

# CHAPTER 5 POST-TERMINATION OF PARENTAL RIGHTS AND ADOPTION

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## § 5.1 Post-Termination of Parental Rights Placement Court Review [7B-908]

### A. Purpose [7B-908(a)]

The purpose of each placement review is to ensure that every reasonable effort is being made to provide for a permanent placement plan for the child who has been placed in the custody of a county director or licensed child-placing agency, which is consistent with the child's best interest.<sup>1</sup>

### B. Evidence to Be Considered [7B-908(a)]

At each review hearing the court may consider information from the Department of Social Services; the licensed child-placing agency; the guardian ad litem; the child; any foster parent, relative, or preadoptive parent providing care for the child; and any other person or agency that the court determines is likely to aid in the review. The court may consider any evidence, including hearsay evidence as defined in G.S. 8C-1, Rule 801, that the court finds to be relevant, reliable, and necessary to determine the needs of the juvenile and the most appropriate disposition.

### C. Under What Circumstances Does Placement Review Take Place? [7B-908(b)]

1. Reviews are to be conducted when parental rights have been terminated by a petition brought by any person or agency designated in G.S. 7B-1103(2) through (5) and a county director or licensed child-placing agency has custody of the juvenile.

If the child has been placed for adoption prior to the date scheduled for the review, written notice of the placement shall be given to the clerk to be placed in the court file and the review hearing shall be canceled, with notice of the cancellation given by the clerk to all persons previously notified. [*But see* G.S. 48-2-102, which would seem to eliminate the requirement that the review be canceled.]

2. Reviews are also to be conducted under the following circumstances set out by 7B-909:

- a. when *one parent surrenders* the child for adoption and there is no TPR proceeding initiated on the other parent within six months, or
- b. *both parents surrender* and there is no adoptive placement within six months,
- c. *adoption is dismissed or withdrawn* and the child returns to foster care.

In any of the above three scenarios, the following must occur:

- i. DSS must notify the clerk within thirty days of the child's return to calendar the review hearing for the agency's plan.
- ii. Notification is by petition for review, which sets forth circumstances necessitating

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**Note:** Two primary resources for Chapter 5 were two separate outlines on post-termination and adoption written by Ilene Nelson and Judy Kornegay.

<sup>1</sup> Note that although a post-termination hearing ("post-TPR review") is only held once termination has occurred, that hearing is not governed by the TPR statutes but by the statutes governing abuse, neglect, and dependency proceedings. This can be important with respect to some procedural issues.

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review.

- iii. Review must be conducted within thirty days (unless the court directs otherwise).
- iv. A review must take place every six months until a new adoption petition is filed.
- v. Such reviews are conducted pursuant to G.S. 7B-908.

### D. Timing [7B-908(b)]

1. **Initial review within 6 months:** The court shall conduct a placement review not later than six months from the date of the termination hearing.
2. **Subsequent reviews:** The court shall conduct reviews every six months thereafter until the child is placed for adoption and the adoption petition is filed by the adoptive parents.<sup>2</sup>

There is no reason that reviews cannot be conducted sooner or more often and the GAL may be the first to notice that a review should occur sooner, in which case a motion for such review is appropriate.

**Continued jurisdiction until adoption is final:** G.S. 48-2-102 states that if the child for whom a petition for adoption is filed is the subject of a proceeding under Chapter 7B, the district court continues to have jurisdiction over the matter until the adoption is final.  
[Also see *In the Matter of N.C.L.*, 89 N.C. App. 79 (1988), prior to change in law.]

Although the statute says that the reviews must continue until the child is placed for adoption and the adoption petition is filed, the language in G.S. 48-2-102 giving the district court jurisdiction until the adoption is final seems to indicate that the reviews could continue until the adoption is final. In other words, the court may, but is not required to, continue such reviews after the adoption petition and placement but before the adoption order is final.

### E. Notice of Review [7B-908(b)(1)]

1. No more than thirty days and no less than fifteen days prior to each review, the clerk shall give notice of the review to the child if he is at least twelve years of age, the legal custodian of the child, any foster parent, relative, or preadoptive parent providing care for the child, the guardian ad litem, if any, and any other person or agency the court may specify.
2. Nothing in this subdivision shall be construed to make any foster parent, relative, or preadoptive parent a party to the proceeding based solely on receiving notice and an opportunity to be heard.

### F. Who Should Attend [7B-908(b)(1)]

The statute says that only the juvenile, if the juvenile is at least 12 years of age, the legal custodian of the juvenile, any foster parent, relative, or preadoptive parent providing care for the juvenile, and the guardian ad litem shall attend the review hearings, except as otherwise directed by the court. [7B-908(b)(1)]

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<sup>2</sup> Session Law 2007-279 effective October 1, 2007 will require that reviews under both 7B-908 and 7B-909 continue until “the juvenile is the subject of a decree of adoption.”

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*From a practical standpoint, however, it is often beneficial for children under twelve to attend the hearing as well, and the GAL is free to make such a request when appropriate. See Volume 1, § 2.7.H. for more information on having the child in court.*

### **G. If a GAL Has Not Yet Been Appointed [7B-908(b)(2)]**

If a guardian ad litem for the child has not been appointed previously by the court in the termination proceeding, the court, at the initial six-month review hearing, may appoint a guardian ad litem to represent the child. The court may continue the case for such time as is necessary for the guardian ad litem to become familiar with the facts of the case.

### **H. What the Court Shall Consider at Review [7B-908(c)]**

The court shall consider at least the following in its review:

1. **The adequacy of the plan** developed by the county department of social services or a licensed child-placing agency for a permanent placement relative to the child's best interest and the efforts of the department or agency to implement such plan;
2. **Whether the child has been listed for adoptive placement** with the North Carolina Adoption Resource Exchange, the North Carolina Photo Adoption Listing Service (PALS), or any other specialized adoption agency; and
3. **The efforts previously made** by the department or agency to find a permanent home for the child.

*The GAL should be prepared to present evidence and make arguments regarding any of the above three factors that are important in advocating for the child's best interests.*

### **I. The Court's Decision [7B-908(d)]**

The court, after making findings of fact, shall affirm the county department's or child-placing agency's plans or require specific additional steps which are necessary to accomplish a permanent placement which is in the best interests of the child.

[Until adoption placement occurs, the court still has the authority to make any dispositional option provided in G.S.7B-903.]

### **J. The GAL's Role in Post-TPR Review Hearings**

The GAL remains on the case until the adoption petition is filed and the child is placed for adoption, so he or she must continue to monitor the needs of the child. Once termination has occurred, the GAL can focus on ensuring a permanent home for the child.

1. **The GAL's investigative responsibilities after termination** may include the following:
  - determining the child's wishes and whether the child is happy
  - determining the child's needs and whether they are being met
  - determining what services or changes might address needs that are not being met
  - obtaining any records on the child

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- talking to the DSS caseworker
  - interviewing anyone with knowledge or input about the child, her needs, and her permanent placement (including foster parents and potential adoptive parents)
2. **The GAL AA's responsibilities in court post-termination** may include the following:
- expressing the child's wishes to the court if the child desires
  - offering evidence and presenting or examining witnesses
  - presenting court reports
  - making motions as needed
  - advocating for the child's needs, including services, placement, sibling contact or joint sibling placement, etc., based on the child's best interests
  - addressing the adequacy of the agency plan and efforts to implement the plan
  - reviewing proposed order for accuracy and completeness
  - getting information from DSS regarding adoption selection
  - evaluating adoption selection to be in a position to determine whether abuse of discretion regarding the selection should be raised

The statute allows the GAL the opportunity to allege that DSS abused its discretion in its decision for adoptive placement. Consequently, it is very important that the GAL stay involved in the case after termination because it is the only way to know whether the placement arranged by DSS is appropriate.

### § 5.2 Adoption and the GAL

*[Because the GAL does not formally participate in adoption, this manual will not discuss adoption law except as it relates to the role of the GAL. See Chapter 48 of the General Statutes, which governs adoption cases.]*

#### A. Jurisdiction in Adoption Cases

Adoption proceedings are special proceedings before the clerk of superior court, but if a child who is the subject of the adoption is also the subject of a pending district court case under the Juvenile Code, then the district having jurisdiction under Chapter 7B, shall retain jurisdiction until the final order of adoption is entered. G.S. 48-2-100(a); 48-2-102(a); *In re Asbury*, 125 N.C. App. 143 (1997). Although the adoption is a special proceeding, it is a special proceeding in the district court division. See N.C.G.S. 48-2-203, 48-9-105(b); 48-10-101(d); 48-10-102(c); 48-10-105(c).

#### B. DSS Is Responsible for Adoptive Placement

The process of selection of specific adoptive parents shall be the responsibility of and within the discretion of the county department of social services or licensed child-placing agency. **[7B-908(f)]**

#### C. GAL's Limited Role in Adoption

**1. GAL may consult with DSS in the selection process:** The GAL does not have a formal say in selecting an adoptive placement for the child, because adoptive placement is in the discretion of DSS. However, the guardian ad litem may request information from and consult with the county department or child-placing agency concerning the selection process. **[7B-908(f)]** The GAL is not automatically part of the adoption selection process although GALs in some cases may be asked to participate.

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**2. GAL may request and receive information on the selection process within five days:** If the guardian ad litem requests information about the selection process, the agency shall provide the information within five days. [7B-908(f)]

a. The North Carolina Court of Appeals supported a GAL's request for information on adoption from DSS in the cases of *In re Wilkinson v. Riffel*, 72 N.C. App. 220 (1985) and *In the Matter of N.C.L.*, 89 N.C. App. 79 (1988).

i. In *Wilkinson*, DSS was appealing a judge's order to respond to the GAL's request for information. The court of appeals stated as follows:

This section [7A-586 now 7B-601] gives the Guardian ad Litem more responsibilities and duties than a Guardian ad Litem ordinarily has. The Guardian ad Litem has the continuing duty to conduct follow-up investigations and to report to the court when the needs of the juveniles are not being met. The section specifically gives the Court the power to order that the Guardian ad Litem have confidential information which in the opinion of the Guardian ad Litem is relevant to the case. The placement of a juvenile for adoption is relevant to a determination by the Guardian ad Litem as to whether the needs of the child are being met. The fact that the information gathered by the Department about adoptive parents shall be confidential under section 48-25 is not relevant because 7A-586 (now 7B-601) provides that the Guardian ad Litem is entitled to confidential information.

ii. In *N.C.L.*, the court held that the duty of the Guardian ad Litem is to see that the child's interest and needs are being met. This duty extends to involvement in the placement of the juvenile for adoption. The court went on to emphasize the GAL's right to confidential information as it had in *Wilkinson*.

**3. GAL may raise abuse of discretion within ten days:** Any issue of abuse of discretion by the county department or child-placing agency in the selection process must be raised by the guardian ad litem within ten days following the date the agency notifies the court and the guardian ad litem *in writing* of the filing of the adoption petition. [7B-908(f)]

*GAL should raise concerns about potential adoptive placements as soon as those concerns arise but cannot bring abuse of discretion before the court until an adoption petition has been filed.* Although the statute gives the GAL the authority to raise abuse of discretion within ten days of notification of filing, any concerns should be raised as soon as they come up, in an effort to avoid a problematic situation for the child. Because the GAL has the right to request information on the selection process and is still involved in the case, he or she can protect and advocate for the child by being vocalizing to DSS any concerns surrounding the adoption process as early as possible to avoid further problems. However, while the GAL may raise concerns to DSS, it **may not make a motion for abuse of discretion until after an adoption petition has been filed.** (See *In re Asbury*, 125 N.C. App. 143 (1997).)

**4. GAL's responsibility is intact during ten-day abuse of discretion period.** During the ten-day period in which abuse of discretion may be raised, the GAL's responsibility to the child for the purpose of raising any issue of abuse of discretion is intact and cannot be fulfilled without certain information obtained from DSS. *In the Matter of N.C.L.*, 89 N.C. App. 79 (1988).

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**5. The statute sets up no role or authority for the GAL beyond this ten-day abuse of discretion period.** However, since post-TPR reviews are to continue until the adoption petition is finalized, the GAL should remain appointed to represent the child in these hearings and to monitor the adoption process.

**CHECKLISTS AND WORKSHEETS**

**§ 5.3 Post-Termination of Parental Rights Worksheet and Checklist**

Has the child been placed for adoption prior to the date of the Post-TPR Review? Yes/No If so, where has the child been placed?

\_\_\_\_\_  
 [If the child has been placed for adoption, the review hearing is canceled, but see 48-2-102, which may allow the hearing to proceed until adoption is final.]

Where does the GAL want to see the child placed permanently and why?

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**Preparation for Post-TPR Review Hearing**

	<b>GAL's Information and Views on Each of the Following</b>	<b>Witnesses and Evidence Needed for Review Hearing</b>
The adequacy of the plan developed by the agency for a permanent placement		
Whether such plan is in the best interest of the child		
The efforts of the agency to implement such plan		
Whether the child has been listed for adoption with any adoption agency		
The efforts previously made by the agency to find a permanent home for the child		

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**Summary of Post-TPR Review Hearings** (to be conducted at least every 6 months)

<b>Issues to Be Considered at Post-TPR Reviews</b>	<b>Date of Review 1</b>	<b>Date of Review 2</b>	<b>Date of Review 3</b>
The adequacy of the plan developed by the agency for a permanent placement			
Whether such plan is in the best interest of the child			
The efforts of the agency to implement such plan			
Whether the child has been listed for adoption with any adoption agency			
The efforts previously made by the agency to find a permanent home for the child			
Whether the court affirmed the agency's plans or required specific additional steps to accomplish permanent placement			

**STATUTES**

## GUARDIAN AD LITEM ATTORNEY PRACTICE MANUAL

### § 7B-908. Post termination of parental rights' placement court review

(a) The purpose of each placement review is to ensure that every reasonable effort is being made to provide for a permanent placement plan for the juvenile who has been placed in the custody of a county director or licensed child-placing agency, which is consistent with the juvenile's best interests. At each review hearing the court may consider information from the department of social services, the licensed child-placing agency, the guardian ad litem, the child, any foster parent, relative, or preadoptive parent providing care for the child, and any other person or agency the court determines is likely to aid in the review. The court may consider any evidence, including hearsay evidence as defined in G.S. 8C-1, Rule 801, that the court finds to be relevant, reliable, and necessary to determine the needs of the juvenile and the most appropriate disposition.

(b) The court shall conduct a placement review not later than six months from the date of the termination hearing when parental rights have been terminated by a petition brought by any person or agency designated in G.S. 7B-1103(2) through (5) and a county director or licensed child-placing agency has custody of the juvenile. The court shall conduct reviews every six months thereafter until the juvenile is placed for adoption and the adoption petition is filed by the adoptive parents:

(1) No more than 30 days and no less than 15 days prior to each review, the clerk shall give notice of the review to the juvenile if the juvenile is at least 12 years of age, the legal custodian of the juvenile, any foster parent, relative, or preadoptive parent providing care for the juvenile, the guardian ad litem, if any, and any other person or agency the court may specify. Only the juvenile, if the juvenile is at least 12 years of age, the legal custodian of the juvenile, any foster parent, relative, or preadoptive parent providing care for the juvenile, and the guardian ad litem shall attend the review hearings, except as otherwise directed by the court. Nothing in this subdivision shall be construed to make any foster parent, relative, or preadoptive parent a party to the proceeding solely based on receiving notice and an opportunity to be heard. Any individual whose parental rights have been terminated shall not be considered a party to the proceeding unless an appeal of the order terminating parental rights is pending, and a court has stayed the order pending the appeal.

(2) If a guardian ad litem for the juvenile has not been appointed previously by the court in the termination proceeding, the court, at the initial six-month review hearing, may appoint a guardian ad litem to represent the juvenile. The court may continue the case for such time as is necessary for the guardian ad litem to become familiar with the facts of the case.

(c) The court shall consider at least the following in its review:

(1) The adequacy of the plan developed by the county department of social services or a licensed child-placing agency for a permanent placement relative to the juvenile's best interests and the efforts of the department or agency to implement such plan;

(2) Whether the juvenile has been listed for adoptive placement with the North Carolina Adoption Resource Exchange, the North Carolina Photo Adoption Listing Service (PALS), or any other specialized adoption agency; and

(3) The efforts previously made by the department or agency to find a permanent home for the juvenile.

(d) The court, after making findings of fact, shall affirm the county department's or child-placing agency's plans or require specific additional steps which are necessary to accomplish a permanent placement which is in the best interests of the juvenile.

(e) If the juvenile has been placed for adoption prior to the date scheduled for the review, written notice of said

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placement shall be given to the clerk to be placed in the court file, and the review hearing shall be cancelled with notice of said cancellation given by the clerk to all persons previously notified.

(f) The process of selection of specific adoptive parents shall be the responsibility of and within the discretion of the county department of social services or licensed child-placing agency. The guardian ad litem may request information from and consult with the county department or child-placing agency concerning the selection process. If the guardian ad litem requests information about the selection process, the county shall provide the information within five days. Any issue of abuse of discretion by the county department or child-placing agency in the selection process must be raised by the guardian ad litem within 10 days following the date the agency notifies the court and the guardian ad litem in writing of the filing of the adoption petition.

Added by S.L. 1998-202, § 6, eff. July 1, 1999. Amended by S.L. 1998- 229, §§ 9, 26, eff. July 1, 1999; S.L. 1999-456, § 60, eff. Aug. 13, 1999; S.L. 2003-62, § 4, eff. May 20, 2003; S.L. 2005-398, § 8, eff. Oct. 1, 2005.

Note: Session Law 2007-276 effective October 1, 2007 amends subsection (b) by replacing “placed for adoption on the adoption petition is filed by the adoptive parents” to “[juvenile is] the subject of a decree of adoption,” under subsection (b)(1) replaces “an opportunity” to be heard with “the right” to be heard. The result is that the juvenile court will continue to have reviews under this subsection until the adoption petition is finalized.

### **§ 7B-909. Review of agency's plan for placement**

(a) The director of social services or the director of the licensed private child-placing agency shall promptly notify the clerk to calendar the case for review of the department's or agency's plan for the juvenile at a session of court scheduled for the hearing of juvenile matters in any case where:

(1) One parent has surrendered a juvenile for adoption under the provisions of Part 7 of Article 3 of Chapter 48 of the General Statutes and the termination of parental rights proceedings have not been instituted against the nonsurrendering parent within six months of the surrender by the other parent, or

(2) Both parents have surrendered a juvenile for adoption under the provisions of Part 7 of Article 3 of Chapter 48 of the General Statutes and that juvenile has not been placed for adoption within six months from the date of the more recent parental surrender.

(b) In any case where an adoption is dismissed or withdrawn and the juvenile returns to foster care with a department of social services or a licensed private child-placing agency, then the department of social services or licensed child-placing agency shall notify the clerk, within 30 days from the date the juvenile returns to care, to calendar the case for review of the agency's plan for the juvenile at a session of court scheduled for the hearing of juvenile matters.

(c) Notification of the court required under subsection (a) or (b) of this section shall be by a petition for review. The petition shall set forth the circumstances necessitating the review under subsection (a) or (b) of this section. The review shall be conducted within 30 days following the filing of the petition for review unless the court shall otherwise direct. The court shall conduct reviews every six months until the juvenile is placed for adoption and the adoption petition is filed by the adoptive parents. The initial review and all subsequent reviews shall be conducted pursuant to G.S. 7B-908. Any individual whose parental rights have been terminated shall not be considered a party to the review unless an appeal of the order terminating parental rights is pending, and a court has stayed the order pending the appeal.

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Added by S.L. 1998-202, § 6, eff. July 1, 1999. Amended by S.L. 1999- 456, § 60, eff. Aug. 13, 1999; S.L. 2005-398, § 9, eff. Oct. 1, 2005.

Note: Session Law 2007-276 effective October 1, 2007 deletes subsection (b), and under subsection (c) replaces “place for adoption and the adoption petition is filed by the adoptive parents” to “the subject of a decree of adoption.” The result is that the juvenile court will continue to have reviews under this subsection until the adoption petition is finalized.