect; and such parent shall be summoned to appear in accordance with G.S. 7B-1106.
- (c) Notice of the preliminary hearing need to given only to the petitioner who shall appear at the hearing; but the court may cause summons to be issued to any person directing him to appear and testify.
- (d) If the court is unable to ascertain the name or identity of the unknown parent, the court shall order publication of notice of the termination proceedings and shall specifically order the place or places of publication and the contents of the notice which the court concludes is most likely to identify the child to such unknown parent. The notice shall be published in a newspaper qualified for legal advertising in accordance with G.S. 1-597 and 1-598 and published in the counties directed by the court, once a week for three successive weeks. Provided, further, the notice shall:
  1. Designate the court in which the petition is pending;
  2. Be directed to "the father (mother) (father and mother) of a male (female) child born on or about \_\_\_\_\_ (date) in \_\_\_\_\_ (county) \_\_\_\_\_ (city), \_\_\_\_\_ (state), respondent",
  3. Designate the docket number and title of the case (the court may direct the actual name of the title be eliminated and the words "In re Doe" substituted therefore);
  4. State that a petition seeking to terminate the parental rights of the respondent has been filed;
  5. Direct the respondent to answer the petition within 30 days after a date stated in the notice, exclusive of such date, which date so stated shall be the date of first publication of notice, and be substantially in the form as set forth in G.S. 1A-1, Rule 4 (j1); and
  6. State that the respondent's parental rights to the child will be terminated upon failure to answer the petition within the time prescribed.

Upon completion of the service, an affidavit of the publisher shall be filed with the court.

- (e) The court shall issue the order required by subsections (b) and (d) within 30 days from the date of the preliminary hearing unless the court shall determine that additional time for investigation is required.
- (f) Upon the failure of the parent served by publication pursuant to section (d) to answer the petition within the time prescribed, the court shall issue an order terminating all parental rights of the unknown parent.

Statutory Reference: G.S. 7B-1105

## **RULE 7 SUMMONS**

- (a) Except as provided in G.S. 7B-1105, upon the filing of the petition, the court shall cause a summons to be issued, directed to the following persons or agency, not otherwise a party petitioner, who shall be named as respondents:
- (1) The parents of the child;
  - (2) Any person who has been judicially appointed as guardian of the person of the child;
  - (3) The custodian of the child appointed by a court of competent jurisdiction;
  - (4) Any county department of social services or licensed child-placing agency to whom a child has been released by one parent pursuant to G.S. 48-9(a)(1); and
  - (5) The child, if he or she is 12 years of age or older at the time the petition is filed.

Provided, no summons need be directed to or served upon any parent who has previously surrendered the child to a county department of social services or licensed child-placing agency, not to any parent who has consented to the adoption of the child by the petitioner. The summons shall notify the respondents to file a written answer within 30 days after service of the summons and petition. Service of the summons shall be completed as provided under the procedures established by G.S. 1A-1, Rule 4(j); but the parent of the child shall not be deemed to be under disability even though such parent is a minor.

- (b) The summons shall be issued for the purpose of terminating parental rights pursuant to the provisions of subsection (a) of this section and shall include:
- (1) The name of the minor child;
  - (2) Notice that a written answer to the petition must be filed with the clerk who signed the petition within 30 days after service of the summons and a copy of the petition, or the parent's rights may be terminated.
  - (3) Notice that if they are indigent, the parents are entitled to appointed counsel. The parents may contact the clerk immediately to request counsel;
  - (4) Notice that this is a new case. Any attorney appointed previously will not represent the parents in this proceeding unless ordered by the court;
  - (5) Notice that the date, time and place of the hearing will be mailed by the clerk upon filing of the answer or 30 days from the date of service, if no answer is filed;
  - (6) Notice of the purpose of the hearing and notice that the parents may attend the termination hearing.

Statutory Reference: G.S. 7B-1106

## **RULE 8 SERVICE**

- (a) The petition and summons shall be served as provided in Rule 4(j) of the N. C. Rules of Civil Procedure.
- (b) The petitioner shall also serve by first class U. S. Mail, postage pre-paid, a copy of the summons and petition on all counsel for the parents and the child and on any Guardian Ad Litem in any abuse, neglect, or dependency action regarding the same child.

*Comment: Due diligence to locate a parent in TPR proceedings.*

Service by publication is in derogation of the common law; therefore, the actions taken by a petitioner will be strictly construed to determine whether or not service is made in conformity with the statute. What conforms to due diligence is determined on a case by case basis; however, relying solely on information provided by the other parent is not sufficient. In addition to searching information available to a petitioner, the most obvious being DSS records and the available juvenile record and in addition to trying to learn a parent's whereabouts through friends and relatives, due diligence requires a search of public and quasi-public records such as phone books, motor vehicle records and correctional/prison records. In addition to using the above sources, a petitioner must follow leads from information acquired from the above sources. Attempts at service by personal service or substituted personal service by certified or registered mail should be made if petitioner determines that a parent may be at a particular address.

See *In re Clark*, 76 N.C. App. 83, 322 S.E. 2d 196, cert. denied, 314 N.C. 665, 335 S.E. 2d 322 (1985); *Fountain v. West*, 44 N.C. App. 584, 281 S.E. 2d 514 (1980).

After making a diligent search for the whereabouts of a parent, service by publication should be made in a newspaper circulated in the area where the petitioner believes the parent to be located. In determining where the parent is located, the petitioner must analyze the information accumulated in its search for the parent. If the petitioner determines that it has reliable or trustworthy information as to the location of a parent, service by publication should be made by a newspaper circulated in that area. When after making a diligent search, the petitioner determines that it has no reliable or trustworthy information placing the parent in a particular location, then the petitioner may publish in a newspaper circulated in the county where the action is pending.

## **RULE 9 APPOINTMENT OF COUNSEL/GUARDIAN AD LITEM FOR PARENTS**

- (a) Any parent has a right to counsel in termination proceedings and to appointed counsel in cases of indigency unless the parent waives that right.

- (b) The court shall determine the indigency of any parent who requests appointment of counsel and shall appoint, without hearing, counsel for any parent determined to be indigent. If the parent has a court appointed attorney in any previous proceeding regarding the same child, that attorney shall be re-appointed, subject to Rule 16 of the General Rules of Practice for the Superior and District Courts.
- (c) If the parent has not contacted the clerk within 10 days following service of the petitioner to request counsel, fails to notify the clerk of the desire to retain private counsel, or fails to notify the clerk of the desire to waive counsel, the clerk shall set a preliminary hearing for the purpose of determining representation as soon as possible.
- (d) If a respondent parent who has not answered appears at trial and requests and is eligible for court appointed counsel, then the court shall appoint counsel to represent that parent and continue the case and shall set a time, not more than thirty days, by which an answer must be filed. If the parent does not want counsel, the Court shall examine the parent on the record and make findings sufficient to show that the waiver of counsel was made knowingly and voluntarily and with full knowledge of the potential consequences of the case.
- (e) Nothing in these rules shall preclude the court from proceeding in a case where a parent does not appear at the adjudicatory hearing after proper notice.
- (f) If a respondent parent is a minor or if the petition alleges mental illness, mental retardation or substance abuse under G.S. 7B-1111(6), then the court shall appoint both an attorney and a guardian ad litem for that respondent. The petitioner shall move at time of filing for appointment of the guardian ad litem. (See also Rule 7(b)3.)
- (g) If a petitioning parent is a minor a guardian ad litem should be appointed for the petitioner pursuant to Rule 17 of the N. C. Rules of Civil Procedure prior to filing of the petition.

Statutory Reference: G.S. 1A-1, Rule 17  
 G.S. 7B-600 through 7B-603  
 G.S. 7B-1101  
 G.S. 7B-1108(d)  
 G.S. 7B-1109(b)

*Comment:*

*1. The intent of this rule and of the notice regarding counsel contained in the summons (see Rule 7(b)(3)(4) is to get appointed counsel involved as early as possible, to avoid the delay and inconvenience associated with last minute requests for appointment of counsel.*

## **RULE 10 ANSWER**

- (a) Any respondent may file a written answer to the petition.
- (b) Any answer shall admit or deny the allegations of the petition and shall set forth the name and answer of the answering respondent or his or her attorney.
- (c) In any case where a parent is represented by counsel, counsel shall file an answer within thirty days of service, but if counsel is not retained or appointed within that period of time, then counsel shall file answer as soon as possible, but no later than
  - the date set by the court pursuant to Rule 9(d)
  - thirty days from the date of counsel's appointment or entry as counsel of record, or
  - prior to the adjudicatory hearing, whichever is sooner

Statutory Reference: G.S. 7B-1108

## **RULE 11 APPOINTMENT OF ATTORNEY ADVOCATE AND GUARDIAN AD LITEM FOR THE CHILD**

- (a) In any termination of parental rights proceeding brought by DSS, the attorney advocate and Guardian Ad Litem appointed to represent the child in an abuse, neglect or dependency proceeding shall be reappointed by separate order to serve that child in their respective capacities, unless the court determines that the child's best interests require otherwise.
- (b) In any termination of parental rights proceeding brought by one parent against another parent, if the respondent parent files an answer denying any material allegation of the petition, the court shall appoint an attorney advocate and a Guardian Ad Litem to represent the child. If the respondent parent does not answer, then the court may, in its discretion, appoint a Guardian Ad Litem or an attorney advocate or both to represent the child.

Statutory Reference: G.S. 7B-1101  
7B-1108

## **RULE 12 NOTICE**

The petitioner shall serve by first class U. S. mail, notice of any hearing on the parties or their counsel, any GAL and, if the child is in the custody of a department of social services, on any foster parents.

## **RULE 13 PRE-TRIAL HEARING**

- (a) If an answer denies any material allegation of the petition...(t)he court shall conduct a special hearing after notice of not less than 10 days nor more than 30 days to the petitioner, the answering respondent(s), and the guardian ad litem for the child, to determine the issues raised by the petition and answer(s). Notice of the hearing shall be deemed to have been given upon the depositing thereof in the United States mail, first-class postage prepaid, and addressed to the petitioner, respondent, and guardian ad litem or their counsel of record, at the addresses appearing in the petition and responsive pleading.
- (b) The court may, upon finding that reasonable cause exists, order the child to be examined by a psychiatrist, a licensed clinical psychologist, a physician, a public or private agency, or any other expert in order that the child's psychological or physical condition or needs may be ascertained or, in the case of a parent whose ability to care for the child is at issue, the court may order a similar examination of any parent of the child.

Statutory Reference: G.S. 7B-1108(b)  
7B-1109(c)

### *Comment:*

1. *The exact form of the required hearing is not described, but it should determine the issues raised by the pleadings. It is sufficient for the hearing to be brief and held just before the termination hearing. In re Peirce, 53 N.C. App. 373 (1981); In re Taylor, 97 N.C. App. 57 (1990).*
2. *In any case where a party seeks a psychological or psychiatric evaluation, that request should be made by motion sufficiently in advance of the adjudicatory hearing that the motion can be heard and any evaluation that is ordered can be completed and available at that hearing.*

## **RULE 14 ADJUDICATION**

- (a) All petitions requesting the termination of parental rights shall be heard by the district court sitting without a jury within 90 days after the filing of an answer or after the time for filing answer has expired.
- (b) The judge should attempt to have the hearing transcribed by the court reporter.
- (c) Any parent shall be entitled to be heard at the adjudicatory hearing, whether or not that parent has filed answer.

- (d) In any case, whether an answer is filed or not, the petitioner shall bear the burden of proving the grounds for termination by clear, cogent and convincing evidence.
- (e) The court shall take evidence, find the facts, and shall adjudicate the existence or nonexistence of any of the circumstances set forth in G.S. 7B-1111 which authorize the termination of parental rights of the respondent.
- (f) No husband-wife or physician-patient privilege shall be grounds for excluding any evidence regarding the existence or nonexistence of any circumstance authorizing the termination of parental rights.

Statutory Reference: G.S. 7B-1109

*Comment:*

1. *Judgments terminating parental rights are frequently appealed. Tape recorded proceedings are difficult for the court reporter to hear and understand. It is therefore highly desirable for the judge to make the necessary arrangements to have the court reporter transcribe the hearing.*
2. *Despite 7B-1107, the court should conduct a hearing in which all parties have the right to be heard and to present evidence.*

## **RULE 15 DISPOSITION**

- (a) Should the court determine that any one or more of the conditions authorizing a termination of the parental rights of a parent exist, the court shall issue an order terminating the parental rights of such parent with respect to the child unless the court shall further determine that the best interests of the child require that the parental rights of such parent not be terminated.
- (b) Should the court conclude that irrespective of the existence of one or more circumstances authorizing termination of parental rights, the best interests of the child require that such rights should not be terminated, the court shall dismiss the petition, but only after setting forth the facts and conclusions upon which such dismissal is based.
- (c) Counsel for the petitioner shall serve a copy of the termination of parental rights order upon the guardian ad litem for the child, if any, and upon the child if he is 12 years of age or older.
- (d) The court may tax the cost of the proceeding to any party.

Statutory Reference: G.S. 7B-1110

*Comment*

1. *There is no burden of proof at this stage of the process. Each party may present evidence bearing on best interest and the court's decision to terminate is discretionary. In Re Montgomery, 311 N.C. 101 (1984).*
2. *The court may consider medical reports, psychological reports and other reports of professionals which it determines to be reliable and relevant; however, the court should be careful not to otherwise relax the evidentiary rules so as to allow evidence which would be excluded under the hearsay rule. In Re Montgomery, 311 N.C. 101 (1984).*
3. *Rule 15(c) is directly from the statute, but how appropriate is it to provide a 12 year old with an order that details his or her parents' failings?*
4. *Potential adoptability of the child is neither a prerequisite nor an appropriate consideration in determining whether parental rights should be terminated.*

## **RULE 16 EFFECTS OF TERMINATION ORDER**

An order terminating the parental rights completely and permanently terminates all rights and obligations of the parent to the child and of the child to the parent, arising from the parental relationship, except that the child's right of inheritance from his or her parent shall not terminate until such time as a final order of adoption is issued. Such parent is not thereafter entitled to notice of proceedings to adopt the child and may not object thereto or otherwise participate therein.

- (a) If the child had been placed in the custody of or released for adoption by one parent to, a county department of social services or licensed child-placing agency and is in the custody of such agency at the time of such filing of the petition, including a petition filed pursuant to G.S. 7B-1103(6), that agency shall, upon entry of the order terminating parental rights, acquire all of the rights for placement of said child as such agency would have acquired had the parent whose rights are terminated released the child to that agency pursuant to the provisions of G.S. 48-9(a)(1), including the right to consent to the adoption of such child.
- (b) Except as provided in subdivision (a) above, upon entering an order terminating the parental rights of one or both parents, the court may place the child in the custody of the petitioner, or some other suitable person, or in the custody of the Department of Social Services or licensed child-placing agency, as may appear to be in the best interest of the child.

Statutory Reference: G.S. 7B-1112

## **RULE 17 APPEALS AND MODIFICATION OF ORDER AFTER AFFIRMATION**

Any child, parent, guardian, custodian or agency who is a party to proceeding under this Article may appeal from an adjudication or any order of disposition to the Court of Appeals, provided that notice of appeal is given in open court at the time of the hearing or in writing within 10 days after the hearing. Pending disposition of an appeal, the court may enter such temporary order affecting the custody or placement of the child as the court finds to be in the best interest of the child or the best interest of the State. Upon the affirmation of the order of adjudication or disposition of the district court in a juvenile case by the Court of Appeals, or by the Supreme Court in the event of such an appeal, the district court shall have authority to modify or alter its original order of adjudication or disposition as the court finds to be in the best interest of the child to reflect any adjustment made by the child or change in circumstances during the period of time the case on appeal was pending, provided that if such modifying order be entered ex parte, the court shall give notice to interested parties to show cause, if any there be, within 10 days thereafter, as to why said modifying order should be vacated or altered.

Statutory Reference: G.S. 7B-1113

*Comment:*

*Note that appeal may be taken from either the adjudicatory or dispositional orders.*

*Note also that this section is different from Rule 3(b) of the Rules of Appellate*

*Procedure in that notice of appeal must be given within 10 days rather than 30 days.*

*Otherwise, the Rules of Appellate Procedure apply to termination proceedings.*

## **RULE 18 PAYMENT OF COURT APPOINTED ATTORNEY OR GUARDIAN AD LITEM**

The fees of the attorney advocate, any guardian ad litem for a minor parent and parents' appointed counsel shall be paid by the Administrative Office of the Courts when the court finds that the respondent is indigent. When the petitioner prevails, the fees of the court appointed parents' attorney and guardian ad litem attorney may be assessed against the non- or partially indigent respondent.

Statutory Reference: G.S. 7B-603

## **RULE 19 POST TERMINATION REVIEW**

- (a) When parental rights are terminated pursuant to a petition initiated by an individual or agency identified in G.S. 7B-1103(2) through (5), the court shall conduct a review of the case every six months to insure that every reasonable effort is made to provide a permanent placement for the child. Such reviews shall be conducted until an adoption petition is filed by the prospective adoptive parent(s).
- (b) No more than 30 or less than 15 days prior to the hearing date the clerk shall give notice of the review to:
  - 1. the child, if he/she is at least 12 years old;
  - 2. the legal custodian;
  - 3. the foster parent;
  - 4. the GAL and attorney advocate, and
  - 5. any other person specified by the court.
- (c) If a GAL has not been appointed for the TPR proceeding, the court may appoint one at the six month review hearing and continue the case to allow the GAL time to become familiar with the facts.
- (d) The court shall receive any evidence offered by DSS and any of those listed in (b) above.
- (e) In its review, the court shall consider the following:
  - 1. The agency plan to place the child, its adequacy and efforts to implement the plan.
  - 2. Efforts previously made by DSS to find a permanent home.
  - 3. Whether the child has been listed in adoption services listings, and which ones and whether others should be utilized.
  - 4. Evidence regarding the best interest of the child.
- (f) The court, after making findings of fact, shall affirm the plan or require specific additional steps to achieve a permanent placement consistent with the best interest of the child.
- (g) DSS shall give immediate written notice to the clerk and notify all parties when:
  - 1. the child is placed in a home for the purpose of adoption; or
  - 2. an adoption petition is filed; or
  - 3. any placement for the purpose of adoption disrupts (meaning the placement plan or the placement changes)
  - 4. a final order of adoption is entered.
- (h) The selection of specific adoptive parents is the responsibility of DSS or the licensed child-placing agency. The GAL may request information from and consult with DSS/the agency concerning the selection process. The GAL may raise objection to abuse of

discretion by DSS/the agency at any time, but not later than 10 days after being notified in writing that an adoption petition has been filed.

Statutory Reference: G.S. 7B-908

*Comments:*

- 1. The purpose of post termination reviews is to facilitate achieving a permanent placement for the child, not just a plan for placement, but a placement.*
- 2. Because their parental rights have been terminated, biological parents are not entitled to notice of review hearings or to be represented by counsel at this stage of the proceeding. Whether they are entitled to be present raises a constitutional question of public access to juvenile court proceedings that the judge would need to resolve. See G.S. 7B-908(b)(1).*
- 3. Read together, In re Wilkinson v. Riffel, 72 N.C. App. 220, 324 S.E. 2d 31 (1985), In re James S., 86 N.C. App. 364, 357 S.E. 2d 430 (1987), and In re N.C. L., 89 N.C. App. 79, 365 S.E. 2d 213 (1988), hold or suggest the following:*

*Any allegation by the GAL that DSS abused its discretion in making an adoptive placement must be raised not later than 10 days after receipt by the GAL of written notice that an adoption petition has been filed. An allegation of abuse of discretion should be written, should be served on DSS and must be filed in the adoption proceeding.*

*The GAL is entitled to meet with the child and to have information regarding prospective adoptive parents and their home, provided that such information and access are timely requested.*

*Any request for access or information should be made well in advance of the filing of the adoption petition and should be written, served on DSS and filed in the District Court proceeding. Any reasonable request should be honored by DSS.*

*If such a request is made before the adoption petition is filed, then the District Court has jurisdiction to compel DSS to comply with the request.*

*It would seem that a request for access to the child or for information regarding the prospective adoptive parents could be made after the adoption petition is filed, but at that point it could only be made and enforced in the adoption proceeding. Such a late request would make it difficult to get and evaluate the requested information and still comply with the requirement that any abuse of discretion be alleged within 10 days after receipt by the GAL of written notice of the filing of the adoption petition.*

*The District Court does not have jurisdiction to conduct reviews after an adoption petition is filed.*

- 4. The statute requires DSS/the child placing agency to notify the GAL in writing that an adoption petition has been filed. Note that most agencies place children in out-of-county adoptive placements. Since the adoption petition is filed by the adoptive parents in their own county, the placing agency may not know immediately that the petition has been filed. Agencies and adoptive parents (and their counsel) need to coordinate communication of this information so that the responsibilities of all parties may be fulfilled in a timely manner. See G.S. 7B-908 and 909.*

5. See Rule 20 regarding the necessity for review of cases in which children are surrendered but not adopted or those where adoptions have disrupted.

## **RULE 20 REVIEW OF CASES OF CHILDREN SURRENDERED BUT NOT ADOPTED AND OF THOSE WHOSE ADOPTIONS DISRUPT**

- (a) The director of social services or the director of the licensed private child-placing agency shall promptly notify the clerk to calendar the case for review of the department's or agency's plan for the child at a session of court schedules for the hearing of juvenile matters in any case where:
1. One parent has surrendered a child for adoption under the provisions of G.S. 48-9(a)(1) and the termination of parental rights proceedings have not been instituted against the non-surrendering parent within six months of the surrender by the other parent, or
  2. Both parents have surrendered a child for adoption under the provisions of G.S. 48-9(a)(1) and that child has not been placed for adoption within six months from the date of the more recent parental surrender.
- (b) In any case where an adoptive placement disrupts and the child returns to the care of DSS or the licensed child-placing agency, the department or agency shall immediately notify the Clerk that the child has returned to its care and the Clerk shall calendar the case for review.
- (c) Notification of the court required under subsections (a) or (b) of this section shall be by a petition for review. The petition shall set forth the circumstances necessitating the review under subsections (a) or (b). The review shall be conducted within 30 days following the filing of the petition for review unless the court shall otherwise direct. The court shall conduct reviews every six months until the child is placed for adoption and the adoption petition is filed by the adoptive parents. The initial review and all subsequent reviews shall be conducted pursuant to G.S. 7B-908.

Statutory Reference: G.S. 7B-908  
7B-909

### *Comments:*

1. See Rule 19 regarding the review process.

## **RULE 21 DEFINITIONS**

- (a) For purposes of these rules, "parents" shall mean either or both parents; "party" shall mean the parents, DSS or any other petitioner, the child and any GAL; and "counsel" shall mean any lawyer for any party and the attorney advocate.