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Selected North Carolina Forms

Available from civil clerks of court and online (often in fillable format) at <http://www.nccourts.org> then click on "Forms" to search by number

JUVENILE FORMS

GENERAL FORMS

AOC-J-207; Fillable Order to Appoint or Release Guardian ad Litem and Attorney Advocate
AOC-J-208; Fillable Summons in Proceeding for Termination of Parental Rights
AOC-J-209; Juvenile Order

ABUSE, NEGLECT AND DEPENDENCY FORMS

AOC-J-120; Fillable Petition Obstruction of or Interference with Juvenile Investigation
AOC-J-121; Juvenile Summons and Notice of Hearing
AOC-J-122; Ex Parte Order to Cease Obstruction of or Interference with Juvenile Investigation
AOC-J-123; Order to Cease Obstruction of or Interference with Juvenile Investigation
AOC-J-130; Fillable Juvenile Petition
AOC-J-140; Fillable Motion for Review
AOC-J-141; Fillable Notice of Hearing in Juvenile Proceeding
AOC-J-142; Juvenile Summons and Notice of Hearing
AOC-J-143; Waiver of Parent's Right to Counsel
AOC-J-150; Order for Nonsecure Custody
AOC-J-151; Order on Need for Continued Nonsecure Custody
AOC-J-153; Fillable Juvenile Adjudication Order
AOC-J-154; Fillable Juvenile Disposition Order
AOC-J-155; Fillable Motion and Order to Show Cause (Parent, Guardian, Custodian or Caretaker in Abuse/Neglect/Dependency Case)

JUDICIAL WAIVER

AOC-J-600; Appointment of Guardian Ad Litem in Waiver of Parental Consent Proceeding (Revised 10-95)
AOC-J-601; Fillable Petition for Waiver of Parental Consent for Minor's Abortion (Revised 10-95)
AOC-J-602; Order on Minor's Petition for Waiver of Parental Consent Requirement for Abortion (Revised 10-95)
AOC-J-603; Certificate Waiver of Parental Consent Requirement for Minor's Abortion (Revised 2-97)
AOC-J-604; Notice of Confidential De Novo Hearing in Superior Court for Waiver of Parental Consent (Revised 10-95)

EMANCIPATION

AOC-J-900M; Fillable Juvenile Petition for Emancipation
AOC-J-901M; Final Decree of Emancipation
AOC-J-902M; Certificate of Emancipation
AOC-J-910M; Juvenile Summons Emancipation Proceeding

GUARDIAN AD LITEM ATTORNEY PRACTICE MANUAL

GENERAL FORMS

AOC-G-100; Fillable Subpoena (Revised 3-98)

AOC-G-101; Certificate of True Copy

AOC-G-102; Exemplification

AOC-G-106; Fillable Petition to Sue/Appeal as an Indigent

AOC-FG-107; Fillable Motion, Appointment and Order Authorizing Payment of Interpreter

AOC-G-114; Fillable Request for Duplicate Copy of Verbatim Audio Court Record (Non-confidential)
(Revised 12-95)

AOC-G-115; Fillable Request and Order for Authorizing Transcript for Confidential Proceeding (Revised 8-97)

AOC-G-150; Exhibits/Evidence Log

AOC-G-151; Notice of Intent to Dispose of Exhibits/Evidence

AOC-G-152; Order for Disposition of Physical Evidence (Other Than Deadly Weapons and Alcoholic
Beverages)

APPENDIX

PERMANENCY PLANNING

Permanency Planning Order

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION (JUVENILE)

_____ COUNTY

FILE NOS: _____

IN THE MATTERS OF)
MINOR CHILD(REN):)

PERMANENCY PLANNING
ORDER (N.C.G.S. 7B-907)

_____)
DOB:)
_____)

THIS CAUSE was heard before the Undersigned Judge Presiding at the _____ session of the _____ County District Court sitting at _____, North Carolina for the hearing of juvenile matters to review the custody and placement of the above named child(ren) and to develop a permanent plan for the child(ren) pursuant to N.C.G.S. 7B-907 [and N.C.G.S. 7B-906 if combined with a review hearing]. Those in attendance include _____, social worker for the _____ County Department of Social Services, _____, Staff Attorney for the _____ County Department of Social Services, _____, Guardian ad Litem appointed to represent the child, _____, Guardian ad Litem Attorney Advocate appointed to represent the child, _____, attorney for the [mother/father], and _____ (other). The Court, after considering the evidence presented makes the following **FINDINGS OF FACT:**

1. The following reports were filed: _____ [list the type of report(s) and the ___ party upon whose behalf each is being filed] _____

2. Additions or objections made to the above named reports included _____ [describe the additions or objections and name the party making the addition or objection] These [addition(s)/objection(s)] were resolved as follows: _____ [describe any deletions, additions, or amendments made to reports] _____

OR

No additions or objections were made to the above named reports.

3. As further findings of fact, the Court adopts _____ [title and date of DSS report, GAL report, or any other document the court intends to incorporate] _____ which is/are incorporated herein as if fully set forth, with the amendments noted in paragraph 2 above.

4. It is possible for the child(ren) to be returned to the home immediately, [OR likely that the children will be returned home in the next 6 months,] based on the following findings of fact: _____ [describe findings leading the court to this conclusion] _____

_____. Reunification with the mother and/or father remains the permanent plan for the child(ren).

OR

GUARDIAN AD LITEM ATTORNEY PRACTICE MANUAL

It is not possible for the child(ren) to return home immediately nor is it likely that the child(ren) will be returned to the home in the next six months. It is not in the child(ren)'s best interest to be returned home based on the following findings of fact: _____[describe the reasons why it is not in the child's best interest to be returned home]_____.

If it is unlikely the child will be returned home in six months, continue to the next paragraph. Otherwise, skip to paragraph #9.

5. Because the juvenile's return home is unlikely within six months, this court has considered whether legal guardianship or custody with a relative or some other suitable person should be established and makes the following findings of fact: _____[describe facts relating to this issue]

_____. The rights and responsibilities which should remain with the parents include _____[describe such rights and responsibilities]_____.

6. Because the juvenile's return home is unlikely within six months, the court has considered whether adoption should be pursued and makes the following findings of fact: _____[describe facts relating to this issue]_____.

7. The barriers to the juvenile's adoption include the following _____[describe any barriers to adoption]_____.

OR

The court finds no barriers to the juvenile's adoption.

8. Because the juvenile's return home is unlikely within six months, the court has considered whether the juvenile should remain in the current placement or be placed in another permanent living arrangement and makes the following findings of fact: _____[describe facts relating to this issue **including the reasons why**]_____.

9. The court has considered whether the county department of social services has made efforts to prevent or eliminate the need for the child(ren) to be placed outside the home and whether, since the initial permanency plan hearing, there have been reasonable efforts to finalize the permanent plan for the juvenile and finds the following: _____[Describe reasonable efforts made—note that court could reference the DSS report if such report includes these facts and is incorporated into the court order. Note that the court must address both efforts to prevent placement **as well as** efforts to finalize the permanent plan. This is required by the ASFA Regulations.]_____.

10. The court has considered whether visitation with _____ is in the child's best interest and finds the following:_____.

If the permanency planning hearing is not combined with a review hearing, skip to paragraph 12

11. [When the permanency planning hearing is combined with a review hearing, the court will also have to make findings required by 7B-906(c). Some of these will duplicate what is already

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addressed in this order but it is important that all the criteria listed in 7B-906(c) are considered and that findings are made on those that are relevant.]

12. The court makes the following additional findings of fact: _____[describe any additional information the court has considered and any "other criteria the court deems necessary" to consider (7B-907(b)(6)]_____.

Based upon the foregoing findings of fact, the Court makes the following CONCLUSIONS OF LAW:

1. The Court has jurisdiction over the subject matter and over the parties to this matter.

2. It is in the best interest of the child(ren) that the Court adopt the following recommendations in this matter: _____[describe the recommendations and who is making them (DSS, GAL, parent's atty)]_____.

3. The best plan of care to achieve a safe, permanent home for the juvenile within a reasonable period of time is as follows: _____[Describe the plan of care, e.g. custody, guardianship, TPR and adoption, and the individuals involved in that plan. Note that concurrent planning is permissible in which case such plan should be described and identified as a concurrent plan of care. If the court appoints a guardian for the juvenile pursuant to 7B-600, this order should state that such appointment is pursuant to G.S. 7B-600.]_____.
This plan of care is in the best interest of the child(ren).

4. It is in the child's best interest that the department of social services take whatever measures are necessary in order to implement and adhere to the above described permanent plan of care, including making reasonable efforts to do the following:
_____ [describe measures that include what it will take to place the child in a timely manner in accordance with the permanent plan and whatever steps are necessary to finalize the permanent placement of the child]_____.

5. The department of social services has/has not made reasonable efforts to prevent or eliminate the need for the child(ren) to be placed outside the home and has/has not made reasonable efforts to finalize a permanency plan.

It is in the best interest of the child(ren) that the department of social services continue to make reasonable efforts to reunify the family

OR

cease reunification efforts with _____[the mother and/or father]_____.

6. The best placement for the child is with _____[Name of the person the child is to be placed with and, if parent or relative, describe that person's relationship to child.]_____. This placement is in the child's best interest and this/these person(s) is/are willing and able to provide a safe [and permanent (if this word is applicable)] home for the child. This/these person(s) is/are considered by this court to be suitable for caring for this child.

GUARDIAN AD LITEM ATTORNEY PRACTICE MANUAL

7. Visitation is/is not in the best interest of the child [under the following limited circumstances: _____]

8. _____

It Is Therefore Ordered, Adjudged and Decreed As Follows:

1. The minor child, _____, shall be placed with _____ [Name of the person the child is to be placed with and, if parent or relative, describe that person's relationship to child.] _____ but legal custody of the child shall remain with the _____ County Department of Social Services. The Department of Social Services shall have placement authority over the child but if a change in placement is anticipated, and in the absence of emergency circumstances, the Guardian ad Litem for the child must be notified prior to such change so that the GAL has an opportunity to either consent to the change or make a motion to the court to examine placement issues prior to moving the child.

OR

The minor child, _____, shall be placed in the legal and physical custody of _____ [Name of the person the child is to be placed with and, if parent or relative, describe that person's relationship to child] _____.

2. Visitation with _____ [describe name of person and relationship to child] shall be as follows: _____.

OR

Is denied.

3. The permanent plan of care for the child is as follows: _____ [Describe the plan of care, e.g. custody, guardianship, TPR and adoption, and the individuals involved in that plan. Note that concurrent planning is permissible in which case such plan should be described and identified as a concurrent plan of care. If the court appoints a guardian for the juvenile pursuant to 7B-600, this order should state that such appointment is pursuant to G.S. 7B-600.] _____.

4. The _____ County Department of Social Services is ordered to make reasonable efforts to place the child in a timely manner in accordance with the permanent plan set forth above.

5. The _____ County Department of Social Services is ordered to complete the following necessary steps to finalize the permanent placement of the child: _____

_____ The _____ County Department of Social Services is ordered to document such steps in the child's case plan.

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6. The _____ County Department of Social Services [*“shall file” is the language applied to actions filed before January 1, 2002; “will be filing” is more appropriate for actions filed on or after that date*] a petition for termination of parental rights for the following reason(s):

- The juvenile has been in the custody or placement responsibility of a county department of social services, and has been in placement outside the home for 15 of the most recent 22 months;
- a court of competent jurisdiction has determined that the parent has abandoned the child;
- a court of competent jurisdiction has determined that the parent has committed murder or voluntary manslaughter of another child of the parent; or has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child or another child of the parent.

The following paragraph 7 is only applicable to cases where TPR is not being pursued

7. The court is not ordering pursuit of termination of parental rights in spite of the existence of one or more of the three circumstances checked in paragraph six (6) above because the court finds:

- The permanent plan for the juvenile is guardianship or custody with a relative or some other suitable person;
- The Department of Social Services has not provided the juvenile’s family with such services as the department deems necessary, and reasonable efforts are still required to enable the juvenile’s return to a safe home
- Filing a petition for termination of parental rights is not in the child’s best interest for the following reasons: _____.

OR

The court is not ordering pursuit of termination of parental rights because none of the three circumstances set out in paragraph six (6) above exist and filing a petition for termination of parental rights is not in the child’s best interest because: _____.

8. The respondent parent, _____, is ordered to do the following in order to facilitate the permanent plan of care: _____ [*Note that according to In re Cogdill, the judge is not permitted to order anything not set out in 7B-904 but it may be appropriate for the judge to condition return of the child on the parent meeting certain criteria designed to correct the conditions which led to removal.*]

9. The permanent plan for this child shall be reviewed on __ (date and time) __ unless a motion is filed by any party requesting an earlier review.

10. _____

This is the _____ day of _____, 200__.

Judge Presiding

Civil Child Custody [7B-911]¹

Permanency Order Planning Order

NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

DISTRICT COURT DIVISION

SURRY COUNTY

FILE NO. _____

MARY BETH JOHNSON,

Plaintiff

VS.

KIMBERLY JOHNSON and
JAMES BRIGGS,

Defendants

)
)
) **PERMANENCY PLANNING**
) **REVIEW ORDER**
)
)
)

THIS MATTER coming on before the undersigned District Court Judge presiding at the May 21, 2007 Session of Surry County District Court sitting in Dobson, North Carolina for the hearing of juvenile matters upon motion by Petitioner Surry County Department of Social Services (DSS) to determine the permanent plan for the juvenile Mark Johnson pursuant to NCGS § 7B-907. Present at the hearing were Thomas Jones, Attorney for DSS; Madeline Smith, Social Worker; Jennifer Nelson, Attorney for GAL; Jane Smith, Guardian ad Litem; Janet Hanson, Attorney for Respondent Mother; Kimberly Johnson, mother; and Mary Beth Johnson, maternal grandmother. The court after hearing evidence and considering the matter, based on clear and convincing evidence, makes the following:

FINDINGS OF FACT

1. That a child petition was filed by the Surry County Department of Social Services (“DSS”) on October 27, 2005 alleging that Mark Johnson, a child born to Kimberly Johnson on June 30, 2000 was Neglected and Dependent. DSS obtained a nonsecure custody order at that time, and the juvenile was placed with his maternal grandmother, Mary Beth Johnson.
2. That the father, James Briggs, was served on October 27, 2005 but has failed to appear in court. The father has had no contact with the juvenile since December of 2000 and does not pay child support. That the mother was served on October 31, 2005 and is represented by counsel.
3. That the father and mother of the juvenile have a history of drug abuse which has interfered with their ability to provide care, supervision and physical necessities for the juvenile.
4. That during an investigation by DSS between February and June 2005, the mother tested positive for cocaine on more than one occasion.
5. That on November 3, 2005 the mother of the juvenile entered into a Case Plan under which she would complete parenting classes, substance abuse assessments, and submit to random drug screens.

¹ Thank you to Evelyn Griggs, GAL Law Intern, for her work drafting the orders for this section.

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6. That the undersigned District Court Judge conducted adjudication and disposition hearings, pursuant to Chapter 7B of the General Statutes, on December 1, 2005, and found by clear and convincing evidence that the minor child was neglected. DSS was granted custody of the minor child and the court approved continued placement of the minor child with the maternal grandmother . At that time the court adopted the recommendations of the Case Plan, including parenting classes, complete a substance abuse assessment and follow all recommendations, and ordered supervised visitation one hour weekly at DSS.
7. That prior to today's date, the permanent plan was reunification with the mother.
8. That the mother of the juvenile did not comply with the Case Plan in that she did not maintain regular contact with the social worker, did not complete parenting classes, did not complete a substance abuse assessment, and had sporadic visitation.
9. That on June 2, 2006, October 14, 2006 and January 22, 2007 the mother of the juvenile tested positive for cocaine.
10. That DSS has made reasonable efforts since the initial permanency plan to implement that plan for the juvenile.
11. That the juvenile is currently in the legal custody of DSS, but he has been living in the home of Mary Beth Johnson in White Plains, N.C. since October of 2005.
12. That due to the mother's drug use, Mary Beth Johnson has periodically cared for the juvenile throughout his life and has been his primary caretaker since October of 2005.
13. That the mother of the juvenile, DSS, and the juvenile's Guardian ad litem have all asked for the juvenile to be placed into the legal custody of Mary Beth Johnson. She is a fit and proper person to have the care, custody and control of the juvenile, and to be named the juvenile's custodian and permanent caretaker.
14. That the court has examined Mary Beth Johnson and finds that she understands the responsibility she is assuming in becoming the juvenile's guardian, and she and her family have the resources to provide proper care and supervision for the juvenile.
15. That it is not in the juvenile's best interest to be returned home to his mother neither immediately nor within the next six months due to her inability to comply with the Case Plan and her continued drug use.
16. That it is not in the best interest of the child that adoption be pursued because he is currently with his maternal grandmother who has taken care of him periodically throughout his life.
16. That the best plan of care to achieve a safe, permanent home for the juvenile within a reasonable period of time is to leave him in his current placement and create a permanent plan established through a civil child custody order for him to remain with the maternal grandmother, and that the mother have weekly supervised visitation.

CONCLUSIONS OF LAW

1. That the court has jurisdiction of the subject matter and parties herein.
2. That this order is in the best interest of the minor child.

GUARDIAN AD LITEM ATTORNEY PRACTICE MANUAL

3. The father of the juvenile, James Briggs, has willfully refused to perform the legal and natural obligations of parental care and support.
4. Placement of the child into the custody of his mother is contrary to the child's welfare at this time.
5. The juvenile's maternal grandmother, Mary Beth Johnson is a fit and proper person to have the care, custody and control of the juvenile, pursuant to NCGS § 50-13.2.
6. It is in the juvenile's best interest for the permanent plan to be that physical and legal custody be placed with Mary Beth Johnson, the juvenile's maternal grandmother, and for Mary Beth Johnson to be named his custodian and permanent caretaker through a civil child custody order pursuant to NCGS § 7B-911.
7. It is in the best interest of the juvenile that the mother be allowed weekly supervised visits to maintain the bond between the juvenile and his mother.
8. It is not in the best interest of the juvenile for the father to be allowed visitation because he has not had a role in the juvenile's life since the juvenile was an infant.
9. That reasonable efforts to eliminate the need for placement shall cease because such efforts clearly would be inconsistent with the juvenile's health, safety, and need for a safe, permanent home within a reasonable period of time.

THEREFORE, it is ordered as follows:

1. The juvenile, Mark Johnson, is placed into the legal custody of Mary Beth Johnson, and Mary Beth Johnson be named the Custodian of the Person for the child. In addition to the other duties and authority granted to her by law, Mary Beth Johnson shall have full authority to authorize and arrange for such medical, psychological or educational services as shall be required in the best interests of the child.
2. Supervised visitation between the juvenile and his mother, Kimberly Johnson, shall occur weekly on Sunday afternoons from 1pm-4pm in the home of Mary Beth Johnson, with Mary Beth Johnson present, or as determined through future proceedings by the court in this matter pursuant to NCGS § 50.13.7.
3. The father of the juvenile, James Briggs, has no visitation rights. If he wishes to regain those rights, he must petition the court for a modification of visitation pursuant to NCGS § 50-13.7.

This the _____ day of June 2007.

District Court Judge Presiding

APPENDIX

Termination of Juvenile Court Jurisdiction

NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

SURRY COUNTY

DISTRICT COURT DIVISION

FILE NO. _____

MARY BETH JOHNSON,)

Plaintiff)

VS.)

CHILD CUSTODY ORDER

KIMBERLY JOHNSON and)

JAMES BRIGGS,)

Defendants)

THIS MATTER coming on before the undersigned District Court Judge presiding at the May 21, 2007 Session of Surry County District Court sitting in Dobson, North Carolina for the hearing of juvenile matters upon motion by Petitioner Surry County Department of Social Services (DSS) for entry of a civil child custody order and termination of juvenile court jurisdiction pursuant to NCGS § 7B-911. Present at the hearing were Thomas Jones, Attorney for DSS; Madeline Smith, Social Worker; Jennifer Nelson, Attorney for GAL; Jane Smith, Guardian ad Litem; Janet Hanson, Attorney for Respondent Mother; Kimberly Johnson, mother; and Mary Beth Johnson, maternal grandmother. The court after hearing evidence and considering the matter, based on clear and convincing evidence, makes the following:

FINDINGS OF FACT

- 1. That a child petition was filed by the Surry County Department of Social Services ("DSS") on October 27, 2005 alleging that Mark Johnson, a child born to Kimberly Johnson on June 30, 2000 was Neglected and Dependent. DSS obtained a nonsecure custody order at that time, and the juvenile was placed with his maternal grandmother, Mary Beth Johnson.
2. That the father, James Briggs, was served on October 27, 2005 but has failed to appear in court. The father has had no contact with the juvenile since December of 2000 and does not pay child support. That the mother was served on October 31, 2005 and is represented by counsel.
3. That the father and mother of the juvenile have a history of drug abuse which has interfered with their ability to provide care, supervision and physical necessities for the juvenile.
4. That during an investigation by DSS between February and June 2005, the mother tested positive for cocaine on more than one occasion.
5. That on November 3, 2005 the mother of the juvenile entered into a Case Plan under which she would complete parenting classes, substance abuse assessments, and submit to random drug screens.
6. That the undersigned District Court Judge conducted adjudication and disposition hearings, pursuant to Chapter 7B of the General Statutes, on December 1, 2005, and found by clear and convincing evidence that the minor child was neglected. DSS was granted custody of the minor child and the court approved continued placement of the minor child with the maternal grandmother. At that time the court adopted the

GUARDIAN AD LITEM ATTORNEY PRACTICE MANUAL

recommendations of the Case Plan, including parenting classes, complete a substance abuse assessment and follow all recommendations, and ordered supervised visitation one hour weekly at DSS.

7. That the mother of the juvenile did not comply with the Case Plan in that she did not maintain regular contact with the social worker, did not complete parenting classes, did not complete a substance abuse assessment, and had sporadic visitation.

8. That on June 2, 2006, October 14, 2006 and January 22, 2007 the mother of the juvenile tested positive for cocaine.

9. That the juvenile is currently in the legal custody of DSS, but he has been living in the home of Mary Beth Johnson in White Plains, N.C. since October of 2005.

10. That due to the mother's drug use, Mary Beth Johnson has periodically cared for the juvenile throughout his life and has been his primary caretaker since October of 2005.

11. That the mother of the juvenile, DSS, and the juvenile's Guardian ad litem have all asked for the juvenile to be placed into the legal custody of Mary Beth Johnson. She is a fit and proper person to have the care, custody and control of the juvenile, and to be named the juvenile's custodian and permanent caretaker.

12. That the court has examined Mary Beth Johnson and finds that she understands the responsibility she is assuming in becoming the juvenile's guardian, and she and her family have the resources to provide proper care and supervision for the juvenile.

13. Inasmuch as the child has been adequately cared for by Mary Beth Johnson for more than eighteen months, the court finds that there is currently no need for intervention by the State of North Carolina or the Surry County DSS on behalf of the child. Further, that continued juvenile court jurisdiction is not necessary to ensure the best interests of the child.

CONCLUSIONS OF LAW

1. That the court has jurisdiction of the subject matter and parties herein.

2. That this order is in the best interest of the minor child.

3. The father of the juvenile, James Briggs, has willfully refused to perform the legal and natural obligations of parental care and support.

4. Placement of the child into the custody of his mother is contrary to the child's welfare at this time.

5. The juvenile's maternal grandmother, Mary Beth Johnson is a fit and proper person to have the care, custody and control of the juvenile, and pursuant to N.C.G.S. 7B-911 and 50-13.2, it is in the best interest of the juvenile that he be placed into the physical and legal custody of Mary Beth Johnson, and that Mary Beth Johnson be named as the juvenile's guardian and permanent caretaker.

6. That there is no further need for continued state intervention on behalf of the child through a juvenile court proceeding.

7. There is good cause, pursuant to N.C.G.S. 7B-911, to terminate the court's jurisdiction in this juvenile matter.

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THEREFORE, it is ordered as follows:

1. The juvenile, Mark Johnson, is placed into the legal custody of Mary Beth Johnson, and Mary Beth Johnson be named the Custodian of the Person for the child. In addition to the other duties and authority granted to her by law, Mary Beth Johnson shall have full authority to authorize and arrange for such medical, psychological or educational services as shall be required in the best interests of the child.
2. No further hearing shall be held by the court in this matter, and the court's jurisdiction in this juvenile matter is hereby TERMINATED.
3. The Department of Social Services, the Guardian ad litem, and all attorneys involved in this matter are hereby RELIEVED of further responsibility herein.

This the _____ day of June 2007.

District Court Judge Presiding

EXPERTS

Motion for Expert

NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE DISTRICT
COURT DIVISION (JUVENILE)
FILE NO:

IN THE MATTER OF)
)
MINOR CHILD)
DOB 7/16/93,)
and)
MINOR CHILD)
DOB 8/8/90)

MOTION FOR EXPERT
(G.S. 7A-454)

NOW COMES the children, by and through their Guardian ad Litem and counsel, and Prays the Court for an order pursuant to G.S. 7A-454 authorizing the State to pay for the fees for the services of a psychological expert witness to inform the Court of needs of the minor children, and in support of this motion shows the following:

1. The minor children herein were adjudicated abused on March 31, 1998. They were left in the custody of the Wake County Department of Social Services and continued in placement with their paternal aunt and uncle.
2. The Guardian ad Litem is duly appointed by the Court and is ordered to and has a statutory obligation to conduct follow up investigations to ensure that the court orders are properly executed, and report to the court when the needs of the children are not being met.
3. Upon information and belief, the current placement of the minor children is not in their best interest and does not provide them with the stability and nurture that they need; therefore, they are in need of further review by the Court to determine appropriate placement for them.
4. The minor child, _____, has special emotional needs, is currently in counseling at the Wake Orange Mental Health Center, has had a Child Mental Health Evaluation, and has been identified by the public school as a special student.
5. The minor child , _____, is very hyperactive and was recommended to have a Developmental Evaluation to determine if he has special needs. He has had a Child Mental Health Examination and is in counseling at the Wake Orange Mental Health Center.

This sample derived from draft provided by Judy Kornegay, Attorney Advocate, district 7

APPENDIX

6. The Child Mental health Examiner and the children's therapist have information which is relevant to the placement and visitation needs of these children.

7. The Guardian ad Litem for the minor children needs to present evidence to the Court regarding their needs concerning placement and visitation with their parent and needs an Order of the Court to call _____, Ph.D., as an expert witness.

8. The minor children are indigent and cannot pay for the fees and expenses of their expert psychological witness and need an order of the Court for the expenses and fees of their expert to be paid by the State pursuant to N.C.G.S. §7A-454.

WHEREFORE, the minor children, through their Guardian ad Litem and Attorney Advocate, pray the Court for its order authorizing payment of expert witness fees and expenses to be paid pursuant to G.S. §7A-454.

This the 20th day of April, 1998.

Jane Johnson, Attorney Advocate
820 Nichole Ln.
Raleigh, N.C. 27803-1543
(919) 937-6343
St. Bar No: 27134

CERTIFICATE OF SERVICE

I hereby certify that I have this day served all parties or their attorney with a copy of this Motion by hand delivery or by depositing it in the U.S. mail, postage prepaid, properly addressed, pursuant to Rule 5 of the Rules of Civil Procedure.

This the 20th day of April, 1998

Attorney Advocate
Address
Telephone Number

GUARDIAN AD LITEM ATTORNEY PRACTICE MANUAL

Order for Expert

NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE DISTRICT COURT DIVISION

ORANGE COUNTY

FILE NO:

IN THE MATTER OF)
)
DOB)

ORDER

THIS CAUSE coming on to be heard before the Undersigned Judge Presiding at the May 24, 1998 Session of the Orange County District Court sitting at Raleigh, North Carolina for the hearing of juvenile matters, upon motion of the Guardian ad Litem for an order of the Court to be allowed to call an expert witness, and it appearing that those in attendance include, the juvenile, _____; _____, social worker for the Orange County Department of Social Services and her attorney, _____, Staff attorney for the Orange County Department of Social Services, _____, Guardian ad Litem for the juvenile, and the attorney advocate, Jane Johnson; and the Court, after considering the evidence presented does make the following FINDINGS OF FACT:

1. The juvenile has special emotional needs, is currently in psychotherapy and is placed in the _____.

2. The juvenile has been identified by the public schools as a special student for several years and has been classified as Behaviorally and Emotionally Handicapped (BEH).

3. There is some dispute about.....

4. A complete psychological evaluation of the juvenile has been performed by _____, Ph.D., a psychologist at the University of North Carolina in Chapel Hill and his testimony is necessary in this matter.

5. The juvenile, through his Guardian ad Litem, needs to present testimony to the court regarding his special needs and needs to call _____ as an expert witness to present that testimony.

6. The juvenile is indigent and cannot pay for the fees and expenses of his expert psychologist witness and needs an order of the Court for the expenses and fees of his expert to be paid by the State pursuant to N.C.G.S. §7A-454

This sample derived from draft provided by Judy Kornegay, Attorney Advocate, district 7

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Based upon the foregoing findings of fact, the Court makes the following **CONCLUSIONS OF LAW:**

1. The testimony of a psychologist who can identify and explain the special needs of the juvenile in this matter is necessary for the Court to have sufficient information upon to which to find facts and make orders concerning this juvenile.

2. The juvenile is indigent.

3. The payment of an expert witness for the juvenile is authorized by the General Statutes of North Carolina pursuant to § 7A-454.

NOW, THEREFORE, IT IS ORDERED that the guardian ad litem for the juvenile is authorized to call as an expert witness, _____, Ph.D. to testify at the hearing of this matter and that his expenses and expert witness fee shall be paid by the State pursuant to N.C.G.S. §7A-454.

This the ____ day of _____, 1993.

The Honorable _____
District Court Judge Presiding

**INJUNCTIONS AND TEMPORARY
RESTRAINING ORDERS**

**Application and Motion for Preliminary Injunction
And Permanent Injunction**

NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE DISTRICT
COURT DIVISION (JUVENILE)
FILE NOS: 98 J X-XXX

IN THE MATTERS OF:)
)
MINOR CHILDREN,)
)
DOB:)
)

APPLICATION AND MOTION
FOR PRELIMINARY
INJUNCTION AND
PERMANENT INJUNCTION

Pursuant to North Carolina General Statutes section 1A-1, Rule 65, of the North Carolina Rules of Civil Procedure, the children, by and through their Guardian ad Litem and counsel move the court as follows:

1. That a preliminary injunction be issued from this court to enjoin [Father] and any person acting in concert or participation with him, from contacting or attempting to contact the minor children or their foster parents, seeing or attempting to see the children or their foster parents, discussing the sex abuse allegations with [Daughter], allowing or facilitating contact between Minor Children and Respondent [Mother], [her Boyfriend], or [Maternal Grandfather], or from violating any orders of the court, until such time as the allegations of the verified motion and affidavits filed in this matter shall be finally adjudicated.

2. That the court issue an immediate temporary restraining order in accordance with North Carolina Rules of Civil Procedure, Rule 65(b), to immediately enjoin [Father], and anyone acting in concert or participation with him, from contacting or attempting to contact the minor children or their foster parents, or seeing or attempting to see the minor children or their foster parents, in that immediate and irreparable injury, loss and damage will result to the minor children before notice can be served and a hearing on the minor children's application for preliminary injunction can be had thereon because the Guardian ad Litem is informed, believes, and therefore alleges that [Father] will continue to violate the court's orders prohibiting discussion of the sex abuse allegations with [Daughter]; his discussion or questioning about this matter compromises the investigation and possible prosecution of these allegations; that he will continue to expose them to or facilitate their exposure to Respondent [Mother], [her Boyfriend], and [Maternal Grandfather], who are not authorized to see the children; and that the Guardian ad Litem has no other adequate remedy at law.

This sample derived from draft provided by Judy Kornegay, Attorney Advocate, district 7

APPENDIX

3. That a hearing upon this application for preliminary injunction and issuance of temporary restraining order be had within ten (10) days of its filing as required by the North Carolina Rules of Civil Procedure.

4. In support of this motion, the minor children show the Court as follows: That a verified motion seeking the court to direct [Father], the father of minor children, and anyone acting in concert with him, to refrain from contacting or attempting to contact the minor children, or seeing or attempting to see the children, except upon the express order of the Court, and that he comply with all of the court's orders, and praying the court to issue a permanent injunction against Father and anyone acting in concert with him for these acts, and for costs and reasonable attorney's fees, was filed by the Guardian ad Litem on this date, the contents of which motion are incorporated herein by reference herein as if fully set out.

This the 7th day of January, 1998.

Attorney Advocate
Address
Telephone Number

CERTIFICATE OF SERVICE

I hereby certify that I have this day served all parties or their attorney with a copy of this Motion and Application for Preliminary Injunction and Permanent Injunction by hand delivery or by depositing it in the U.S. mail, postage prepaid, properly addressed, pursuant to Rule 5 of the Rules of Civil Procedure.

This the 7th day of January, 1998.

Attorney Advocate
Address
Telephone Number

**Motion for Temporary Restraining Order,
Preliminary Injunction and
Permanent Injunction**

NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE DISTRICT
COURT DIVISION (JUVENILE)
FILE NO: 98 J X-XXX

IN THE MATTERS OF:)	
	)	MOTION
MINOR CHILDREN,	)	FOR TEMPORARY RESTRAINING
	)	ORDER, PRELIMINARY
DOB:	)	INJUNCTION AND PERMANENT
	)	INJUNCTION (G.S. 1A-1, RULE 65)

NOW COMES the children by and through their Guardian ad Litem and counsel, pursuant to N.C.G.S. 1A-1, Rule 65 of the North Carolina Rules of Civil Procedure, and move the Court for a Temporary Restraining Order, Preliminary Injunction, and Permanent Injunction restraining [Father] and anyone acting in concert with him from contacting or attempting to contact the Minor Children or their foster parents, seeing or attempting to see the minor children or their foster parents, discussing the sex abuse allegations with [Daughter], facilitating contact between Respondent [Mother], [her Boyfriend] or [Maternal Grandfather] with Minor Children, or violating any of the court's orders, and for costs and reasonable attorney's fees. In support of this motion the movant shows the court the following:

1. This is an emergency motion which is made ex parte because immediate, irreparable injury, loss or damage will result to Minor Children before notice can be served and hearing held thereon in that such delay would afford [Father] the opportunity for his violations of the Court's orders to continue and could provide the impetus for removal of the children from the State.

2. A Temporary Restraining Order is necessary to restrain and enjoin Father and those acting in concert with him from continued violations of the Court's orders.

3. On January 4, 1998, the Court held a 7 day hearing in this matter and [Father] appeared before the Court, having come from New York City without having seen Minor Children for several years, to request visitation with Minor Children and to request that a home study be done on his home so that he could be considered for their placement.

4. At the hearing, the Court entered an order allowing [Father] to have one time overnight unsupervised visitation with the Minor Children on January 4, 1998, conditioned upon his not discussing the allegations in this case with them, specifically not discussing the sex abuse allegations with [Daughter], and not allowing the Respondent [Mother], [her Boyfriend], or [Maternal

This sample derived from draft provided by Judy Kornegay, Attorney Advocate, district 7

APPENDIX

Grandfather] to be in their presence or have contact with them. The Court specifically prohibited any other contact by [Father] with the Children, including not obtaining information about their placements, day care, school, and after school arrangements. The issue of further contact was to be addressed at the next hearing to be held on January 19, 1998.

5. [Father] was present during the hearing of this matter, acknowledged his understanding of the Court's order and his agreement to abide by all of its terms, and entered into a protection plan with the Wake County Department of Social Services agreeing to the terms, all of which is set out in the affidavit of Social Worker, which is attached to this motion and incorporated herein.

6. Upon that information and belief, on January 4, 1998, [Father] exercised his right to have unsupervised visitation and the minor children spent the night with him at the Holiday Inn in Goldrock, North Carolina.

7. Upon information and belief, during the visitation, [Father] discussed the sex abuse allegations with [Daughter], in violation of the Court's order.

8. Upon information and belief, during the visitation, [Father] called Respondent [Mother] at [Maternal Grandparents'] home and allowed Respondent [Mother] to talk with all three children on the telephone, in violation of the Court's order.

9. Upon information and belief, [Father] took the children to the home of the [Maternal Grandparents], knowing that Respondent [Mother], [her Boyfriend], and [Maternal Grandfather] were there and the children saw and visited with all these adults at that time, in violation of the court order.

10. Upon information and belief, [Father] left the grandparents' home with the three children and Respondent [Mother], continuing her unauthorized visit with the children, in violation of the court order.

11. Upon information and belief, [Father] and Respondent [Mother] and the children spent the night together in his motel room in violation of the court order.

12. Upon information and belief, [Father] took the children to their Respondent [Mother's] place of employment on January 5, 1998, in violation of the court order.

13. Upon information and belief, [Father] discussed the sex abuse allegations with [Daughter] several times during the visit, in violation of the court order.

14. Upon information and belief, [Father] obtained the telephone numbers and addresses of the children's foster parents from the children and has called them and their foster parents numerous times attempting to arrange visits with the children directly through the foster parents outside of court, in violation of the court order.

15. Upon information and belief, [Father] has questioned the foster mother's own

GUARDIAN AD LITEM ATTORNEY PRACTICE MANUAL

biological children in order to get exact directions to their home, find out when the parents are at work, and learn where the Children are in day care and after school care, in violation of the court order.

16. Upon information and belief, the foster parents are concerned about the security of the children's placements due to [Father's] actions.

17. The placements of Minor Children are compromised due to the interference of the [Father]; and further, the investigation of the sexual abuse allegations concerning [Daughter] and prosecution of these charges are compromised due to [Father's] violation of court orders.

18. [Father's] intentional violation of the Court's orders, his flagrant disregard of protective orders concerning the conditions of his visitation with the children, his continual telephone calls to the minor children in foster care in attempt to arrange unauthorized visits, and his knowledge of the whereabouts of their placements in foster care, provide reasonable grounds to believe that [Father] will continue to violate the Court's orders, continue to contact the minor children, continue to flagrantly disregard the orders of the Court, and continue to compromise the investigation and prosecution of the sexual abuse allegations concerning [Daughter], thereby causing immediate and irreparable injury, loss and damage to the minor children by exposing them to further risk of harm and inhibiting the ability of the Court to protect them.

WHEREFORE, the movant prays the Court to grant her Temporary Restraining Order, Preliminary Injunction, and Permanent Injunction restraining [Father] and anyone acting in concert with him from contacting or attempting to contact the minor children or their foster parents, or seeing or attempting to see the minor children or their foster parents, discussing the sex abuse allegations with [Daughter], facilitating contact between the children and Respondent [Mother], [her boyfriend], or [Maternal Grandfather], or violating any of the Court's orders until such time as allegations of this motion shall be finally adjudged. Movant also prays that no security be required.

This the 7th day of January, 1998.

Attorney Advocate
Address
Telephone Number

VERIFICATION

On this 7th day of January, 1998, _____, the GAL, personally appeared before me who, first being duly sworn, says that she is the Guardian ad Litem herein; that she has read the foregoing motion and knows its contents; and that the same is true of her own knowledge, except as to those matters stated upon information and belief, as to those, she believes them to be true.

Guardian ad Litem

APPENDIX

Sworn to and subscribed before me this 7th day of January, 1999.

Notary Public

My commission expires: _____

Affidavit of Social Worker

NORTH CAROLINA
EDGECOMBE COUNTY

IN THE GENERAL COURT OF JUSTICE DISTRICT
COURT DIVISION (JUVENILE)
FILE NOS: 98 J X-XXX

IN THE MATTERS OF:)
)
MINOR CHILDREN,) AFFIDAVIT OF SOCIAL WORKER
DOB:)
)

I, JOHN DOE, being first duly sworn, deposes and says:

1. I am a social worker in the Child Protective Services Section of the Wake County Department of Social Services.

2. I am more than eighteen (18) years of age and have personal knowledge of the facts and matters set forth in this affidavit, and am competent to give this affidavit.

3. I was present in court on January 4, 1998 for the seven day hearing of this matter when the Court ordered unsupervised visitation between Father children, conditioned upon several things.

4. On January 4, 1998, after the seven day hearing in this matter, I discussed with Father all of the terms and conditions of the Court’s order allowing his visitation. This included, but was not limited to a discussion of the court’s order that he not discuss the allegations of sex abuse with Daughter. I explained that any such discussion could compromise investigation and prosecution of the matter.

5. I also explained to Father the necessity of the Court’s condition that Respondent Mother, her Boyfriend, and Maternal Grandfather, who are the alleged perpetrators, have no contact with the children.

6. I also explained to Father the necessity of the Court’s condition that Respondent Mother, her Boyfriend, and Maternal Grandfather, who are the alleged perpetrators, have no contact with the children.

7. Additionally, I explained to Father that he was allowed to have no contact whatsoever

This sample derived from draft provided by Judy Kornegay, Attorney Advocate, district 7. This affidavit is to accompany the Motion for Temporary Restraining Order, Preliminary Injunction and Permanent Injunction.

APPENDIX

with the children other than the court ordered unsupervised visit to take place that day and night; that this was necessary to protect the security of the children's placement, and that additional visitation and contact would be addressed at the next hearing which was scheduled to take place on January 18, 1998.

8. Father stated that he understood and agreed to all of the conditions placed on his visit by the Court; he restated them to me; and he signed a protection plan containing this agreement. A copy of the protection plan is attached to this affidavit and incorporated into it.

9. I delivered the children to Father for overnight visitation at 4:00 PM, on January 4, 1998, as ordered by the court and picked them up the next day at 8:00 AM.

10. Based upon my own observations and my investigation of the visit and events that have followed it, our agency substantiated neglect by Father for intentionally violating the court's orders in that:

- A. Upon information and belief, Father called the Respondent Mother at Maternal Grandparents' house from his motel room during the visit and allowed the children to talk to her.
- B. Upon information and belief, Father took the children to the home of the Maternal Grandparents, knowing that Respondent Mother, her Boyfriend, and Maternal Grandfather were there and the children saw and visited with all of these adults at that time.
- C. Upon information and belief, Father let the grandparents' home with the three children and Respondent Mother, continuing her unauthorized visits with the children.
- D. Upon information and belief, Father and Respondent Mother and the children spent the night together in his motel room.
- E. Upon information and belief, Father took the children to their Respondent Mother's place of employment on January 5, 1998.
- F. Upon information and belief, Father discussed the sex abuse allegations with Daughter several times during the visit.
- G. In the presence of this affiant, Father told Daughter that if anyone ever messed with her again she should call him, even if she had to go to a phone booth and call him collect, and he, his father and his "crazy brother" would come down here and take care of it.
- H. Upon information and belief, Father obtained the telephone numbers and addresses of the children's foster parents from the children and has called them and their foster parents numerous times attempting to arrange visits with the children directly through the foster parents outside of court.

GUARDIAN AD LITEM ATTORNEY PRACTICE MANUAL

I. Upon information and belief, Father has questioned the foster mother's own biological children in order to get exact directions to their home, find out when the foster parents are at work, and learn where the Children are in day care and after school care.

J. The Foster parents have expressed concern about the security of the children's placements because of Father's telephone calls, his knowledge of their addresses, his attempts to find out where the children are, and his attempts to arrange unauthorized visits through them with the children.

11. The children have been adjusting well to foster care.

12. Daughter has bonded with her foster mother and has made ongoing revelations concerning alleged sexual abuse by multiple adult abusers to her when she had not made these revelations to anyone else, including her parents or social worker.

13. It is in the best interest of these children to have consistency by remaining in their current foster homes and not being unnecessarily removed or further separated.

14. Father's unauthorized contacts with the children, his violation of court orders regarding his communication with Daughter about the sex abuse allegations, his facilitation of prohibited contact between the children and Respondent Mother, her Boyfriend, and Maternal Grandfather all compromise the safety and placements.

Further affiant sayeth not.

This the _____ day of _____, _____.

John Doe

Sworn to and subscribed before me,
This the _____ day of _____, _____.

Notary Public

My Commission Expires: _____

[Attach Certificate of Service]

APPENDIX

**Notice of Hearing on Temporary Restraining Order,
and Application for Preliminary Injunction**

NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION (JUVENILE)
FILE NO. 98J X-XXX

IN THE MATTER OF:)
)
MINOR CHILDREN,)
)
DOB:)

NOTICE OF HEARING ON TEMPORARY RESTRAINING ORDER,
AND APPLICATION FOR PRELIMINARY INJUNCTION

TAKE NOTICE that the child by and through the child’s Guardian ad Litem and counsel has filed a verified Motion and supporting affidavit, alleging that Father has violated orders of the court by discussing sexual abuse allegation with Daughter; allowing Respondent Mother, her Boyfriend, and Maternal Grandfather to have unauthorized access to the Minor Children; and further that his knowledge of the placements of the children and his telephone calls to them compromises the security of their placements. The Guardian ad Litem has obtained a Temporary Restraining order on this date and has applied for a Preliminary Injunction, and Permanent Injunction to enjoin Father and anyone acting in concert with him from contacting or attempting to contact the minor children or their foster parents, or from seeing or attempting to see the minor children or foster parents, from discussing the sex abuse allegations with Daughter, or from violating any of the court’s orders. A hearing upon extension of said Temporary Restraining Order and Application and Motion for Preliminary Injunction shall be held at 9:30 AM January 15, 1998, in the Wake County District Courtroom, Wake County Courthouse, Tarboro, North Carolina.

This the 7th day of January, 1998.

Attorney Advocate
Address
Telephone Number

[Attach Certificate of Service]

Temporary Restraining Order

NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE DISTRICT
COURT DIVISION (JUVENILE)
FILE NOS: 98 J X-XXX

IN THE MATTERS OF:)	
)	
MINOR CHILDREN,)	
	)	TEMPORARY RESTRAINING
DOB:	)	ORDER
)	

THIS CAUSE, coming on ex parte by the attorney and Guardian ad Litem for the minor children herein, before the undersigned District Court Judge presiding for the entry of this order on January 7, 1998, pursuant to N.C.G.S. 1A-1, Rule 65 of the North Carolina Rules of Civil Procedure, for a Temporary Restraining Order restraining [Father] and anyone acting in concert with him from contacting or attempting contact the Minor Children or their foster parents, discussing the sex abuse allegations with [Daughter], facilitating contact between Respondent [Mother], [her Boyfriend], or [Maternal Grandfather] with Minor Children, or violating any of the court's orders, and for cost and reasonable attorney's fees. After reviewing the motion, application, affidavit and attachments, and hearing counsel, the Court makes the following

FINDINGS OF FACT:

1. On January 4, 1998, the Court held a 7 day hearing in this matter and Father appeared before the Court, having come from New York without having seen Minor Children for several years, to request visitation with Minor children and to request that a home study be done on his home so that his home could be considered for their placement.

2. At the hearing, the Court entered an order allowing Father to have one time overnight unsupervised visitation with the Minor Children on January 4, 1998, conditioned upon his not discussing the allegations in this case with them, specifically not discussing the sex abuse allegations with Daughter, and not allowing the Respondent Mother, her Boyfriend, or Maternal Grandfather to be in their presence or have contact with them. The Court specifically prohibited any other contact by Father with the children, including not obtaining information about their placements, day care, school, and after school arrangements. The issue of further contact was to be addressed at the next hearing to be held on January 19, 1998.

3. The Father was present during the hearing of this matter, acknowledged his understanding of the Court's order and his agreement to abide by all of its terms, and entered into a protection plan with Wake County Department of Social Services agreeing to the terms.

This sample derived from draft provided by Judy Kornegay, Attorney Advocate, district 7

APPENDIX

4. On January 4, 1998, Father exercised his right to have unsupervised visitation and the minor children spent the night with him at the Holiday Inn in Goldrock, North Carolina. During that visit, Father violated the Court's order in that:

- A. Father discussed the sex abuse allegations with Daughter.
- B. Father called Respondent Mother at Maternal Grandparent's home and allowed Respondent Mother at Maternal Grandparents' home and allowed Respondent Mother to talk with all three children on the telephone.
- C. Father took the children to the home of the Maternal Grandparents, knowing that Respondent Mother, her Boyfriend, and Maternal Grandfather were there and the children saw and visited with all of these adults at that time.
- D. Father left the grandparents' home with the three children and Respondent Mother, continuing her unauthorized visit with the children.
- E. Father and Respondent Mother and the children spent the night together in his motel.
- F. Father took the children to their Respondent Mother's place of employment on January 5, 1998.
- G. Father obtained the telephone numbers and addresses of the children's foster parents from the children and has called them and their foster parents numerous times attempting to arrange visits with the children directly through the foster parents of court.
- H. Father questioned the foster mother's own biological children in order to get exact directions to their home, find out when the foster parents are at work, and learn where the Children are in day care and after school care.

5. The foster parents are concerned about the security of the children's placements due to Father's actions.

6. The placements of Minor Children are compromised due to the interference of the Father; and further, the investigation of the sexual abuse allegations concerning Daughter and prosecution of these charges are compromised due to Father's violation of court orders.

7. The children may have to be moved to other foster placements to protect the security of the their placements, and compromise of the investigation and prosecution of the sex abuse charges may be permanent.

8. Father's intentional violation of the Court's orders, his flagrant disregard of protective

GUARDIAN AD LITEM ATTORNEY PRACTICE MANUAL

orders concerning the conditions of his visitation with the children, his continual telephone calls to the minor children in foster care in attempt to arrange unauthorized visits, and his knowledge of the whereabouts of their placements in foster care, provide reasonable grounds to believe that Father will continue to violate the Court orders, continue to contact the minor children, continue to flagrantly disregard the orders of the Court, and continue to compromise the investigation and prosecution of the sexual abuse allegations concerning Daughter, thereby causing immediate and irreparable injury, loss and damage to the minor children by exposing them to further risk of harm and inhibiting the ability of the Court to protect them.

9. It is necessary to grant the ex parte motion for a Temporary Restraining Order because waiting for notice to Father and opportunity for him to be heard allows additional time for his violations of the Court's orders to continue and could provide the impetus for removal of the children.

Based on the foregoing Findings of Fact, the Court makes the following

CONCLUSIONS OF LAW:

1. The Court has jurisdiction of the parties and subject matter of this matter.

2. This is an emergency motion which was heard ex parte because immediate, irreparable injury, loss or damage will result to Minor Children before notice can be served and hearing had thereon in that such delay would afford Father the opportunity for his violations of the Court's orders to continue and could provide the impetus for removal of the children from the State.

3. Immediate and irreparable injury, loss and damage has been inflicted upon Minor Children by Father's intentional violation of the Court's orders; his flagrant disregard of protective orders concerning the conditions of his visitation with the children; his continual telephone calls to the minor children in foster care in attempt to arrange unauthorized visits; and his unauthorized knowledge of the whereabouts of their placements in foster care; his attempts to learn the whereabouts of their day care, school, and after school care; his discussion of sex abuse allegations with Daughter, compromising the investigation and prosecution of these allegations; all of which exposes them to further risk of harm and inhibits the Court's ability to protect them.

4. A temporary restraining order is necessary to restrain and enjoin Father's violations of the Court's orders.

5. No security should be required.

Based on the foregoing Findings of Fact and Conclusions of Law

IT IS HEREBY ORDERED that:

1. The movant's Temporary Restraining Order is granted restraining and enjoining Father and anyone acting in concert with him from contacting or attempting to contact the minor children or their foster parents, or seeing or attempting to see the minor children or their foster parents, discussing the sex abuse allegations with Daughter, facilitating contact between the children and

APPENDIX

Respondent Mother, her Boyfriend, or Maternal Grandfather, or violating any of the Court's orders until such time as hearing can be had on the merits of this matter and further orders entered.

2. This Temporary Restraining Order expires ten days from the date and time of its issuance, which date and time are endorsed below.

3. Hearing on the extension of this Temporary Restraining Order and movant's motion and application for a Preliminary Injunction shall be held at 9:30 AM, on January 15, 1998, in the District Courtroom, Wake County District Court, Tarboro, North Carolina.

4. No security from movant is required.

5. The original of this Temporary Restraining Order along with movant's Motion, Application and Motion, and Notice of Motion and Application shall be filed in the office of the Wake County Clerk of superior court and copies shall be immediately served upon Father and anyone believed to be acting in concert with him, and all parties, in accordance with the Rule of Civil procedure, so that they will have notice to appear and opportunity to be heard.

This the 7th day of January, 1998.

District Court Judge Presiding

ENTERED:

DATE: _____

TIME: _____

CONTEMPT

Motion to Show Cause

NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE DISTRICT COURT DIVISION (JUVENILE)

WAKE COUNTY

FILE NOS: 98 J X-XXX

IN THE MATTERS OF:)

MINOR CHILDREN,)

MOTION TO SHOW CAUSE (G.S.5A-21; 7B-904(e))

DOB:)

NOW COMES the minor children by and through their Guardian ad Litem and counsel, in the above-entitled matter and moves the court to issue an order requiring Joe Smith, father of the minor children, to appear and show cause, pursuant to G.S. 7B-904(e) and 5A-21, why he should not be held in civil contempt. In support of this motion, the minor children respectfully show the Court as follows:

- 1. Joe Smith, father of the minor children, appeared and submitted himself to the jurisdiction of the Court on January 4, 1998, at a seven-day hearing.
2. The court allowed the Mr. Smith to have unsupervised overnight visitation with the minor children on January 4, 1998, conditioned upon his not discussing the sex abuse allegations with Daughter and his not allowing any contact by the Respondent Mother, her Boyfriend, or Maternal Grandfather the alleged perpetrators, with the minor children. He was ordered to have no other contact with the minor children other than the specific unsupervised visits ordered by the court. Further contact was to be addressed at the next court hearing scheduled for January 19, 1998.
3. Mr. Smith specifically agreed in open court to abide by the Court's orders concerning his contact with the children and he entered into a written protection plan to specifying the same.
4. The Guardian ad Litem has filed a sworn affidavit executed by Social Worker, which is attached to this motion and incorporated herein by reference, alleging and detailing Mr. Smith's intentional violations of the Court's Order occurring on or about January 4-5, 1998.

WHEREFORE, Guardian ad Litem prays that Mr. Smith be ordered to show cause, if any there be, why he should not be held in civil contempt of this Court, and that the Court find Mr. Smith to be in civil contempt of Court and punish him for civil contempt of Court.

This sample derived from draft provided by Judy Kornegay, Attorney Advocate, district 7

APPENDIX

This the 7th day of January, 1998.

Attorney Advocate
Address
Telephone Number

[Attach Certificate of Service]

GUARDIAN AD LITEM ATTORNEY PRACTICE MANUAL

Notice of Hearing

NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE DISTRICT
COURT DIVISON (JUVENILE)
FILE NOS: 98 J X-XXX

IN THE MATTERS OF:)
)
MINOR CHILDREN,) NOTICE OF HEARING
)
DOB:)

TO: Respondent Father Respondent Mother
Address Address

Attorney (Father) Attorney (Mother)
Address Address

Attorney Social Worker
Wake Co. DSS Wake Co. DSS
Address Address

PLEASE TAKE NOTICE that on the undersigned will bring the attached Motion to Show Cause on for hearing before the District Court of Wake County, Wake County Courthouse, Raleigh, North Carolina, at 9:30 a.m. 15th day of January, 1998, or as soon thereafter as the Court can hear it.

This the 7th day of January, 1998.

Attorney Advocate
820 Lane
Raleigh, NC 27803
(919) -6343

[Attach Certificate of Service]

APPENDIX

Show Cause Order

NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE DISTRICT
COURT DIVISON (JUVENILE)
FILE NOS: 98 J X-XXX

IN THE MATTERS OF:)
)
MINOR CHILDREN,) SHOW CAUSE ORDER
) (G.S. 7B-904(e))
DOB:) (G.S. 5A-21)

THIS CAUSE, coming onto be considered and being considered by the Court on Motion by the minor children, by and through their Guardian ad Litem and counsel, for Joe Smith, the father of the minor children, to appear and show cause, if any, why he should not be held in civil contempt of court;

IT APPEARING TO THE COURT, that on January 4, 1998, an Order was entered by the Court allowing the father to have unsupervised overnight visitation with the minor children only as specifically authorized by the Court and conditioned upon Father not discussing the sexual abuse allegations with Daughter or allowing Respondent Mother, her Boyfriend, or Maternal Grandfather to have any contact with the minor children other than the specifically authorized visit; Father was present in Court when that Order was entered and he specifically agreed to abide by the Court's Orders; and it appearing that Father has discussed the sex abuse allegations with Daughter, allowed prohibited contact between Respondent Mother, her Boyfriend, and Maternal Grandfather, and the children during his visitation, and that he has had repeated contact and attempted contact with the minor children.

The Court finds probable cause to believe that Father is in civil contempt; therefor

IT IS ORDERED, that Father appear in person before the Wake County District Court, Wake County Courthouse, in Raleigh, North Carolina, at 9:30 AM, on January 15, 1998; and show cause why he should not be held in civil contempt of Court for failure to comply with the lawful Order of this Court, and be punished accordingly.

AND IT IS FURTHER ORDERED, that a copy of this Order and Guardian ad Litem's motion be served upon Father and the other parties to this action as required by the Rules of Civil Procedure.

This the 7th day of January, 1998.

District Court Judge Presiding

This sample derived from draft provided by Judy Kornegay, Attorney Advocate, district 7

GUARDIAN AD LITEM ATTORNEY PRACTICE MANUAL

TERMINATION OF PARENTAL RIGHTS

Petition for Termination of Parental Rights

STATE OF NORTH CAROLINA
COUNTY OF _____

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO. ____J ____

IN THE MATTER OF:)
_____, a minor juvenile)
d.o.b. ___/___/___)
)
)

PETITION FOR TERMINATION
OF PARENTAL RIGHTS

[BEGINNING OF PETITION WHEN DSS IS PETITIONER]

The _____ County Department of Social Services, through its Director, _____,
Petitioner, files this Petition for Termination of Parental Rights pursuant to Article 11 of Chapter 7B of
the North Carolina General Statutes. As grounds for the relief sought, Petitioner alleges the following:

- 1. The Petitioner is the _____ County Department of Social Services, whose address is
_____. _____ (Director's Name) is the
director of the department.
2. _____, c/o _____, District Administrator, Guardian ad Litem Program,
(_____), was appointed guardian ad litem, pursuant to G.S. 7B-601, for the child in
Juvenile File # ___J___, and has not been relieved of that responsibility.

[BEGINNING OF PETITION WHEN GAL IS PETITIONER]

The Guardian ad Litem, _____, petitioner, working with and
supervised by the _____ County Guardian ad Litem Program staff, files this Petition
for Termination of Parental Rights pursuant to Article 11 of Chapter 7B of the North Carolina General
Statutes. As grounds for the relief sought, Petitioner alleges the following:

- 1. The Petitioner is the Guardian ad Litem who (a) was appointed to represent the minor child
pursuant to G.S. 7B-601 on _____, in ___J___, (b) has not been relieved of this
responsibility, and (c) qualifies as a petitioner under the provisions of G.S. 7B-1103(6).
2. _____ [Name of GAL attorney] is the Guardian ad Litem attorney appointed to
represent the child in the juvenile proceeding, docket number ___J___. Petitioner's mailing
address is _____ [Attorney's Mailing Address].

APPENDIX

[REMAINDER OF PETITION]

3. The name of the child as it appears on the child's birth certificate is _____.
A copy of the child's birth certificate is attached hereto as Exhibit "A" and is incorporated by reference as part of this Petition.

4. The child, _____ (Child's name) _____ was born on _____ (date) _____, in _____ (place) _____.

5. The child is residing in _____ County, North Carolina, at the time of the filing of this Petition.

6A. The child is in the legal and physical custody of the _____ County Department of Social Services pursuant to the "Parent's Release, Surrender, and General Consent to Adoption" signed by the [mother and/or father], _____ names(s) _____ (dated) _____.
A copy of the release and surrender is attached hereto as Exhibit "B" and is incorporated by reference.

OR

6B. The child is in the legal and physical custody of the _____ County Department of Social Services pursuant to orders of the Court in Juvenile File# ___J___. The orders are designated as follows by judge and date: _____; _____; _____.
Copies of the orders are attached hereto as Exhibits "C", "D", and "E", and are incorporated by reference.

7. The mother of the child is _____, who is more than eighteen (18) years of age and whose current address is _____.

8. The mother was unmarried at the time of the conception and birth of the child and has not subsequently married the reputed father of the child.

9. The biological father of the child is _____, who is more that eighteen (18) years of age and whose current address is _____.

AND/OR

10. The biological father of the child is _____, who is more than eighteen (18) years of age and who current whereabouts are unknown. Petitioner has made diligent efforts to ascertain the location of the father, including but not limited to the following (describe efforts in detail):

AND/OR

11. The identity of the child's biological father is unknown. Petitioner has made diligent efforts to ascertain the identity of the father, including but not limited to the following (describe efforts in detail):

12. No one has been appointed guardian of the person of the child pursuant to Article 1 of Chapter 35A of the General Statutes or G.S. 7B-600.

GUARDIAN AD LITEM ATTORNEY PRACTICE MANUAL

13. As alleged below, there are facts sufficient to warrant a determination that ground (s) exist(s) for the termination of parental rights.
- /_/_ a. The [mother/ father] has abused the child within the meaning of G.S. 7B-101(1), in that (allege specific facts):
- /_/_ b. The [mother/ father] has neglected the child within the meaning of G.S. 7B-101(15), in that (allege specific facts):
- /_/_ c. The [mother/father] has willfully, and not due solely to poverty, left the child in foster care or placement outside the home for more than twelve (12) months without showing to the satisfaction of the court that reasonable progress under the circumstances has been made within 12 months in correcting the conditions that led to the child's removal, in that (allege specific facts):
- /_/_ d. The child has been placed in the custody of the county department of social services, [a licensed child-placing agency a child caring institution, or a foster home] and the [mother/ father], for a continuous period of six months next preceding the filing of this Petition, has willfully failed for such period to pay a reasonable portion of the cost of care for the child although physically and financially able to do so, in that (allege specific facts):
- /_/_ e. The child was born out of wedlock and the father, before the filing of this Petition, has not done any of the following:
- 1) Established paternity judicially or by affidavit filed in a central registry maintained by the Department of Health and Human Services; or
 - 2) Legitimated the child pursuant to G.S.49-10, or filed a petition for that specific purpose;
- or
- 3) Legitimated the child by marriage to the child's mother; or
 - 4) Provided substantial financial support or consistent care with respect to the child and mother (allege specific facts):
- /_/_ f. The [mother/ father] is incapable of providing for the proper care and supervision of the child, such that the child is a dependent child within the meaning of G.S. 7B-101(9), and that there is a reasonable probability that such incapability will continue for the foreseeable future. The [mother/father's] incapability is the result of substance abuse, mental retardation, mental illness, organic brain syndrome, or any other similar cause or condition. The following facts support this ground:
- /_/_ g. The [mother/ father] has willfully abandoned the child for at least six consecutive months immediately preceding the filing of the Petition, in that (allege specific facts):
- /_/_ h. The [mother/ father] has committed murder or voluntary manslaughter of another child of the parent or other child residing in the home; has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child, another child or the parent, or other

APPENDIX

child residing in the home; or has committed a felony assault that results in serious bodily injury to the child, another child of the parent, or other child residing in the home in that:

- /_/ i. The parental rights of the [mother/ father] with respect to another child of the [mother/ father] have been terminated involuntarily by a court of competent jurisdiction and the parent lacks the ability or willingness to establish a safe home in that:
- 14. This petition has not been filed to circumvent the provisions of G.S. Chapter 50A, the Uniform Child Custody Jurisdiction and Enforcement Act, and the Court would have jurisdiction to make a child custody determination pursuant to G.S. 50A-201.
- 15. The conduct of the [mother/ father] has been such as to demonstrate that he/she will not promote the child's healthy and orderly physical and emotional well-being.
- 16. The child is in need of a permanent plan of care at the earliest possible age, and this can be accomplished only by the severing of the relationship between the child and the [mother/ father] by termination of parental rights of the [mother/ father].
- 17. It is in the child's best interests that the parental rights of the [mother/ father] are terminated.

WHEREFORE, the Petitioner prays the Court as follows (include only applicable provisions):

- 1. That pursuant to G.S. 7B-1101, the Court appoint a guardian ad litem to represent the [mother/ father] of the child.
- 2. That pursuant to G.S. 7B-1105, the Court hold a preliminary hearing to ascertain the identity of the father of the child.
- 3. That the Court issues an Order terminating the parental rights of the [mother/ father] of the child.
- 4. That the Court tax the costs of this action to any party as the court finds appropriate.
- 5. That the Court grant such other and further relief as the Court may deem appropriate.

This ____ day of _____, _____.

[Attorney's Name]
N.C. Bar # _____
[Address]
[Telephone number]

GUARDIAN AD LITEM ATTORNEY PRACTICE MANUAL

VERIFICATION

NORTH CAROLINA

COUNTY OF _____

_____, being first duly sworn, deposes and says that he/ she is the Petitioner herein; that he/ she has read the foregoing Petition for Termination of Parental Rights, and that the same is true of his/her own knowledge, except as to the matters and things stated upon information and belief, and as to those matters and things, he/she believes them to be true.

[Petitioner's Name]

Sworn to and subscribed before me,
This the _____ day of _____, _____.

Notary Public

My Commission Expires: _____

APPENDIX

Possible Exhibits to TPR Petition

POSSIBLE EXHIBITS TO TPR PETITION

<u>EXHIBIT #</u>	<u>USED?</u>	<u>NAME OF EXHIBIT</u>
1.	_____	Affidavit regarding Petitioner's Efforts to Determine the Identity or Whereabouts of the Parent(s)
2.	_____	Copy of the Signed Parental Consent to Adoption Form
3.	_____	Copy of Petition to Adopt Child(ren)
4.	_____	Copy of Order Giving Custody to DSS
5.	_____	Copy of Order of Adjudication of Abuse
6.	_____	Copy of Order of Adjudication of Neglect
7.	_____	Affidavit regarding Parent's Failure to Make Positive Response Within Required time
8.	_____	Affidavit Regarding Parent's Mental Incapacity
9.	_____	Affidavit Regarding Abandonment by Parent
10.	_____	Affidavit Regarding Placement History of Child(ren)

GUARDIAN AD LITEM ATTORNEY PRACTICE MANUAL

Order Authorizing Service of Process by Publication

STATE OF NORTH CAROLINA
COUNTY OF _____

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO. ____ J____

IN THE MATTER OF:

)
)
)
)
)

ORDER AUTHORIZING SERVICE OF
PROCESS BY PUBLICATION
(G.S. 7B-1105)

THIS MATTER comes before the Court by way of a Petition for Termination of Parental Rights. Pursuant to G.S. 7B-1105 (a), this Court conducted a preliminary hearing on _____ to ascertain the name or identity of the father of the child, _____, at which time the following persons were present: _____, Guardian ad Litem for the child, _____, attorney advocate for the child, _____, social worker from the _____ County Department of Social Services; and _____, representing the _____ County Department of Social Services.

Testimony was elicited on behalf of petitioner, _____ County Department of Social Services, from _____, social worker.

[If child's mother attends, add that to first paragraph and include appropriate findings.]

FINDINGS OF FACT

Based on the evidence and testimony presented, the Court makes the following findings of fact by clear, cogent and convincing evidence:

- 1. INSERT SPECIFIC FINDINGS OF FACT FORM THE EVIDENCE REGARDING WHAT THE PETITIONER KNOWS ABOUT THE PARENTAGE OF THE CHILD AND THE LOCATION OF THE MOTHER AT THE TIME OF THE CONCEPTION OF THE CHILD.
2. That the name or identity of the father of the child, _____, are not known and cannot be ascertained.
3. That the proper county for publication of notice to the unknown father of the Petition for Termination of Parental Rights is _____.

APPENDIX

CONCLUSIONS OF LAW

Based on the foregoing findings of fact, the Court concludes as a matter of law:

1. That the name or identity of the father of the child, _____, are not known and cannot be ascertained.
2. That the proper count for publication of notice to the unknown father of the Petition of Termination of Parental Rights is _____.
3. That there is good cause to require the Petitioner to publish the notice specified within this Order in _____ (city or town), in _____ county, North Carolina, for three (3) successive weeks.

Based on the foregoing findings of fact and conclusions of law, IT IS ORDERED, ADJUDGED AND DECREED:

1. That service of process by publication shall take place in _____, _____, North Carolina, for three (3) successive weeks published in a newspaper qualified for legal advertising in accordance with G.S. 1-597 and G.S. 1-598 in the following form:

NOTICE OF PROCEEDING AND SERVICE OF PROCESS
 BY PUBLICATION
 STATE OF NORTH CAROLINA
 COUNTY OF _____
 IN THE GENERAL COURT OF JUSTICE
 FILE NO. _____ J _____

In Re: _____
 d.o.b. __/__/__

To: John Doe, father of a child born of _____ on __/__/__.

TAKE NOTICE that a pleading seeking relief against you has been filed in the above-entitled action. The nature of the relief being sought is as follows: termination of your parental rights to the above-named child.

You are required to answer the petition not later than _____, _____ (30 days) and upon your failure to do so the party seeking relief against you will apply to the Court for the relief herein sought.

You are entitled to attend any hearing affecting your rights. You are entitled to have counsel appointed by the Court if you are indigent. If you desire counsel, you should contact the Clerk of Court, Juvenile Division, _____, _____ County Courthouse, immediately to request counsel, This is a new case and any attorney appointed previously will not represent you in this proceeding unless ordered by the Court.

GUARDIAN AD LITEM ATTORNEY PRACTICE MANUAL

This the _____ day _____, _____.

Attorney for Petitioner
(Address)
(Telephone)

2. That the matter be scheduled for further hearing at the appropriate time.

This the _____ day of _____, _____.

[Name]
Judge Presiding

APPENDIX

Notice of Service of Process by Publication for Termination of Parental Rights

STATE OF NORTH CAROLINA
COUNTY OF _____

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO. ____ J ____

IN THE MATTER OF: _____

(can substitute "In re Doe," 7B-1105(d))

)
)
)
)
)

NOTICE OF SERVICE OF PROCESS BY PUBLICATION FOR TERMINATION OF PARENTAL RIGHTS (G.S. 7B-1105(d))

TO: Father (Mother) (Father and Mother) of a Male/ Female juvenile born on or about _____ in _____ County, _____ (city) _____, _____ (state) _____, Respondent(s).

PLEASE TAKE NOTICE that a petition has been filed by the _____ County Department of Social Services (petitioner) requesting the Court to terminate any parental rights you may have to the above named child. Your are required to answer the petition within thirty (30) days from the date of the first publication of this notice (written below) and if you fail to do so, your parental rights to the child will be terminated.

G.S. 7B-1106 entitles you to a court-appointed lawyer to represent you in termination action if you cannot afford to hire a lawyer, You may call the Deputy Clerk of the juvenile Court of _____ County at _____ for further information.

This the _____ day of _____, _____.

[Attorney Name]
Attorney for Petitioner
[Attorney Address]
Attorney Telephone Number]

Published: _____

GUARDIAN AD LITEM ATTORNEY PRACTICE MANUAL

**Notice of Service of Process by Publication for
Termination of Parental Rights
(Another Version)**

STATE OF NORTH CAROLINA
COUNTY OF _____

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO. ____ J____

IN THE MATTER OF: _____

) NOTICE OF SERVICE OF PROCESS BY
) PUBLICATION RE: TERMINATION OF
) PARENTAL RIGHTS
) (G.S. 7B-1106; Rule 4(j1) of the N.C. Rules
) of Civil Procedure)

TO: Father (Mother) (Father and Mother) of a Male/ Female juvenile born or about _____ in
_____ County, _____ (city) _____, _____ (state) _____, Respondent(s).

PLEASE TAKE NOTICE that a petition has been filed by the _____ County Department of Social Services (petitioner) for the purpose of terminating your parental rights to the above named minor child(ren). You must prepare and file with the Clerk of Superior Court of _____ County a written answer to the petition within forty (40) days from the date of the first publication of this notice (written below). You also must serve a copy of the answer on the petitioner's attorney (address below). If you fail to file answer within the time period specified above, your parental rights to the child may be terminated, and the petitioner will apply to the Court for the relief demanded in the petition.

You are entitled to attend any hearing affecting your parental rights. You are entitled to have an attorney appointed by the Court if you cannot afford one, provided that you request an attorney at or before the time of the hearing. You may contact the Clerk of Superior Court immediately to request counsel. This is a new case and any attorney appointed previously will not represent you in this proceeding unless ordered by the Court.

If your address is known, the date, time and place of the hearing of the petition will be mailed to you upon filing of an answer or forty (40) days from the date of the first publication of this notice (written below) if no answer is filed.

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You may call the Deputy Clerk of the juvenile Court of _____ County at _____ for further information.

This the _____ day of _____, _____.

[ATTORNEY NAME]
Attorney for Petitioner
[Attorney Address]
[Attorney Telephone Number]

Published: _____

GUARDIAN AD LITEM ATTORNEY PRACTICE MANUAL

Affidavit of Service of Process by Publication

STATE OF NORTH CAROLINA
COUNTY OF _____

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO. ____ J____

IN THE MATTER OF:	)	AFFIDAVIT OF SERVICE OF PROCESS
_____	)	BY PUBLICATION
	)	(G.S.1-600; 75.10(2))
)	
_____)	

The undersigned attorney, being duly sworn, deposes and says:

1. That he/she is the attorney of record for the Petitioner in this action;
2. That on the _____ day of _____, _____, [DATE OF FILING OF TPR PETITION] the _____ County _____ [AGENCY NAME] through _____ [NAME AND TITLE OF INDIVIDUAL PETITIONER] did through its attorney file a petition with the Court requesting a termination of parental rights.
3. That it was necessary to obtain service of process by publication over _____ [NAME OF MOTHER/FATHER/PARENTS, IF KNOWN] [the mother/father/parents] of the child(ren) named in the petition, because [he/she/they] could not be served within this state in the manner described in Rule 4(j1) of the North Carolina Rules of Civil Procedure, G.S. 1A-1, Rule 4(j1).
4. That on _____ [DATE OF PUBLICATION ORDER] THIS COURT ENTERED AN Order authorizing service of process by publication on the [mother/father/parents] of the minor child[ren].
5. That the whereabouts, dwelling house or usual abode of the [mother/father/parents] of the child[ren] [is/are] unknown and cannot with due diligence be ascertained, despite Petitioner's diligent efforts, namely (*refer to earlier affidavit setting out diligent efforts and /or describe specific and/or additional efforts here*):
6. That attached here to and incorporated by reference is a copy of an affidavit from newspaper . . .
7. That service of process has been given by publication which is a part of this Court's record, and a copy of which is attached to this affidavit.

APPENDIX

This the ____ day of _____, _____.

[ATTORNEY NAME]
Attorney for Petitioner
[ATTORNEY ADDRESS]

[ATTORNEY PHONE NUMBER]

GUARDIAN AD LITEM ATTORNEY PRACTICE MANUAL

§ 1-75.10. Proof of service of summons, defendant appearing in action.

Where the defendant appears in the action and challenges the service of the summons upon him, proof of the service of process shall be as follows:

- (1) Personal Service or Substituted Personal Service. –
 - a. If served by the sheriff of the county or the lawful process officer in this State where the defendant was found, by the officer's certificate thereof, showing place, time and manner of service; or
 - b. If served by any other person, his affidavit thereof, showing place, time and manner of service; his qualifications to make service under Rule 4(a) or Rule 4(j3) of the Rules of Civil Procedure; that he knew the person served to be the party mentioned in the summons and delivered to and left with him a copy; and if the defendant was not personally served, he shall state in such affidavit when, where and with whom such copy was left. If such service is made outside this State, the proof thereof may in the alternative be made in accordance with the law of the place where such service is made.
- (2) Service of Publication. – In the case of publication, by the affidavit of the publisher or printer, or his foreman or principal clerk, showing the same and specifying the date of the first and last publication, and an affidavit of mailing of a copy of the complaint or notice, as the case may require, made by the person who mailed the same.
- (3) Written Admission of Defendant. – The written admission of the defendant, whose signature or the subscription of whose name to such admission shall be presumptive evidence of genuineness.
- (4) Service by Registered or Certified Mail. – In the case of service by registered or certified mail, by affidavit of the serving party averring:
 - a. That a copy of the summons and complaint was deposited in the post office for mailing by registered or certified mail, return receipt requested;
 - b. That it was in fact received as evidence by the attached registry receipt or other evidence satisfactory to the court of delivery to the addressee; and
 - c. That the genuine receipt or other evidence of delivery is attached.

APPENDIX

Affidavit of Service of Process by Certified Mail

STATE OF NORTH CAROLINA
COUNTY OF _____

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO. ____ J____

IN THE MATTER OF:

)
)
)
)
)

AFFIDAVIT OF SERVICE OF
PROCESS BY CERTIFIED MAIL

The undersigned attorney, being duly sworn, deposes and says:

That he/she is the attorney of record for the Petitioner in this program;

That a copy if the summons and petition to terminate Parental Rights in this matter was party to sent by certified mail, return receipt requested, to _____ [*name of Party sent to*], who is _____ [*title and/or relationship of that person to the child-mother, father, parents, custodian, guardian, social worker, the child, etc.*] at _____ [*address*]. A copy of the receipt is attached here to as Exhibit A;

that a copy of the summons and petition were in fact received as evidence by the genuine attached registry receipt [or other evidence satisfying to the court of delivery to the addressee attached here as exhibit].

This the ____ day of _____, _____.

[ATTORNEY NAME]
Attorney for Petitioner
[ATTORNEY ADDRESS]
[ATTORNEY TELEPHONE NUMBER]

[Add Notary Block and Certificate of Service]

GUARDIAN AD LITEM ATTORNEY PRACTICE MANUAL

Acceptance of Service

STATE OF NORTH CAROLINA
COUNTY OF _____

File Number: _____
Film Number: _____
In the General Court of Justice
District Court Division

IN THE MATTER OF:)
_____)
_____)
_____)

ACCEPTANCE OF SERVICE*

I, _____(Name)_____, ___(position and agency, if applicable),_____ hereby accept service of the Summons and Petition for Termination of Parental Rights bearing the above file number, pursuant to Rule 4(j5) of the North Carolina Rules of Civil Procedure.

This the _____ day of _____, _____.

(Name)
(Position and agency, if applicable)

Personally appeared before me _____, and accepted Service of the Summons and Petition in the Proceeding for Termination of Parental Rights bearing the above file number.

This the _____ day of _____, _____.

Notary Public

My Commission expires: _____
SEAL

* It is probably preferable to have a person accepting service of a summons sign the back of the summons.

APPENDIX

INTERPRETER

Motion for Appointment of a
Volunteer Interpreter to
Assist Guardian ad Litem

STATE OF NORTH CAROLINA

File No. _____

In the General Court of Justice
District Court Division

_____ County

IN THE MATTER OF

MOTION FOR APPOINTMENT
OF A VOLUNTEER INTERPRETER
TO ASSIST GUARDIAN AD LITEM

(G.S. 7B-601)

NOW COMES ___[insert name of child]___ (the "Child"), by and through [his/her] court-
appointed Guardian ad Litem and attorney, and moves the court for an order appointing ___[insert
name of volunteer interpreter]___ to serve as a volunteer foreign language interpreter to assist the
Child's Guardian ad Litem and attorney in fulfilling their statutory duty to conduct an investigation to
determine the facts, the needs of the Child, and the available resources with the family and community
to meet those needs, and further authorizing the Child's Guardian ad Litem to disclose to ___[insert
name of volunteer interpreter]___ confidential information about this matter, if necessary, so that the
interpreter may effectively assist the Child's Guardian ad Litem and attorney. In support of this
Motion, the Child shows unto the court as follows:

- 1. On ___[insert date of petition]___, the _____ County of Social Services filed a
petition alleging that the Child is dependent, neglected, and/or abused.
2. On ___[insert date GAL appointment order was signed]___, pursuant to G.S. §7B-601,
the Court appointed ___[insert GAL's name]___ to serve as the Child's Guardian ad Litem and ___[insert
attorney's name]___ to serve as the Child's attorney.
3. In order to fulfill the duties outlined in G.S. §7B-601(a), specifically the duty to conduct
an investigation to determine the facts, the needs of the Child, and the resources available within the
family and community to meet those needs, the Child's Guardian ad Litem and attorney will need to
interview the Child's parents and other persons who have information and knowledge relevant to this
matter.

GUARDIAN AD LITEM ATTORNEY PRACTICE MANUAL

4. Upon information and belief, the Child's parents and/or other persons with information and knowledge relevant to this matter speak Spanish, but do not speak English.

5. ____ [*insert name of volunteer interpreter*] ____ has volunteered *his/her* services as a foreign language interpreter to assist the Child's Guardian ad Litem and attorney.

6. Upon information and belief, ____ [*insert name of volunteer interpreter*] ____ is qualified by knowledge, skill, experience, training, and education to interpret the Spanish language into the English language and the English language into the Spanish language.

7. In the course of assisting the Child's Guardian ad Litem or attorney by providing interpreting services, it will become necessary for information about this case to be disclosed to the volunteer language interpreter. The Child's Guardian ad Litem, who is bound by the appointment order to maintain the confidentiality of this case, will need the Court's authorization for such disclosure.

8. Appointment of ____ [*insert name of volunteer interpreter*] ____ to assist the Child's Guardian ad Litem is in the best interests of the Child.

Wherefore, the Child, through *his/her* Guardian ad Litem and attorney, pray the Court for its order appointing ____ [*insert name of volunteer interpreter*] ____ to serve as a volunteer foreign language interpreter to assist the Guardian ad Litem in interviewing Spanish speaking persons who may have information and knowledge relevant to this matter, and further authorizing the Child's Guardian ad Litem to disclose, as necessary, information about the case to the volunteer foreign language interpreter.

This the _____ day of January, 2001.

John Doe, Attorney Advocate
Address
Phone

[Attach Certificate of Service]

APPENDIX

Order Appointing Volunteer Interpreter

STATE OF NORTH CAROLINA

_____ County

File No. _____
In the General Court of Justice
District Court Division

IN THE MATTER OF _____)
)
) ORDER APPOINTING
) VOLUNTEER INTERPRETER
) TO ASSIST GUARDIAN AD LITEM
)
_____)

THIS CAUSE coming on for hearing before the Honorable _____ *[insert name of judge]* presiding at the _____ *[insert date of hearing]* session of the _____ County District Court on _____ *[insert name of child]*'s (the "Child") motion for appointment of a volunteer language interpreter to assist the Child's Guardian ad Litem;

The Court finding that a sufficient showing has been made for the appointment of a foreign language interpreter as requested by the Child, that _____ *[insert name of volunteer interpreter]* is qualified by knowledge, skill, experience, training and education to interpret the Spanish language into the English language and the English language into the Spanish language, that a foreign language interpreter is necessary in order for the Child's Guardian ad Litem and attorney to conduct an investigation to determine the facts, the needs of the juvenile, and the available resources within the family and community to meet those needs, and that such appointment would be in the best interests of the Child;

IT IS THEREFORE ORDERED that _____ *[insert name of volunteer interpreter]* is appointed to serve as a volunteer foreign language interpreter to assist the Child's Guardian ad Litem in this matter. The volunteer foreign language interpreter is not authorized by this appointment to serve as a court interpreter in this matter, but is appointed solely as a volunteer to assist the Child's Guardian ad Litem in the investigation of this matter. Furthermore, this appointment does not entitle the volunteer foreign language interpreter to payment for professional services, expenses, or fees;

IT IS FURTHER ORDERED that the volunteer foreign language interpreter shall treat all information that he/she hears or obtains concerning this matter as confidential and shall not disclose any such information except to the Child's Guardian ad Litem or attorney, or as ordered by a court of competent jurisdiction;

IT IS FURTHER ORDERED that the Child's Guardian ad Litem and attorney may disclose to the volunteer language interpreter as much information about this matter as necessary to facilitate their investigation to determine the facts of this matter, the needs of the juvenile, and the available resources within the family and the community to meet those needs.

Sample provided by Debra Sasser

GUARDIAN AD LITEM ATTORNEY PRACTICE MANUAL

This the ____ day of January, 2001.

_____County District Court Judge Presiding

APPENDIX

LIVE VIDEO TESTIMONY

Motion for Live Video Testimony

STATE OF NORTH CAROLINA
COUNTY OF _____

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO. ____J____

IN THE MATTER OF:

)
)
)
)
)
)

MOTION FOR LIVE VIDEO
TESTIMONY

NOW COMES the child[ren], by and through [his/her/their] Guardian ad Litem and Attorney Advocate, and prays the Court for an order authorizing the use of live video equipment for transmission of the minor child[ren]'s testimony, and in support of this motion shows the following:

- 1. The minor child[ren] [is/are] the subject of a petition for [abuse/neglect] and will be called to testify in the adjudication hearing on that petition.
2. The Guardian ad Litem, _____, is duly appointed by the Court and is ordered to and has a statutory obligation to protect the best interests of the child pursuant to G.S. 7B-601.

[Paragraphs 3 through 7 should be tailored to the facts of the case; the following provides an example]

3. In order to protect the best interests of the child, the Guardian ad Litem seeks to reduce any trauma to the child which might result from the child testifying as a witness in the presence of respondent father [or to reduce any trauma to the child associated with testifying in the intimidating environment of the courtroom].

4. The minor child, _____, has been evaluated by a child therapist, _____, with the Johnson Mental Health Center, and has remained in counseling with this child therapist.

5. Upon information and belief, the child therapist, _____, has observed the child and has reason to believe it will be traumatic and detrimental to the child to be in the presence of _____, respondent father and alleged perpetrator of the abuse inflicted on the child. As more fully explained in the affidavit of the child therapist, which is attached as Exhibit A and incorporated herein, the child therapist believes that the child should only testify in a setting that makes it impossible for the child to see respondent father [or outside the intimidating environment of the courtroom].

GUARDIAN AD LITEM ATTORNEY PRACTICE MANUAL

6. The child is currently living in the licensed foster care home of _____.

7. Upon information and belief, the minor child's foster mother, _____, has observed the child's reactions to discussions regarding respondent father. As more fully explained in the affidavit of the foster mother, which is attached as Exhibit B and incorporated herein, the foster mother believes it would be traumatic and detrimental to the child to [be in the presence of respondent father under any circumstances] or [to testify in the intimidating environment of the courtroom].

8. The North Carolina Administrative Office of the Courts possesses live video equipment, which can be delivered at no cost to any courtroom in North Carolina. This equipment, referred to as the Remote Video Witness System, can be set up so that the witness can testify from a room adjacent to the courtroom with the respondent in the courtroom with the judge, or the witness can testify in the courtroom with the respondent watching from an adjacent room. The broadcast is live and in color. Throughout the proceeding the respondent may have confidential communication with his attorney over a secure phone line and the respondent's attorney may be in the room with the child witness.

9. The North Carolina Court of Appeals has reviewed and approved the use of remote video testimony equipment and procedures as outlined above, and has held that such use does not violate the defendant's (or respondent's) constitutional rights. *See State. v. Jones*, 89 N.C. App. 584 (1988), and *In the Matter of Johnny Stradford*, 119 N.C. App. 654 (1995).

10. The Guardian ad Litem for the minor child believes that remote video testimony of the child is necessary in order to protect the best interests of the minor child. The Guardian ad Litem further believes that in order to [*protect the child from the trauma associated with testifying in the presence of the respondent, that the equipment be set up so that the respondent is moved to an adjacent area and the child remains in the courtroom during the child's testimony*] OR [*to protect the child from the intimidating environment of the courtroom, that the equipment be set up so that the child is moved to and testifies from an area adjacent to the courtroom*].

WHEREFORE, the minor child[ren], through [his/her/their] Guardian ad Litem and Attorney Advocate, pray the Court for its order authorizing the use of remote video equipment to transmit the minor child's testimony as outlined in paragraph 10 above.

This the 20th day of June, 2000.

Jane Johnson, Attorney Advocate
820 Nichole Ln.
Raleigh, N.C. 27803-1543
(919) 937-6343
St. Bar No: 27134

[Attach Certificate of Service]

APPENDIX

Order Approving Use of Remote Video Testimony Equipment

STATE OF NORTH CAROLINA
COUNTY OF _____

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO. ___ J ___

IN THE MATTER OF: _____)
)
)
)
)
)
)

ORDER APPROVING USE OF
REMOTE VIDEO TESTIMONY
EQUIPMENT

THIS CAUSE coming on for hearing before the Honorable _____ *[insert name of judge]* presiding at the _____ *[insert date of hearing]* session of the _____ County District Court on _____ *[insert name of child]*'s (the "Child") motion for remote video testimony equipment to be used by the child to testify in the adjudicatory hearing on the petition for *[abuse/neglect]* in the above captioned file;

The Court finding that a sufficient showing has been made for use of remote video testimony equipment as requested by the Child and that it would be in the best interest of the Child and the State of North Carolina and in the interest of justice to allow the Child's testimony to be by live video transmission while the *[father/mother or name of guardian/custodian/or caregiver]* is present in a room other than the one from which the child is testifying;

IT IS THEREFORE ORDERED that testimony of the child in this matter may be presented by live video transmission *[with the respondent moved to an adjacent area and the Child remaining in the courtroom during the Child's testimony]* OR *[with the Child moved to and testifying from an area adjacent to the courtroom]*. The Administrative Office of the Courts is hereby directed to furnish and supply such equipment as may be necessary to the Clerk of _____ County for use at the hearing in this matter on _____ (date).

This the _____ day of _____, _____.

The Honorable _____
District Court Judge Presiding

GUARDIAN AD LITEM ATTORNEY PRACTICE MANUAL
OBTAINING SUBSTANCE ABUSE RECORDS

Motion to Produce Records

NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION (JUVENILE)

WAKE COUNTY

FILE NOS: _____

IN THE MATTERS OF
MINOR CHILD,

DOB:

)
)
)
)

MOTION TO PRODUCE
RECORDS

NOW COMES the minor child, by and through the child's guardian ad litem and counsel, and hereby moves the Court for an Order that the entire mental health record, including, but not limited to, substance abuse records of Respondent Mother, be produced for review by the Guardian ad Litem. In support thereof, the Movant alleges and says as follows:

1. The Guardian ad Litem is duly appointed by the Court and is ordered to and has a statutory obligation to investigate the matter before the court.
2. _____ is a named party to this action, the Respondent mother.
3. The petition in this matter alleges that respondent _____ has a history of substance abuse.
4. Respondent has been hospitalized at Johnson hospital on at least one occasion, and may have had intake, screening, evaluation or treatment at the Furman Mental Health Center, and the Pleasantville Alcohol and Drug abuse Treatment Center in Pleasantville, North Carolina.
5. Respondent's mental health records, including any identification and/or treatment as a substance abuser, are relevant information to this case and the Guardian ad Litem needs to review those records in order to fulfill her court ordered and statutory duties for these minor children, specifically to assess Respondent's mental status, the allegations of the petition, and her ability to parent her children, any needed services, and the best interest of the children.
6. Without a court order, the Guardian ad Litem will be unable to obtain this information which she believes to be necessary to fully protect the children and provide adequate representation to them.
7. The Juvenile Court proceedings are confidential, and the information in these records will remain confidential if provided to the Guardian ad Litem.

This sample derived from draft provided by Judy Kornegay, Attorney Advocate, district 7

APPENDIX

8. Without the substance abuse records, the Guardian ad Litem will be unable to assess the needs of the children in developing a permanent plan.

WHEREFORE, the undersigned prays the Court for its Order providing for release of the mental health records of Respondent, from the Furman Mental Health Center and the Pleasantville Alcohol and Drug abuse Treatment Center, including, but not limited to her substance abuse records, to the court for the Court's in camera review, and for said records thereafter to be provided to the Guardian ad Litem for review.

This the ____ day of _____, _____.

Attorney Advocate
Address
Telephone Number

[Attach Certificate of Service]

APPENDIX

WHEREFORE, the Guardian ad Litem prays the court enter an Order which satisfies the requirements of 42 C.F.R.2.12 et seq. directing the Johnson Center for Mental Health, Development Disabilities and Substance Abuse Services in Marble, North Carolina to disclose to the Court and the Petitioners in this Termination of Parental Rights Action confidential patient information regarding John Doe, a fictitious name for a certain patient.

Dated: June 22, 1999

Attorney Advocate
Guardian ad Litem
P.O. Box 59
Smith, North Carolina 28788
(Phone Number)
N.C. Bar No.

GUARDIAN AD LITEM ATTORNEY PRACTICE MANUAL

Order to Produce Records for Review

STATE OF NORTH CAROLINA
NASH COUNTY

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION (JUVENILE)
FILE NO. 98-J-

IN THE MATTERS OF)
MINOR CHILDREN,)
DOB)

ORDER TO PRODUCE
RECORDS FOR REVIEW

Name of Patient:

TO: _____, Director of Medical Records
Johnson Center for Mental Health
500 Smith Street
Marble, NC 27804

_____, Director of Medical Records
Taylor Alcohol and Drug Treatment Center
Director of Medical Records
2577 W. Jones St.
Greenville, NC 27834

_____, Director of Medical Records
Miller Hospital
2301 Main St.
Rocky Mt., NC 27804

THIS MATTER coming on before the undersigned Judge upon the Motion of the Guardian ad Litem for an Order releasing information and/ or medical records on the above named patient to the Guardian ad Litem; and

It appearing to the Court that such information is in the possession of the above entity or entities which may be within the protection provisions of Title 42, part 2 or the Code of Federal Regulations, entitled Confidentiality of Alcohol and Drug Abuse Patients; and

That section 2.64 of said regulations requires that good cause must be found for revelation of said information; and

That release of this information may assist the Guardian ad Litem and protect the above children, which constitutes good cause.

THEREFORE, it is ordered as follows:

This sample derived from draft provided by Judy Kornegay, Attorney Advocate, district 7

APPENDIX

1. That the above named providers shall produce a copy of all medical records, including all substance abuse records, regarding the aforementioned patient in its possession to the Court for an in camera review on Monday, August 31, 1998, at 9:30 AM; and
2. That a copy of this Order shall be provided to all parties to the above captioned matter; and
3. That the Court shall rule on the release of this information in camera unless any party files an objection with the Court by August 31, 1998.

This the _____ day of August, 1998.

District Court Judge Presiding

CERTIFICATE OF SERVICE

I hereby certify that I have this day served all parties and the other persons named in this Order or their attorney with a copy of this Notice and Motion by hand delivery or by depositing it in the U.S. mail, postage prepaid, properly addressed, pursuant to Rule 5 of the Rules of Civil Procedure.

This the _____ day of August, 1998.

Attorney Advocate
Address
Phone number
Bar No.

Order to Produce Records

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION (JUVENILE)

NASH COUNTY

FILE NOS:

IN THE MATTERS OF)
MINOR CHILDREN,)
DOB)

ORDER TO PRODUCE
RECORDS

THIS MATTER coming on before the undersigned District Court Judge presiding at the August ____, 1998 Session of Nash County District Court sitting in Nashville, North Carolina for the hearing of juvenile matters, pursuant an Order to Produce Records and subpoenas issued by the Attorney Advocate for the Guardian ad Litem and minor children in this matter, which Court Order and subpoenas were directed to _____, Director of Medical Records of the Johnson Center for Mental Health, Marble, North Carolina; _____, Medical Records Director of Taylor Alcohol and Drug Treatment Center, Greenville, North Carolina; and _____, Director of Medical Records of Miller Hospital, Rocky Mt., North Carolina. Those appearing were: _____, attorney for the Respondent Mother; _____, Staff Attorney for Petitioner, Nash County Department of Social Services; and _____, Attorney Advocate for the Guardian ad Litem and the minor children. Based upon the evidence presented, the Court makes the following

FINDINGS OF FACT:

1. All parties are properly before the Court and the Court has jurisdiction of this matter. Subpoenas were issued to _____, Director of Medical Records of the Johnson Center for Mental Health, Marble, North Carolina; _____, Medical Records Director of Taylor Alcohol and Drug Treatment Center, Greenville, North Carolina; and _____, Director of Medical Records of Miller Hospital, Rocky Mt., North Carolina, directing production of all records of _____, Respondent Mother in this action, including, but not limited to substance abuse records.
2. The custodian of medical records at Taylor Alcohol and Drug Treatment Center found no records to produce; medical records were found at the Johnson Center for Mental Health and at Miller Hospital.
3. The undersigned Judge presiding, after reviewing the Petition and evidence in camera determined that:
 - A. The Movant has a legally recognized interest in the disclosure which is sought.
 - B. The motion was made in a juvenile proceeding and the records of these proceedings are sealed from public scrutiny, which provides adequate privacy for the limited disclosure of these records.

_____ This sample derived from draft provided by Judy Kornegay, Attorney Advocate, district 7

APPENDIX

- C. This hearing was held in a manner which ensured that patient identifying information is not disclosed to anyone other than a party to the proceeding, the patient, or the person holding the record.
- D. Good cause exists pursuant to the requirements of Chapter 42 of the Code of Federal Regulations that all medical records of _____, including, but not limited to substance abuse records in the possession of the Johnson Center for Mental Health and at Miller Hospital, to be released to counsel for the parties, subject to the conditions set out in paragraph 4 below.
- E. Other ways of obtaining the information are not available or would not be effective.
- F. The public interest and need for the disclosure of these records outweigh the potential injury to the Respondent mother, the physician-patient relationship and treatment services.

4. The records may be obtained by the parties designated below, subject to the following conditions:

- A. These records are ordered to be released immediately by the custodians of the medical records for Johnson Center for Mental Health and Miller Hospital to the Guardian ad Litem, the Nash County Department of Social Services, attorney for Respondent Mother, and attorney for the Respondent Father.
- B. Any information read or obtained by any party from the medical records cannot be further disclosed without further order of the Court and must be kept in a manner that ensures its confidentiality.
- C. No determination of the admissibility of these records at the adjudicatory hearing of this case is made at this time and any motion to introduce such records or portion thereof at the adjudicatory hearing shall be determined upon its own merits at that time.

Based upon the foregoing Findings of Fact, the court makes the following

CONCLUSIONS OF LAW:

- 1. All parties are properly before the Court, and the Court has jurisdiction of this matter.
- 2. There is good cause pursuant to Chapter 42 of the Code of Federal Regulations to order the release of such records in the possession of Johnson Center for Mental Health and Miller Hospital, but subject to the following conditions:
 - A. These records, are ordered to be released immediately by the custodians of the medical records Johnson Center for Mental Health and Miller Hospital.to the Guardian ad Litem, the Nash County Department of Social Services, attorney for Respondent Mother, and attorney for the Respondent Father.
 - B. Any information read or obtained by any party from the medical records cannot be further disclosed without further order of the Court and must be kept in a manner that ensures its confidentiality.

GUARDIAN AD LITEM ATTORNEY PRACTICE MANUAL

C. No determination of the admissibility of these records at the adjudicatory hearing of this case is made at this time and any motion to introduce such records or portion thereof at the adjudicatory hearing shall be determined upon its own merits at that time.

THEREFORE, it is ordered as follows:

1. The medical records of _____, including but not limited to substance abuse records, in the custody of Johnson Center for Mental Health and Miller Hospital are ordered to be released immediately by their custodians to the Court to the Guardian ad Litem, the Nash County Department of Social Services, attorney for Respondent Mother, and attorney for the Respondent Father.
2. Any information read or obtained by any party from the medical records cannot be further disclosed without further order of the Court and must be kept in a manner that ensures its confidentiality.
3. No determination of the admissibility of these records at the adjudicatory hearing of this case is made at this time and any motion to introduce such records or portion thereof at the adjudicatory hearing shall be determined upon its own merits at that time.

This the _____ day of September, 1998.

District Court Judge Presiding

APPENDIX

Authorization to Release Information

AUTHORIZATION TO RELEASE INFORMATION

I, ___[name of person whose records are sought]___ Social Security number:
_____ date of birth: _____ hereby request and authorize ___[name
of hospital or treatment center]_____
to release the following information: any and all records pertaining to my screening, intake,
evaluation, diagnosis, treatment, attendance, compliance and prognosis; progress notes, therapy notes;
type and dosage of medication; psychological, psychiatric, vocational and drug screen testing;
laboratory test; x-rays; treatment goal plan, attendance, and any other information relating to my
screening, intake, consultation, treatment, therapy, counsel or referral to: the Guardian ad Litem,
_____, and/ or Attorney Advocate, Judy Johnson, on request for the purpose of
assisting the Guardian ad Litem with his or her investigation and report to the court of my juvenile
court case, which may include information found in my records. I understand that the information to
be released may include information regarding drugs abuse, alcohol abuse, sickle cell anemia, or
psychological or psychiatric impairments.

I certify that this authorization is made freely, voluntarily and without coercion. I understand
that the information to be released is protected under state and federal laws and cannot be disclosed
further than the scope of this release without my consent, or redisclosed without my further consent
unless otherwise provided for by state or federal law. I understand that I may revoke this authorization
at any time, except to the extent that action has already been taken to comply with it. Without my
express revocation, this consent will automatically expire:

- _____ upon satisfaction of the need for disclosure;
_____ within _____ days from the date signed;
_____ under the following conditions: _____

A photocopy of this authorization may be considered as valid as the original.

Client

Witness

Date

**Consent for the Release of
Confidential Alcohol or Drug Treatment Information**

CONSENT FOR THE RELEASE OF
CONFIDENTIAL ALCOHOL OR DRUG TREATMENT INFORMATION

I, _____, authorize
(Name of patient)

(Name or general designation of program making disclosure)

to disclose to _____ the
(Name of person or organization to which disclosure is to be made)

following information: _____
(Nature of the information, as limited as possible)

The purpose of the disclosure authorized herein is to: _____

(Purpose of disclosure, as specific as possible)

I understand that my records are protected under the federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records, 42 CFR Part 2, and cannot be disclosed without my written consent unless otherwise provided for the regulations. I also understand that I may revoke this consent at any time except to the extent that action has been taken in reliance on it, and that in any event this consent expires automatically as follows:

(Specific of the date, event, or condition which this consent expires)

Dated: _____

Signature of participant

Signature of parent, guardian or authorized
representative when required

APPENDIX

**Prohibition on Redisclosure of
Information Concerning Client in
Alcohol or Drug Abuse Treatment**

PROHIBITION ON REDISCLOSURE
OF INFORMATION CONCERNING CLIENT
IN ALCOHOL OR DRUG ABUSE TREATMENT

This notice accompanies a disclosure of information concerning a client in alcohol/ drug abuse treatment, made to you with the consent of such client. This information has been disclosed to you from records protected by federal confidentiality rules (42 CFR Part 2). The Federal rules prohibit you from making any further disclosure of this information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains or as otherwise permitted by 42 CFR Part 2. A general authorization for the release of medical or other information is **NOT** sufficient for this purpose. The Federal rules restrict any use of the information to criminally investigate or prosecute any alcohol or drug abuse patient.

**Consent for the Release of Confidential Alcohol or
Drug Treatment Information
To Child Welfare Agency and Court
Where Children Were Removed Due to
Parent's Alcoholism or Drug Abuse**

CONSENT FOR THE RELEASE OF CONFIDENTIAL
ALCOHOL OR DRUG TREATMENT INFORMATION
TO CHILD WELFARE AGENCY AND COURT
WHERE CHILDREN WERE REMOVED DUE TO
PARENT'S ALCOHOLISM OR DRUG ABUSE

I, _____ authorize

to disclose to:

1. (e.g. volunteer/ attorney advocate/ GAL Program of x county)
(name of person or organization to which disclosure is to be made)

to monitor my progress in treatment; and

2. the [x County Juvenile Court]

and I also authorize the _____ to redisclose to the
_____ the following information:

(Name of court to whom redisclosure is made)

(Nature of the information as limited as possible)

[* Initial each category that applies]

_____ My name and other personal identifying information;

_____ Information about status as a patient in [alcohol and/ or drug] treatment;

_____ Initial evaluation;

_____ Date of admission;

_____ Assessment results and history;

_____ Summary of treatment plan, progress and compliance;

_____ Attendance;

APPENDIX

- ____ Urinalysis results;
- ____ Date of discharge and discharge status;
- ____ Discharge plan;
- ____ Other: _____.

The purpose of these disclosures is to: Provide the [_____] and
(Purpose of disclosure as specific as possible)

the [Family Court] with the information they need to determine (e.g. progress in treatment/ what is in the best interest of my children)

I understand that my records are protected under the federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records, 42 CFR Part 2, and cannot be disclosed without my written consent unless otherwise provided for in the regulations. I also understand that I may revoke this consent at any time except to the extent that action has been taken in reliance on it, and that in any event this consent expires automatically as follows:

[termination of the child abuse/neglect case against me] [or specify earlier date if required by state law].

Date: _____

Signature of patient

**SAMPLE LETTERS ADVISING OF
CHILD'S REPRESENTATION BY ATTORNEY**

**Sample Letter to Respondent Attorney Regarding Obtaining Consent
to Talk to Child When Child Is Placed With Respondent Parent**

Dear Attorney:

I am appointed in Johnson County case file number _____ as the Attorney Advocate and _____ is appointed as the Guardian ad Litem for the minor child _____, who is the alleged victim of _____ (sex abuse, physical abuse, neglect) _____ in Johnson County Juvenile file number _____. My client remains placed in the home of your client, _____, her respondent mother. As you know, attorneys are not permitted to speak with represented persons without the consent of their attorney. This rule applies to children represented by a Guardian ad Litem attorney advocate, and an attorney wishing to speak to the child must obtain consent from the attorney advocate. This is a legal rule which is not commonly known or understood by parents. State Bar Ethics Opinions, including RPC 61 and RPC 249, support and clarify this rule, and a copy of each has been enclosed for your convenience.

I would appreciate it if you would be sure that your client clearly understands that because a Guardian ad Litem and attorney advocate have been appointed in this matter, she no longer has the parental prerogative to allow her child to talk to any attorney who is involved in this case or the criminal case arising out of the same circumstances. Further, the Guardian ad Litem and I specifically prohibit either the respondent father's attorney in the juvenile case, his attorney in the criminal case, you, or any agents or anyone on behalf of any attorney involved in this case or the criminal case from having any contact whatsoever with my client or discussing this case with him/her in any manner. If you have any question about this, please call me. Thank you for your assistance with this matter.

APPENDIX

**Sample Letter to Respondent Attorney
Regarding Obtaining Consent to Talk to Child**

Dear Attorney:

I am appointed in Johnson County case file number _____ as the Attorney Advocate and _____ is appointed as the Guardian ad Litem for the minor child _____, who is the alleged victim of _____ (sex abuse, physical abuse, neglect) _____ in Johnson County Juvenile file number _____. You are named as attorney of record for your client, _____, who is named in the juvenile petition in this case (or is charged criminally in Johnson County criminal file number _____) as being the perpetrator of these acts. Enclosed is a copy of my court appointment order.

As you know, attorneys are not permitted to speak with represented persons without the consent of their attorney. This rule applies to children represented by a Guardian ad Litem attorney advocate, and an attorney wishing to speak to the child must obtain consent from the attorney advocate. State Bar Ethics Opinions, including RPC 61 and RPC 249, support and clarify this rule, and a copy of each has been enclosed for your convenience.

This letter is to inform you that the Guardian ad Litem and I specifically prohibit you, your agent, or anyone on your behalf from having any contact whatsoever with my client or discussing this case with him/her in any manner. If you have any question about this, please call me. Thank you.

**Sample Letter to Unrepresented Parent
Regarding Obtaining Consent to Talk to Child**

Dear Parent:

I am the attorney, and _____ is the Guardian ad Litem appointed to represent your child, _____, in juvenile court because a juvenile petition has been filed alleging that she has been sexually abused by your husband, _____. A copy of our court appointment order is enclosed with this letter. Our job includes investigating the case and making recommendations to the court about what is in the best interest of your child. We spoke to you about this in court at the hearing which was held on _____. When you appeared in court, you did not want a court appointed attorney, so I am writing directly to you to let you know another important legal fact concerning your child which you may not be aware of.

Another part of our job is to decide if attorneys and people working with attorneys can talk to _____ and if she can talk to them. Legal rules give this authority to me as _____'s attorney for this case. Even though _____ is your child and is placed with you and you make most of the decisions about her, you cannot allow her to talk to any attorneys who are involved in either this juvenile case or the criminal case against your husband for sex abuse. This means that you cannot let her talk to your own attorney, if you choose to hire one. This means she cannot talk to your husband's attorney for the criminal case or his attorney for the juvenile case. This is true even if they also represent you. This means she cannot even talk to these attorneys if she wants to. You should not take her with you if you go to a lawyer's office concerning this case. You should not let her talk to any attorney other than me on the telephone. If any attorneys or anyone who works with an attorney wants to talk to your child, please have them contact me. If the District Attorney of Johnson County Department of Social Services attorney want to interview _____, I will give them permission to do so, but they will need to contact me first.

If you do not understand this letter or if you have questions about it, please call me. Thank you for your cooperation.

APPENDIX

ADMINISTRATIVE ORDER

**Allowing GAL Supervisory Personnel to
Act on Behalf of GAL**

STATE OF NORTH CAROLINA
CHEROKEE COUNTY

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO. 98-J-

ADMINISTRATIVE ORDER

In all child abuse, neglect and dependency cases in which a Guardian ad Litem is appointed pursuant to N.C.G.S 7B-601, 906 and/or 7B-1108, the Guardian ad Litem District Office administrative supervisory personnel, including the District Administrator and the Program supervisors, are hereby authorized to act on behalf of the Guardian ad Litem whenever deemed necessary by the Guardian ad Litem District Office; and all agencies and persons to whom the Guardian ad Litem appointment order and this administrative order are presented shall respond to the designated administrative supervisory personnel as though they were the appointed Guardian ad Litem.

This the _____ day of _____.

Chief District Court Judge

Judicial District

GUARDIAN AD LITEM ATTORNEY PRACTICE MANUAL

RESPONSE TO SUBPOENA DUCES TECUM & TESTIMONY

North Carolina
_____ County

In the General Court of Justice
District Court Division
File No. _____

In the Matter of _____)
)
)
) MOTION TO QUASH / MODIFY
 a minor child) SUBPOENA
)
)

HERE COMES _____, Guardian ad Litem Volunteer, by and through _____, Guardian ad Litem Attorney Advocate, and moves the Court to quash, or in the alternative, modify the subpoena to testify and subpoena *duces tecum* in the above captioned case pursuant to NCGS §1A-1, Rule 45(c)(5). In support of this motion, the Guardian ad Litem shows the Court as follows:

1. That the Guardian ad Litem, _____ (hereinafter “GAL”), was appointed to represent <minor child> under NCGS §7B-601 pursuant to a juvenile neglect petition filed on <date> in <county> <juvenile file number> alleging that the juvenile had a diagnosis of failure to thrive and was not receiving necessary medical care.

2. That pursuant to the appointment under NCGS §7B-601, the GAL commenced “an investigation to determine the facts, the needs of the juvenile, and the available resources within the family and community to meet those needs...to protect and promote the best interests of the juvenile until formally relieved of the responsibility of the court.”

3. That despite the concerns of the GAL after investigating, <county> Department of Social Services as “Petitioner” took a voluntary dismissal on the juvenile neglect petition on <date> prior to the scheduled adjudication hearing. As a result of the petition dismissal, the Court terminated the GAL appointment.

4. That on <date> <county> Department of Social Services filed the juvenile neglect petition in this matter alleging that the juvenile has not received proper medical care for failure to thrive, and a guardian ad litem in this district was appointed to represent the juvenile pursuant to NCGS §7B-601.

5. That the respondent parent has served the GAL formerly appointed in the previous action with a subpoena to testify and subpoena *duces tecum* to produce all records concerning the juvenile; however, “the subpoena requires disclosure of privileged or other protected matter and no exception or exception or waiver applies to the privilege or protection.” [NCGS §1A-1, Rule 45(c)(3)(b)]

APPENDIX

6. That the guardian ad litem appointment statute specifically provides that information learned in the course of representing the child's best interest in the proceeding under Chapter 7B remain confidential: "The confidentiality of the information or reports shall be respected by the guardian ad litem, and no disclosure of any information or reports shall be made to anyone except by order of the court or unless otherwise provided by law." [NCGS §7B-601(c)]

7. That before undertaking an appointment as Guardian ad Litem to represent a child in an abuse or neglect proceeding, the GAL took an oath of confidentiality. Despite the fact that this proceeding involves the same juvenile and similar allegations of neglect, the GAL is not appointed in this matter and the adjudication hearing is based on a subsequently filed juvenile petition in a different judicial district. As a result, the GAL must respect the duty of confidentiality and cannot testify regarding information learned in the course of the former appointment, absent a court order.

8. That the subpoena issued requests the production of all documents concerning the juvenile, and said documents were assembled in the course of the investigation and representation of the juvenile; therefore, the documents are confidential pursuant to NCGS § 7B-601. Further, information contained the Guardian ad Litem file is privileged as attorney-work product as it relates to the GAL and attorney advocates' impression of the case as a result of the investigation.

WHEREFORE, the Guardian ad Litem prays that the Court enter an order for the following relief:

1. That subpoena issued to the GAL to appear and testify, and to produce productions of documents concerning the child be quashed.
2. Alternatively, in the event that the Court determines the GAL testimony to be in the best interest of the juvenile, that the Court enter an order permitting the GAL to disclose confidential information.
3. Alternatively with respect to the GAL file and records, that the Court conduct an *in camera* inspection of the records in order to make findings of fact regarding whether the evidence is material and favorable to the respondent and is not merely duplicative of the juvenile court file to which respondent parent has access pursuant to NCGS §7B-2901(a); and seal the file in the event of appellate review.
4. For such further relief that the Court deems just and proper.

This the ____ day of _____, 200_.

By: _____
Attorney Advocate
State Bar #
Address & Phone #

GUARDIAN AD LITEM ATTORNEY PRACTICE MANUAL

CERTIFICATE OF SERVICE

This is to certify that I have this day served upon the persons listed below a copy of the MOTION TO QUASH/MODIFY SUBPOENA by depositing a copy of same in the United States Mail in Raleigh, North Carolina, postage prepaid, addressed as follows:

Attorney for DSS

Address

Respondent Mother Opposing Counsel

Address

Respondent Father Opposing Counsel

Address

This the _____ day of _____, 200_.

GAL Attorney Advocate

APPENDIX

Motion to Quash Subpoena GAL Testimony

North Carolina
_____ County

In the General Court of Justice
District Court Division
File No. _____

[Case Caption]

MOTION TO QUASH SUBPOENA

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HERE COMES _____, Guardian ad Litem Volunteer, by and through
_____, Guardian ad Litem Attorney Advocate, and moves the Court to quash the subpoena
to testify in the above captioned case pursuant to NCGS §1A-1, Rule 45(c)(5). In support of this motion, the
Guardian ad Litem shows the Court as follows:

1. That the Guardian ad Litem, ___<insert name>___, was appointed to represent the juvenile
pursuant to NCGS §7B-601 to “make an investigation to determine the facts, the needs of the juvenile, and the
available resources within the family and community to meet those needs...and to protect and promote the best
interests of the juvenile until formally relieved of the responsibility of the court.”

2. That the statute specifically provides that information learned in the course of representing the
child’s best interest in the proceeding under Chapter 7B remain confidential: “The confidentiality of the
information or reports shall be respected by the guardian ad litem, and no disclosure of any information or
reports shall be made to anyone except by order of the court or unless otherwise provided by law.” NCGS §7B-
601(c).

3. That before becoming a Guardian ad Litem appointed to represent a child in an abuse or neglect
proceeding, the individual must take an oath of confidentiality.

4. That the purpose of a Guardian ad Litem appointed pursuant to NCGS 7B-601 is to represent
the child’s best interest in the abuse or neglect proceeding, and in the above captioned case, the disclosure of
information would not be in the child’s best interest.

GUARDIAN AD LITEM ATTORNEY PRACTICE MANUAL

5. That if individuals were aware that information gathered by the Guardian ad Litem could be used in a proceeding not governed by Chapter 7B, there would be a chilling effect on information shared with the Guardian ad Litem that ultimately promotes the child's best interest.

6. Pursuant to NCGS §1A-1, Rule 45(c)(3)(b), the subpoena requires disclosure of privileged or other protected matter and no exceptions or waiver applies to the privilege or protection.

WHEREFORE, the Guardian ad Litem prays the Court for an Order quashing the subpoena to appear and testify.

This the _____ day of _____, 200__.

Attorney Advocate
Guardian ad Litem Program

By: _____
Attorney Name
State Bar #
Address & Phone #

CERTIFICATE OF SERVICE

This is to certify that I have this day served upon the persons listed below a copy of the MOTION TO QUASH SUBPOENA by depositing a copy of same in the United States Mail in Raleigh, North Carolina, postage prepaid, addressed as follows:

**Opposing Counsel
Address**

This the _____ day of _____, 200__.

Signature of Movant

APPENDIX

Order Permitting GAL to Testify

North Carolina

In the General Court of Justice

District Court Division

File No. _____

_____ County

[Case Caption]

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ORDER TO DISCLOSE
CONFIDENTIAL
INFORMATION

Upon good cause shown, the Guardian ad Litem appointed pursuant to NCGS §7B-601 is hereby ordered to disclose confidential information to promote the best interests of the child represented. Such disclosure is limited to testimony elicited at this hearing, and does not permit continued disclosure.

This the _____ day of 200__.

District Court Judge Presiding

GUARDIAN AD LITEM ATTORNEY PRACTICE MANUAL

Motion to Reappoint GAL

NORTH CAROLINA
_____ COUNTY

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO. -J-

IN RE: _____, A MINOR CHILD)
Date of Birth _____)

MOTION FOR REAPPOINTMENT
OF GUARDIAN AD LITEM

NOW COMES the Guardian ad Litem Attorney Advocate for the above captioned juvenile(s) and moves the Court for an order to reappoint the Guardian ad Litem to represent the best interest of the child in the above captioned case pursuant to N.C.G.S. § 7B-601.

In support of this Motion, the Guardian ad Litem states as follows:

- 1. That on or about _____, 200_, the undersigned was appointed Attorney Advocate to represent the juvenile(s) in this proceeding and a Guardian ad Litem was appointed in accordance with N.C.G.S. § 7B-601 to make an independent investigation and independent recommendations as to the best interests of the juvenile(s).
2. That on or about _____, 200_, the above captioned juvenile(s) was moved to an out-of-state placement. As a result of that placement and due to lack of access to the juvenile(s), the Guardian ad Litem was unable to adequately fulfill the statutory duties set forth in N.C.G.S. § 7B-601.
3. That on _____ an Order to Withdraw and Release Guardian ad Litem was filed with the Clerk of District Court in _____ County releasing both the Guardian ad Litem and the undersigned Attorney advocate for the minor child from their appointed roles because they were unable to adequately fulfill the statutory duties set forth in N.C.G.S. § 7B-601 due to the juvenile’s out-of-state placement.
4. That N.C.G.S. §7B-601 states in pertinent part as follows: “The court may reappoint the guardian ad litem pursuant to a showing of good cause upon motion of any party, including the guardian ad litem, or of the court.”
5. That the Order to Withdraw dated _____ stated that the Guardian ad Litem and Attorney Advocate were to be notified immediately if the juvenile(s) returned to North Carolina or if a Motion or Petition to Terminate Parental Rights was filed in this matter and stated that the Attorney Advocate and Guardian ad Litem may be reappointed to represent the juvenile(s) upon motion to the court.
6. That the juvenile(s) has returned to North Carolina, and the Guardian ad Litem is once again able to fulfill the statutory duties set out by N.C.G.S. § 7B-601. That a Motion or Petition to Terminate Parental Rights was filed on _____ and reappointment is appropriate under N.C.G.S. § 7B-1108(c). That the Guardian ad Litem has the ability to communicate with the juvenile(s) such that he or she is able to adequately fulfill the statutory duties set out in N.C.G.S. § 7B-601.

APPENDIX

WHEREFORE, the movant prays the court to enter an order as follows:

1. That permits reappointment of the Attorney Advocate for further representation of the juvenile(s).
 2. That permits the reappointment of the Guardian ad Litem for further representation of the juvenile(s) pursuant to N.C.G.S. § 7B-601.
- This the _____ day of _____ 2005.

By: _____

GAL Attorney Advocate
State Bar #
ADDRESS, PHONE #S

CERTIFICATE OF SERVICE

This is to certify that I have this day served upon the persons listed below a copy of the MOTION TO REAPPOINT GUARDIAN AD LITEM by depositing a copy of same in the United States Mail in Raleigh, North Carolina, postage prepaid, addressed as follows:

**Opposing Counsel
Address**

This the _____ day of _____ 2005.

Signature of Movant

GUARDIAN AD LITEM ATTORNEY PRACTICE MANUAL

Order Reappointing GAL

NORTH CAROLINA

_____COUNTY

IN THE GENERAL COURT OF JUSTICE

DISTRICT COURT DIVISION

FILE NO. -J-

IN RE: _____,)
A minor child)
[or minor children])
Date(s) of Birth _____)

ORDER TO REAPPOINT
GUARDIAN AD LITEM

THIS MATTER coming on before the undersigned Judge upon the motion of the Guardian ad Litem requesting permission for reappointment for further representation of the juvenile(s) in the above-captioned matter.

THE COURT finds as follows:

- 1. That the juvenile(s) has been placed out-of-state, and because of lack of access to the juvenile(s), the Guardian ad Litem and Attorney Advocate were released from their duties by order of this Court on _____.
2. That the juvenile(s) has returned to North Carolina, and the Guardian ad Litem is once again able to fulfill the statutory duties set out by N.C.G.S. § 7B-601./That a Motion or Petition to Terminate Parental Rights was filed on_____ and reappointment is appropriate under N.C.G.S. § 7B-1108(c). That the Guardian ad Litem has the ability to communicate with the juvenile(s) such that he or she is able to adequately fulfill the statutory duties set out in N.C.G.S. § 7B-601.

WHEREFORE, it is ordered as follows:

- 1. That the Attorney Advocate is hereby reappointed for further representation of the juvenile(s) at this time.
2. That the Guardian ad Litem is hereby reappointed for further representation of the juvenile(s).
3. That the Guardian ad Litem will fulfill the statutory duties as set out by N.C.G.S. § 7B-601.

This the _____ day of _____, 200__.

District Court Judge Presiding

APPENDIX

Special Immigrant Juvenile Status: An Overview

Application Requirements for Special Immigrant Juvenile Status & Preparation of Relevant Order

****See sample court order.****

1. The child must be under the jurisdiction of a juvenile court in juvenile court proceedings such as abuse, neglect, or dependency.
2. The child must have been “**deemed eligible for long-term foster care.**”
 - a. This term means the court has found that family reunification is not a viable option and the child would normally be placed in foster care, guardianship or adoption.
3. The court or some administrative agency must rule that it is **not in the child’s best interest to be returned to his or her home county.**
 - a. This finding must be based on evidence such as the written reports of social workers, probation officers or others discussing their efforts to determine the conditions for the child in the home country, the conditions for the child in the U.S., and their basis for their recommendation that it is not in the child’s best interest to return.
 - b. It is often easiest to have the juvenile court judge include this finding along with the others in the order that will be submitted to CIS. However, other judicial or administrative bodies authorized or recognized by the juvenile court may make such a determination.
4. The court should make it clear that it made its findings and orders **based on abuse, neglect or abandonment of the child**, as opposed to just to get the child immigration status.
 - a. The child must have been the subject of juvenile court orders and deemed eligible for long-term foster care “due to abuse, neglect or abandonment.”
 - b. Judges must make this finding explicit. Every juvenile court order that will be submitted to Citizenship and Immigration Services (“CIS”) should include a statement identifying the basis for the order.
 - c. The judge’s finding of abuse, neglect or abandonment should be based on applicable state law.
5. The juvenile court judge should sign an order making the above findings.
6. The juvenile court must retain jurisdiction over the child.
7. The child must be under the age of 21 and unmarried. If the child is between the ages of 18 and 21 and/or considering emancipation, please consult with an immigration specialist.

Adoption and SIJS

- Children who have been adopted may still apply for Special Immigrant Juvenile Status (“SIJS”).
- Potential Issue: The federal immigration regulation imposes the requirement that the juvenile court retain jurisdiction until the SIJS case is approved.
 - Some juvenile courts have complied with this regulation by delaying completion of the final step of adoption until CIS has approved the application, or by retaining jurisdiction over the case despite the completion of adoption.

GUARDIAN AD LITEM ATTORNEY PRACTICE MANUAL

- The above measures may not be necessary according to the most recent CIS policy commentary which provides that CIS will consider the child a juvenile court dependent based on the prior dependency order.
- Please consult an immigration attorney regarding this issue if the child may be adopted before her SIJS application is filed or approved.
- If the child is under 16 years old when the adoption is completed, she may be able to immigrate through her adoptive parents rather than SIJS. It is important to discuss these options with an immigration attorney as immigration through adoptive parents may have various disadvantages as compared to immigrating through SIJS.

Family Member Benefits

If the child is granted SIJS, the natural parents cannot receive any immigration benefit based on their relationship to the child. Most likely, the child will be unable to assist a brother or sister to immigrate since he or she ceases to be the “child” of the original parents for immigration purposes.

Grounds of Inadmissibility

A foreign national can be denied a green card if she comes within a “ground of inadmissibility.”

Waivable Grounds

The foreign national can ask for a discretionary waiver. Waivable grounds of inadmissibility that apply to special immigrant juveniles are:

- people who have been prostitutes or procurers (“pimps”)
- people who were convicted as adults once of simple possession of 30 grams or less of marijuana
- people who are HIV positive
- people who were deported and did not remain outside the US for five (5) years before returning
- people who committed fraud to enter the US or to get a visa
- people who are alcoholics or have a mental or physical disorder that poses a risk to people or property
- people who are or have been drug addicts or abusers
- people who helped other aliens to enter the US illegally

It is possible the waiver will not be granted. Thus, the SIJS application will carry additional risk for children who fall under one of the above categories.

Nonwaivable Grounds

A child who falls within one of these grounds and submits an SIJS application may be subject to deportation proceedings. It is important to consult an immigration expert before submitting an application.

Nonwaivable grounds of inadmissibility are:

- people who CIS has “reason to believe” are or have been drug traffickers.
- People convicted as adults of a wide range of offenses or who have made a formal admission of any drug offense or a “crime involving moral turpitude” (such as shoplifting, assault with a deadly weapon, or sex crimes).

APPENDIX

Order for Special Immigrant Juvenile Status

NORTH CAROLINA
_____ COUNTY

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO. _____

In the Matter of

A minor child
Date of Birth:
ORDER REGARDING MINOR'S
ELIGIBILITY FOR SPECIAL
IMMIGRANT JUVENILE STATUS

The Court having reviewed the supporting material in the court file and heard arguments of counsel hereby makes the following

FINDINGS OF FACT

- 1. That the minor child became subject to the jurisdiction of juvenile court upon an adjudication of abuse/neglect/dependency entered _____.
2. That the minor child has been in the custody of the Department of Social Services since _____ and continues to remain in the custody of the Department of Social Services.
3. That the minor child is eligible for long term foster care as a result of the adjudication of abuse/neglect/dependency and subsequent review hearings held on _____ that held _____ (ex: that reunification efforts cease).
4. That it is not in the best interest of the minor child to be returned to his/her or his/her parents' previous country of nationality or country of last habitual residence, _____. It is in the best interest of the minor child to remain in the United States.
5. That the above findings were made due to abuse, neglect and/or dependency of the minor child as defined pursuant to NCGS §7B-101.

WHEREFORE IT IS ORDERED THAT THE MINOR CHILD IS ELIGIBLE FOR APPLIATION OF SPECIAL IMMIGRANT JUVENILE STATUS.

This the ____ day of _____, 200__.

District Court Judge Presiding

GUARDIAN AD LITEM ATTORNEY PRACTICE MANUAL

Order to Allow Confidential Disclosure (SIJS)

North Carolina
_____ County

In the General Court of Justice
District Court Division
File No. _____

[Case Caption]

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**ORDER TO DISCLOSE
CONFIDENTIAL
INFORMATION**

Upon good cause shown, the Guardian ad Litem appointed pursuant to NCGS §7B-601 is hereby ordered to disclose confidential information to promote the best interests of the child represented. Such disclosure is limited to information necessary to assist the child in obtaining Special Juvenile Immigrant Status, and to the immigration attorney assisting in obtaining such status.

This the ____ day of 200__.

District Court Judge Presiding

APPENDIX

PERMANENCY OPTIONS²

Explanation and Comparison of Custody, Guardianship, and Adoption

I. Permanency Defined

- A. Permanency can best be defined as a positive, nurturing relationship with at least one adult that is characterized by mutual commitment and is legally secure. Permanency is the goal for every child in foster care.
- B. Elements of permanency
 - 1. Commitment: This is the most critical aspect of permanency. Everyone needs someone to step up and say, “I’ll be there for you.” This is commitment. Although the statutes require that placement with a relative be considered, you have to consider the best interests of the child, which means that you need to consider the “bond” between the child and the adult.
 - 2. Positive, nurturing relationship
 - 3. Legally secure

II. Permanency Options—An Overview

- A. There are three permanency options outside of reunification with the parents:
 - 1. Adoption—the most legally secure
 - 2. Guardianship (pursuant to G.S. 7B-600) —less legally secure than adoption
 - 3. Custody—least legally secure of the three options
- B. Guardianship should only be sought as the permanent plan if adoption is not an option or would not be in the best interests of the child.
- C. Custody should only be sought as the permanent plan if neither adoption nor guardianship is available as an option or would not be in the best interests of the child.

III. Adoption

- A. Adoption is the **most legally secure** relationship that can be established between a child and an adult who did not give birth to the child.

² This paper was compiled by Kella Hatcher and Debra Sasser, Associate Counsels for the North Carolina Guardian ad Litem Program, based on lectures and handouts presented in October 2000 by Chuck Harris, Chief of Children’s Services, North Carolina Department of Health and Human Services, and Jane Thompson, J.D., Assistant Attorney General. It also incorporates information from the North Carolina Health and Human Services On-line Publications, Children’s Services Manual, Chapter VI.

GUARDIAN AD LITEM ATTORNEY PRACTICE MANUAL

B. Before adoption can occur, there would have to be **relinquishment** of the child by the parent(s) or a **termination** of parental rights.

1. **Relinquishment:** Where the parent of guardian voluntarily consents to permanently transfer legal and physical custody of his/her child to DSS (or a licensed child placing agency) for the purpose of adoption.

a. **Designated relinquishment:** Where the parent designates the individual who will adopt the child and DSS approves this selection, or where the parent retains the right to consent to the prospective adoptive parent selected by the agency. N.C. Gen. Stat. § 48-3-703(a)(5). Where the individual designated by the parent does not or cannot adopt, the parent may choose to revoke the relinquishment. N.C. Gen. Stat. § 48-3-703(c).

b. **General relinquishment:** Where the parent agrees that DSS may place the child with prospective adoptive parents selected by DSS.

2. **Termination of parental rights:** Where a petition is filed seeking the court to terminate parental rights. N.C. Gen. Stat. §§ 7B-1100 – 7B-1113. When a parent cannot be found or when the parent will not agree to voluntarily surrender (relinquish) the child for the purpose of adoption, then a proceeding to terminate parental rights must be brought.

Note: Adoptability and TPR. Proving adoptability is not required by case law in order to prove best interest in the dispositional phase of a TPR proceeding, but some judges are reluctant or may even refuse to find best interest unless an adoption option is presented. They do not want to create a “legal orphan.” To “prove” adoptability:

a. Have foster parents who are ready to adopt the child and consider having one or both of them testify at disposition;

b. Plan for adoption from the very beginning (i.e., the foster-adopt program). Look for adoptive families as options even before adoption is a legal option;

c. Have the foster care workers or adoption workers testify as to the county’s track record with adoption and that the child has been referred to the four private child-placing agencies which have contracted with the Division to help DSS find adoptive homes.

C. **DSS Custody and adoption assistance:** Adoption is not appropriate for everyone, but if one wants adoption to be available as an option down the road, remember that if the child was ever in DSS custody (for at least one day), adoption assistance is available (so long as the other eligibility requirements, including “special needs,” are met).

1. **DSS Custody.** When a child is placed for adoption after having been in the custody or placement responsibility of an agency, it is likely that the child will be eligible for adoption assistance because of his special needs status.

2. **When to establish eligibility.** Eligibility for adoption assistance benefits *should be* established prior to a child’s placement for adoption, but *must be* established prior to the issuance of the Decree of Adoption.

APPENDIX

Note: No residency requirement. If a child is eligible for Adoption Assistance (including the requirement that the child be in the custody of DSS), the child remains eligible regardless of whether or not the child resides in North Carolina.

D. Filing the adoption petition

1. **Who petitions.** This is typically done by DSS. If the foster parent, relative, or other potential adoptive parent files it, they take on burden of the expense and other responsibilities. If DSS files it, they are responsible for the costs and related responsibilities.

2. Post-adoption Services

- a. **Post-adoption services** are required and should be available to children without regard to income to assure the stability of the adoption placement.
- b. **Post-adoption contact agreements** allow adoptive parents and biological parents to enter into agreements whereby contact between child and biological parents and/or siblings/grandparents are permitted under the terms of the agreement (note that such agreements are not currently addressed by North Carolina law).
- c. **In the event an adoption does disrupt** and cannot be repaired, the child can be relinquished to DSS or a licensed child placing agency and be immediately free for another adoptive home.

E. Financial Assistance Available for adoption

1. Availability of assistance, in general

- a. Adoption assistance is available for all “special needs” children when other certain criteria are met.
- b. The **federal** adoption assistance program is limited to those adoptive children who meet the eligibility criteria for the federal AFDC program as it existed as of July, 1996 (predates Work First Phase I) or the Supplemental Security Income (SSI) program.
- c. In addition, North Carolina counties use **state** and **local** funds (without federal reimbursement) to provide assistance to adoptive children with special needs who do not meet the federal eligibility criteria and to provide benefits that are not covered by the federal program.

2. **Conditions for Eligibility.** Eligibility for subsidy is determined by the **status** of the child involved and by that **child’s special needs**. A child for whom adoption is the plan, or who has already been adopted, may be determined eligible for Adoption Assistance if all of the following conditions are met:

- a. **Child Removed from Parents:** The child has been removed from his parents by a Voluntary Placement Agreement subject to judicial review or by a court order that includes the language in reference to best interest and reasonable effort; and
- b. **A North Carolina Agency has Placement Responsibility:** The child is in the placement responsibility of a North Carolina agency (e.g., DSS) authorized to place children for

GUARDIAN AD LITEM ATTORNEY PRACTICE MANUAL

adoption, or was at the time of the filing of the adoption petition in the custody of a North Carolina agency or had been in the placement responsibility of an agency who subsequently placed the child in the custody of a person now pursuing adoption of that child.

In general, foreign-born children are not eligible for adoption assistance. However, if a foreign born child enters the foster care system due to abuse, neglect, dependency, adoption disruption or adoption dissolution, that child's eligibility is determined in the same way as any other child.

- c. **Child Can/Should Not Return to Parents.** It has been determined that the child cannot or should not be returned to his parents. This means that the state must have reached that decision based on evidence by a court order legally clearing the child through TPR, or the existence of a petition for TPR, or a relinquishment by the parent to a child-placing agency, or, in the case of an orphan child, verification of the death of the parents, or the parent gives consent to adoption directly to a family approved by the agency that is legally responsible for placement (this is often the foster family or a relative); and
- d. **Special Needs.** The child has "special needs." A child is considered a child with special needs when the state has determined:
 - (i) That there exists, with respect to the child, a specific factor or "condition" because of which it is reasonable to conclude that such child cannot be placed with adoptive parents without providing adoption assistance or medical assistance.
 - (ii) Conditions:
 - (a) Child's ethnic background;
 - (b) Child's age;
 - (c) Membership in a minority
 - (d) Child in a sibling group that is being placed together; or
 - (e) The presence of factors such as medical conditions or physical, mental, or emotional handicaps. Includes *potential* handicaps.
 - (f) Child is in foster care (meets requirement that it would be difficult to place the child without payment of the subsidy).
- e. **Reasonable Efforts Have Been Made to Place Child Without Adoption Assistance.** Finally, there must be a demonstration that a reasonable, but unsuccessful, effort has been made to place the child with appropriate adoptive parents without providing adoption or medical assistance.

Waiver of Requirement: This requirement is waived when it would be against the best interests of the child because of such factors as the existence of significant emotional ties with prospective adoptive parents while in the care of such parents as a foster child.

3. Financial Circumstances as a Consideration for Eligibility

- a. **Circumstances of the Child.** The financial criteria for federal adoption assistance eligibility address the circumstances of the child rather than the adoptive parents.
- b. **Circumstances of the Adoptive Parent.** The financial circumstances of the parents become relevant only in determining the *amount* of adoption assistance and should not be considered in determining whether the child is eligible for the program. An income requirement or a means test cannot be imposed to restrict eligibility for adoption assistance.

APPENDIX

The agency may negotiate with the adoptive parents as to the amount of the monthly cash payment, partly on the basis of their income. In regard to children with an income, such as, but not limited to, Social Security benefits, Veteran's benefits, Supplemental Security benefits, this income may be a consideration in the negotiation of the amount of the Adoptive Assistance payment. However, receipt of such income shall not arbitrarily or automatically generate a denial, termination, or reduction in the receipt or amount of Adoption Assistance monthly cash payments.

4. **Who Establishes Eligibility:** Establishing the eligibility for adoption assistance is a task of the services staff of a child's resident agency. The agency is required to use the Adoption Assistance Eligibility Checklist (DSS-5012). Documentation sufficient to establish eligibility can be in the form of statements of diagnosis and/or prognosis from physicians, psychiatrists, speech and other therapists, etc. Documentation in reference to high-risk potential should be supported by information about the child's and birth parents' background. This documentation shall be attached to the DSS-5012.

5. Funding Sources

a. IV-E (Monthly Cash Payments):

- (i) Children are eligible to receive assistance under the IV-E program if, at the time they are cleared for adoption either through TPR or relinquishment, they are eligible for or recipients of IV-E foster care assistance benefits, or are eligible for or recipients of SSI benefits, or are recipients of Family Assistance (TANF) benefits living in a relative's home who was given custody by a North Carolina child placing agency. (Note that IV-E cannot be used if the child came into foster care under relinquishment, but can be used if they came in under a non-secure and there was a subsequent relinquishment.)
- (ii) Children who were eligible for SSI, but are no longer eligible because of new definitions, are entitled to adoption assistance up to the county's rate.
- (iii) Funding for IV-E adoption assistance cash payments is a combination of federal, state and county funds.

b. **IV-B (Monthly Cash Payment):** Children found eligible for monthly cash benefits who are not IV-E eligible are eligible to receive monthly cash payments from IV-B funds. Funding is derived from federal IV-B funds, (which North Carolina has retained the discretion to use and has opted to make available for non IV-E children), and county funds.

c. **SAF (Monthly Cash Payment):** The State Adoptive Fund is available for children with special needs who are placed by private agencies. Funding for this category of children is provided from IV-B funds and state funds. No county funds are required as match, with the exception of the Medicaid.

d. Vendor Payments

Adoptive parents will be expected to explore and use available resources other than these benefits for payment of services related to alleviating the child's special needs. However, for children also approved for assistance after adoption from the Children's Special Health Services, Division of Maternal and Child Health, Department of Environment, Health and Natural Resources, benefits from the vendor categories of Adoption Assistance are to be exhausted before the family turns to children's Special Health Services for assistance. Vendor payments are not included in the requirements of PL 96-272 for a subsidy program. Therefore, whether the children are IV-E or IV-B

GUARDIAN AD LITEM ATTORNEY PRACTICE MANUAL

eligible, the funding source is IV-B and county funds and the county share is the same. SAF-eligible children receive vendor payments reimbursed through IV-B funds.

e. Medicaid

- (i) For IV-E eligible children, Medicaid should automatically be triggered by an application filed by the social worker in the child's behalf.
- (ii) For IV-B children, Medicaid coverage is available for special medical or rehabilitative needs. The child's Adoption Assistance worker in the county makes the determination of whether the child has special medical needs. Once the child is initially determined as Medicaid eligible under special needs criteria, the eligibility determination is binding as long as adoption assistance remains in effect (unless child begins receiving income other than adoption assistance, then a redetermination of eligibility is required to ascertain if the child remains eligible based on income). A redetermination of financial eligibility is not required. Coverage terminates at age 18 or whenever the adoption assistance is terminated.

f. Non-recurring

- (i) Non-recurring adoption expenses are considered an administrative expenditure of the Title IV-E adoption assistance program.
- (ii) Federal reimbursement is available at a 50% matching rate for state expenditures up to \$2,000 for any adoption.
- (iii) The child is eligible for this benefit and reimbursement is available under this program regardless of whether or not the child is IV-E eligible.
- (iv) The county's share of these nonrecurring expenses is 25 %.

6. Benefits Available

- a. **Adoption Assistance Agreement:** North Carolina offers benefits in several categories. In order to offer these benefits, an adoption assistance agreement with the adopting parents must be in place. Any individual child may qualify for all types. Also, if a subsidy is in place for one type of benefit, additional types may be added in the future if the circumstances warrant it.

b. Categories

- (i) Monthly Cash Benefits: In an effort to assure permanency for children, most counties continue adoption assistance at the *state standard foster care rate*, including special costs. The maximum amount of payment may vary from child to child and may change for an individual child over time.
 - (a) Children who are HIV positive or who have AIDS may receive additional payments while in foster care and may receive these additional benefits as part of the adoption assistance payment.
 - (A) This amount varies and ranges from \$800-\$1600. This is all state money and there is no county match.
 - (B) With this supplemental payment, a child with HIV/AIDS who is adopted will receive the same benefits as if such child remained in foster care
 - (b) Other children may receive additional money for their therapeutic needs while in foster care, and the county may choose to continue this supplement when the child is adopted. **The county is responsible for**

APPENDIX

all supplemental payments, except for children who are HIV positive. (Submit request for HIV payment on monthly basis on Form 5159.)

- (c) Sources of monthly cash payment: IV-E, IV-B, & SAF funds.
 - (d) Some counties supplement these costs for both foster care and adoption
 - (e) The Adoption Assistance Monthly Cash Payment continues until the child turns 18
 - (f) Adoption assistance looks at the child's needs and not the adoptive parents' income
 - (g) Application for adoption assistance needs to be done prior to the final decree of adoption
- (ii) **Vendor Payment to Medical or Therapeutic Providers**
- (a) Handicapping Conditions: Vendor payments provide assistance for services or treatment for handicapping conditions that existed prior to the time of the child's placement for adoption. It is not necessary for these conditions to have been identified prior to the placement, but rather to have existed.
 - (b) Cap on payment: Medical care providers may be paid up to \$1200 per child, per year for medical treatment of services not covered by any medical insurance; therapeutic care providers may be paid up to \$1200 per child, per year for non-medical services (e.g., psychological, tutorial, therapy, etc.)
 - (c) Source of payment: Agencies make payments on behalf of the child and are then reimbursed by the Division through IV-B funds.
 - (d) Termination of payment: Adoption Assistance Vendor payments continue until the child turns 18
- (iii) **Non-recurring expenses**
- (a) Available only to parents adopting special needs children regardless of whether the child was in the foster care system.
 - (b) Although non-recurring costs covers attorneys' fees and preplacement assessments, these funds should not be used for these tasks since DSS should be doing this as part of its casework.
 - (c) Parents adopting special needs children are eligible for reimbursement of non-recurring costs of the adoption. The non-recurring expenses for the adoption of a special needs child must be reimbursed by the state agency responsible for the administration of the adoption subsidy program. This is true whether the adoption is an independent placement or one facilitated by a public or private agency.
 - (d) Eligibility requirement. The child is eligible under the criteria established for children receiving adoption assistance, with the exception of the requirement that the child be in the custody or placement responsibility of a child-placing agency.
 - (e) Reimbursable costs include *adoption fees, court costs, attorney fees, and other expenses* that are directly related to the **legal** adoption of a child with special needs, which are not incurred in violation of state or federal law and which are not reimbursed from other sources or other funds. These expenses can include such costs as the *preplacement assessment, including physical and psychological examinations,*

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transportation and reasonable costs of lodging and food for the child and/or the adopting parents when necessary to complete the placement or adoption process and supervision of the placement.

- (f) In cases where siblings are placed and adopted either separately or together, each child is treated as an individual with separate reimbursement for non-recurring adoption expenses up to the maximum amount allowable for each child.
 - (g) Foreign adoptions. Payments are available to parents participating in intercountry adoptions as long as the child meets the requirements as outlined above with the exception of the child being in the custody or placement responsibility of a child-placing agency.
 - (h) Parents' financial condition not relevant. If parents have reimbursable expenses that are allowable, the reimbursement of these expenses must not depend on the income and resources of the parents.
 - (i) There can be no limit placed on either the amount in any type of non-recurring expenses or the number of types of non-recurring expenses for which a child may be eligible. The only allowable limit is for the total amount of incurred expenses of \$2,000 per child.
 - (j) Counties make direct payments and request reimbursement from the State on the 5095.
- (iv) **Medicaid**
- (a) In North Carolina, children who receive adoption assistance must be evaluated for eligibility for Medicaid benefits.
 - (b) IV-E eligible children are categorically eligible and the Medicaid should automatically be triggered by an application filed by social worker on the child's behalf.
 - (c) The county with custodial responsibility is responsible for the Medicaid application.
 - (d) Non IV-E (i.e., IV-B) children may be eligible for Medicaid coverage if they have special medical or rehabilitative needs (special needs) and the child's income is below allowable limits.
 - (1) If the child own income (e.g., SSA) exceeds the eligibility amount as determined by the Medicaid eligibility specialist, then Medicaid is not available.
 - (2) Financial eligibility is determined based upon the child's income and resources only. Income and resources of the adoptive parents are not counted. As federal requirements specify that these children meet Categorically Needy income and resource requirements, they must be eligible under M-AF criteria. **(Refer to Family and Children's Medicaid Manual, dated 10-1-94)**
- (v) **Social Services Benefits:** Children who are recipients of adoption subsidy are eligible for services without regard to income. This provides an opportunity for the social worker and family to identify a set of post-adoption services that may be helpful in keeping the new family system intact. These services may be funded through Social Services Block Grant or Permanency Planning funds as well as all county money.

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IV. Guardianship:

A. **Guardianship, in general**

1. This is a permanency option for children that is more secure than custody, but not as secure as adoption. It is appropriately used when reunification and adoption are not possible.
2. Juvenile court guardianship is governed by 7B-600 and is different from Chapter 35A guardianship.
3. With guardianship, the parents' rights do not have to have been terminated.
4. The guardian shall have the care, custody and control of the child and may represent the child in legal matters before the court. The guardian may consent to certain actions on the part of the child in place of the parent (example, consent to marriage, enlisting in the armed forces, enroll in school).
5. Guardianship awarded in the context of a permanent plan for a child shall continue unless the court finds that the relationship between the guardian and the juvenile is no longer in the juvenile's best interest, that the guardian is unfit, the guardian has neglected its duties or the guardian is unwilling or unable to continue to assume the duties. N.C. Gen. Stat. § 7B-600(b).
6. A juvenile court order appointing a guardian is valid for as long as the juvenile court retains jurisdiction over the case, unless the court terminates the guardianship pursuant to G.S. § 7B-600(b). It is unsettled what happens to a court-ordered guardianship when the juvenile court terminates jurisdiction over the matter. To insure validity of the order creating the guardianship, it is therefore recommended that the juvenile court retain jurisdiction over the case until the guardianship is terminated by a subsequent order or until the child reaches 18 years or is otherwise emancipated.
7. For suggestions concerning a guardianship order under Chapter 7B, see section V.G, below.

B. **Kinship Assessment:** DSS utilizes a "kinship assessment tool" whereby they evaluate potential placements using specific criteria.

1. DSS is to assess whether the potential caregiver(s) have/has a lifetime commitment to the child and how they fit into the family system.
2. DSS is to assess such things as what kind of access the biological parent(s) would/should have, whether the caregivers believe that the alleged perpetrator (potentially their son/nephew, etc. . .) actually engaged in abuse/sexual abuse of the child they will care for (affecting the likelihood that the child will receive appropriate protection from this person).

C. **Important steps at non-secure hearing to prepare for a potential guardianship placement**

1. Identify the fathers
2. Identify all the relatives that are willing and able to take care of the child and with whom it would be in the child's best interest to reside
3. Identify any other individuals who are potential guardians

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D. **Financial assistance available for guardianship**

1. **TANF:** Relatives who are appointed by the juvenile court as guardians under G.S. 7B-600 may qualify for TANF Child Only benefits. In addition, relatives who have a child placed with them when DSS retains legal custody may also qualify for Child Only benefits. It should be noted that eligibility for TANF is not automatic and anyone interested in learning if they would be eligible under particular circumstances should contact their county department of social services, Work First Program.
2. **Medicaid** or North Carolina Health Choice for Children.
3. **Child support:** Since the court case stays open, the parents can be obligated to pay child support to the guardian.
4. **County funds in the 19 IV-E Waiver Counties for Assisted guardianship.** The 19 IV-E waiver counties can opt to provide assisted guardianship at the same rate of payment as foster care and adoption assistance (there is no vendor payment for guardianship). A certain set of criteria must be met for a guardian to receive these funds. So far, only 5 of these counties have chosen to use assisted guardianship because those funds are scheduled to end July 2002; but there is the potential, now that guardianship will become more common with more statutory definition, that they could still opt to do assisted guardianship and anyone is free to try to convince them to do so. This waiver project may also be extended past July 2002.
5. **No federal child welfare funds** (i.e., IV-E) can be used for assisted guardianship. Note, however, that the IV-E waiver project may change this so that guardians receive the same level of support as foster parents or adoptive parents.

E. **Standard for modification of a 7B-600 Guardianship**

1. Pursuant to section 7B-600(b), the court may not terminate a 7B-600 guardianship or order that the juvenile be reintegrated into a parent's home unless the court finds one of the following:
 - That the relationship between the guardian and the juvenile is no longer in the juvenile's best interest;
 - That the guardian is unfit;
 - That the guardian has neglected a guardian's duties; or
 - That the guardian is unwilling or unable to continue assuming a guardian's duties.
2. At any hearing to review the appointment of the guardian, the court can order an assessment by DSS, even though DSS may no longer have any role in the case.

F. **DSS's Role Once the Court Appoints a 7B-600 Guardian for the Child.**

1. **Until review hearings are properly waived pursuant to 7B-906(b)**, DSS's only role is to schedule the review hearings. See 7B-906(a) (DSS shall make a timely request to calendar each review). This is DSS's only *official* role after guardianship (or custody) is granted. DSS can work with the family and assist them in applying for "330 services," which is voluntary on the part of the custodian or guardian, but it allows DSS to remain involved with a family. This falls in line with the recommendation that the order granting guardianship or custody should also include what services are needed from DSS. See suggestions for custody orders below. See also custody section on DSS's role for possible way to require DSS supervision.

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2. **After review hearings are waived**, DSS has no role at all in the case. This does not mean that the court should terminate jurisdiction over the case (i.e., should not close the court case). This simply means that there are no periodic reviews, but the court retains jurisdiction in the event that a party files a motion pursuant to 7B-906(b) or 7B-1000 seeking a review hearing.

G. **Permanence if Guardianship Ends**

Unlike adoption where the adoptive parent can relinquish the child to DSS, making him immediately free for adoption, if guardianship ends and the child returns to DSS custody, quick permanence will probably not be possible. The parents' rights have not been terminated, grounds for TPR may not exist and the parents may not be willing to relinquish the child to DSS now that guardianship, usually with a relative they approved of, has ended.

V. **Custody**

A. **An adult can be granted custody of a child.**

B. **This is the option with the least permanency** as a parent can file a motion for review and ask the court to return the child to him based on the parent's change in circumstance.

1. This is the first permanency plan that comes to mind; it is used the most; and it is the least secure.
2. This option should only be used when reunification, adoption, and guardianship have been ruled out.

C. **There is no termination of parental rights required.**

D. **Relative's rights over a child relative**

1. **Absent DSS involvement:**

- a. Can get a Power of Attorney from the child's parents, which gives the relative a right to physical custody of the child, the right to seek medical treatment, and the right to enroll the child in school (if accepted by the school).
- b. Can hire a private attorney and seek custody of the child via an action filed pursuant to Chapter 50.
- c. Seek guardianship of the child under Chapter 35A, but only if there is no living natural parent. Note that guardianship pursuant to Chapter 35A is different from the guardianship that is available in a child protection proceeding pursuant to N.C. Gen. Stat. § 7B-600.

2. **With DSS involvement and the filing of a petition alleging abuse, neglect, or dependency:**

- a. A relative can get Chapter 7B custody or guardianship of the child.
 - (i) The court can grant custody to a relative or other individual at any time during the course of the child protection proceedings, but the court must continue to review the case until the child has resided with the relative or been in the custody of the other individual for a year. N.C. Gen. Stat. § 7B-906(b).
 - (a) With a **relative**, the year can include any time the child *resided* with the relative prior to the filing of the petition.

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- (b) If the child is placed with a person who is *not a relative*, then the child MUST be *in the “custody”* of the non-relative for a full year before the court can waive the hearings.
- (c) Once the year requirement is completed, the court can waive review hearings pursuant to 7B-906 so long as the other requirements of 7B-906 are met.
- (ii) Even if the court waives further review hearings, the court MUST conduct a review hearing upon motion of a party.

- b. A relative can hire an attorney and seek Chapter 50 custody of the child via a motion in the cause in the Chapter 7B action (so long as the relative is a party to the action or is allowed to intervene) or via a separate Chapter 50 action. In the latter event, the juvenile court could appropriately terminate its jurisdiction.

E. **Standard for modification of a 7B custody order:** In addition to those review hearings set by the court, there are two vehicles for any party in an abuse, neglect, or dependency case to get the court to reconsider a custody order. A party may make a motion pursuant to G.S. 7B-1000 or 7B-906(b)(4) to get the case back in front of the court. The court may not waive or refuse to conduct a review hearing if a party files a motion seeking review under 7B-906. N.C.G.S. § 7B-906. When a hearing is conducted as a review hearing under 7B-906, the judge’s decisions are based on the *best interest* of the child standard, and pursuant to section 7B-903(a)(2)b the court has the authority to make orders relating to custody. N.C.G.S. §§ 7B-906 & 7B-903. When a hearing is conducted pursuant to a motion made pursuant to section 7B-1000, the judge may modify or vacate the order in light of *changes in circumstances or the needs of the juvenile*. See *In re Brenner*, 83 N.C. App. 242 (1986). This leads to some confusion as to the standard applied for modification of custody orders, depending upon the context in which the order is made and whether the party has made a motion pursuant to 7B-1000 or 7B-906.

It can be argued that when a hearing is conducted in an attempt by one party to change an order concerning the child’s custody, there is a requirement of a finding of changed circumstances (*see, e.g., In re Williamson*, 77 N.C. App. 53 (1986)) for custody to be modified. However, when “changes in circumstances” is read along with the language of “or the needs of the juvenile,” as is also stated in section 7B-1000, this appears to lead back to the *best interest* standard, which is the essentially the same standard in regular review hearings set by the court or held in response to a motion by a party. This may be a simple semantic difference; therefore when a party is seeking to change orders affecting custody, the judge would be prudent to refer, in the order, to whether there has been a “change in circumstances,” to the “needs of the juvenile,” and to the “best interests” of the juvenile. This way, it will be less likely that the order could be attacked for failure to apply the appropriate standard in determining whether to modify orders concerning custody of the child.

Because the standards for changing custody are less stringent than the standards for changing guardianship, custody is considered more “temporary” and less “secure” than guardianship.

F. **What happens if custody “disrupts”** (i.e., the custodian doesn’t want custody of the child anymore):

1. There can be an “unofficial” return of the child to the parents.
2. The custodian may take the child to DSS and say that they can’t do this anymore. The concern with this option is that when the child is returned to DSS, the child is probably not freed for another permanent plan and will go into foster care until such time as the child ages out.

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3. If custody is out of county, there is no clear-cut answer on which county has jurisdiction over the child when the placement disrupts. Therefore, you need to be very clear when dealing with placing the child in the custody of an individual who resides in a different county.

G. **Suggestions concerning a custody order or guardianship under Chapter 7B**

1. Remember that the order will be shown to many third parties (e.g., health care providers, and schools), so “sanitize” the order as much as possible without sacrificing the required findings of fact and conclusions of law.

2. These orders should address the issue of visitation with the parents.

3. The order should include what services are needed from DSS in addition to granting custody. Before a custody order is entered, discuss the needs of the family that is taking custody (e.g., day care, transportation, and health care) and see what DSS can provide so this can be included in the custody order to help insure that custody is successful. Some services the relative has come to rely on from DSS may not be available, or may no longer be available at no cost to the relative, once DSS no longer is the child’s custodian.

Note, however, that when DSS does not have custody, services are available on a voluntary basis – the person receiving services can sign a service agreement. Another advantage to DSS providing services is that it keeps DSS involved, which is of tremendous benefit should the placement fall through.

H. **DSS’s Role Once the Court Grants Custody of the Child to a Relative or other Person.**

1. **Until review hearings are properly waived pursuant to 7B-906(b)**, DSS’s only role is to schedule the review hearings. *See* 7B-906(a) (DSS shall make a timely request to calendar each review). This is DSS’s only *official* role after custody (or guardianship) is granted. DSS can work with the family and assist them in applying for “330 services,” which is voluntary on the part of the custodian or guardian, but it allows DSS to remain involved with a family. This falls in line with the recommendation that the order granting guardianship or custody should also include what services are needed from DSS. See suggestions for custody orders above.

There may be a way to extend DSS supervision of a case that would not be voluntary, a way that the court COULD order DSS to continue to supervise the child even after the court grants custody (and maybe even guardianship) to a relative or other person: Section 7B-906(d) authorizes the court at any review hearing (including the one at which further review hearings are waived) to make any disposition authorized by 7B-903. Since under section 7B-903(2)a the court has the authority to order DSS to supervise the child in his/her home—if the child needs more adequate care or supervision—then this is a way to try to get continued DSS supervision. This does not seem to address the question of services, but will at least provide a way to have continued supervision if review hearings are being waived, but there is some concern about whether this placement will work.

2. **After review hearings are waived**, DSS has no role at all in the case. This does not mean that the court should terminate jurisdiction over the case (i.e., should not close the court case). This simply means that there are no periodic reviews, but the court retains jurisdiction in the event that a party files a motion pursuant to 7B-906(b) or 7B-1000 seeking a review hearing.

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I. **Funding Sources**

1. **TANF:** Custodians (persons who have been given legal responsibility but not guardianship to provide care and supervision for the child) may apply for TANF (Temporary Assistance for Needy Families, formerly AFDC) payments for the children as child(ren) only cases. One who is not a legal custodian may not be able to get child only benefits.

a. Child Only benefits do not consider the income of the legal custodian in determining eligibility. However, if the child has other income (such as SSI), the child may not be eligible for TANF. If the child is not a U.S. citizen or a "qualified alien," he is not eligible for TANF benefits. Anyone interested in learning whether they qualify for TANF should contact their county department of social services, Work First Program.

b. Payment for TANF is less than that for children in adoption or assisted guardianship

c. The amount of payment may be reduced by any other income (e.g, SSI) of the child's.

2. **Medicaid:** If the child receives TANF there will be Medicaid.

If there is no Medicaid, custodians are encouraged to apply for North Carolina Health Choice for Children.

3. **Child support:** Since the court case stays open, the parents can be obligated to pay child support to the custodian.