

# JUVENILE LAW BULLETIN

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## **ABUSE, NEGLECT & DEPENDENCY CASES INVOLVING MORE THAN ONE COUNTY**

■ Janet Mason

It is not unusual for more than one county department of social services to have some degree of involvement in a child protective services case. The child's family may relocate after a county's social services department has substantiated abuse, neglect, or dependency, or even after social services has initiated a juvenile court proceeding. A court in one county may remove a child from the home and order or approve the child's placement with a relative, in a group home, or in a treatment facility in another county. One county may be called on to conduct an assessment for another county when a report of abuse or neglect relates to the child of a social services department's employee. If abuse or neglect is discovered first when a child is somewhere other than the child's home county and immediate action is required to protect the child, the social services department in a county other than the child's home county may initiate a juvenile court proceeding, obtain a nonsecure custody order, and place the child in foster care.

When a child protective services case involving more than one county is the subject of a juvenile court proceeding, important distinctions among several key elements of the case occasionally become blurred. The result can be a proceeding that is procedurally deficient or a court order that fails to accomplish the intended result, that does more than was intended, or that is legally improper. Other consequences sometimes include hard feelings between counties that need to have a cooperative relationship, unnecessary delays in the child's case, and inconvenience to the parties and professionals involved in the case.

In most juvenile court proceedings in which more than one county social services department has an interest, addressing each of the following questions will help guide the court toward appropriate procedures, clear decisions, and proper orders.

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1. What is the proper venue of the proceeding?
2. Who has (or should have) legal custody of the child?
3. Who are (or should be) the parties to the proceeding?

In addressing these questions, it may help for the court to have some understanding of state social services law and policy with respect to counties' responsibilities in child welfare cases involving more than one county.

## Legal Residence

In North Carolina's county-administered, state-supervised social services system, a person's county of legal residence is responsible for providing that person with social services and public assistance for which the person is eligible.<sup>1</sup> The law of "legal residence" is not always easy to interpret and apply,<sup>2</sup> but the legislature has created rules specifically for determining a person's legal residence for purposes of social services programs.<sup>3</sup> These provide that

- a person's legal residence generally is in the county where the person resides;
- the fact that a person is in a hospital, a mental institution, a boarding home, or a similar facility (presumably including a foster home) does not, by itself, change the person's legal residence to the county in which the facility or home is located;
- a person's legal residence continues until he or she acquires a new legal residence; and
- a person has only one legal residence at a time.

With respect to determining a child's legal residence, the statute provides as follows:

A minor has the legal residence of the parent or other relative with whom he resides. If the minor does not reside with a parent or relative and is not in a foster home, hospital, mental institution, nursing home, boarding

1. N.C. GEN. STAT. § 153A-257(a) (hereinafter G.S.).

2. *See, e.g.*, *Jamestown Mut. Ins. Co. v. Nationwide Mut. Ins. Co.*, 266 N.C. 430, 437, 146 S.E.2d 410, 415 (1966), in which the North Carolina Supreme Court said, "The word [residence] is frequently used in the sense of bodily presence in a place, sometimes, a mere temporary presence, and sometimes the most settled and permanent abode in a place, with all the shades of meaning between these extremes, and also with reference to the distinction between an actual and legal residence."

3. G.S. 153A-257. This section is set out in full in Appendix A.

home, educational institution, confinement facility, or similar institution or facility, he has the legal residence of the person with whom he resides. Any other minor has the legal residence of his mother, or if her residence is not known then the legal residence of his father; if his mother's or father's residence is not known, the minor is a legal resident of the county in which he is found.<sup>4</sup>

Disagreement may occur over the meaning of that provision in relation to a particular child's situation, risking complications or delay in the delivery of appropriate services. For that reason, the General Assembly supplemented the rule with respect to child protective services to authorize the Director of the Division of Social Services, in the state Department of Health and Human Services, to resolve any dispute between counties regarding a child's legal residence for purposes of a child abuse, neglect, or dependency case. After reviewing the background and facts of a disputed case, which any county social services department may bring to the division director's attention, the division director determines which county is responsible for providing protective services and financial support for the child.<sup>5</sup>

The Juvenile Code refers to the county of the juvenile's residence (or the juvenile's residence or the county in which the juvenile resides) in relation to

- reports of suspected abuse, neglect, or dependency;<sup>6</sup>

4. G.S. 153A-257(a)(3).

5. G.S. 153A-257(d). This language was added by S.L. 2003-304, effective July 4, 2003. Counties in North Carolina bear a significant portion of the costs of providing child protective services. In addition to the cost of social work services, a county's expenditures on behalf of an abused, neglected, or dependent juvenile may include the cost of court-ordered treatment for the child or parent; the county's portion of the cost of federal or state foster care payments; and the county's share of the cost of Medical Assistance for the child. *See, e.g.*, G.S. 7B-903(a)(3)a.; G.S. 7B-904(b), (c), and (d); and G.S. 108A-58. Statewide and county-specific budget estimates for 2006-2007, which show the percent and estimated amounts of county financial responsibility for various programs and benefits, can be found at <http://www.dhhs.state.nc.us/dss/budget/estimates.htm>.

6. G.S. 7B-301. Reports must be made to the department of social services in the county where the child resides or is found.

- county social services directors' responsibility for carrying out various provisions in the Juvenile Code;<sup>7</sup>
- initiation of a juvenile court proceeding;<sup>8</sup>
- dispositional authority to place a child in the custody of a social services department;<sup>9</sup> and
- judicial authority to order a county to pay for treatment.<sup>10</sup>

In only one instance does the Juvenile Code state that the child's residence should be determined pursuant to Section 153A-257 of the North Carolina General Statutes (hereinafter G.S.), which defines legal residence for purposes of social services and public assistance programs. The section that specifically references G.S. 153A-257 relates to an infrequently used procedure for a medical facility to obtain judicial authorization to retain custody of a child who is brought to the facility, needs treatment, and may have been abused.<sup>11</sup> Although that section is somewhat obscure, it cross-references key sections of the Juvenile Code that deal with dispositions and payment for treatment.<sup>12</sup> Those references and the extent to which juvenile court proceedings and social services programs are intertwined strongly suggest that courts

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7. G.S. 7B-101(10). Throughout the Juvenile Code, the word "director" includes the director's authorized representative.

8. G.S. 7B-400. This section refers to the district, not the county, in which the juvenile resides or is found.

9. G.S. 7B-903(a)(2)c. authorizes the court to place a child in the custody of the department of social services in the county of the juvenile's residence. It also provides that when the child's legal residence is outside North Carolina, the court may place physical custody of the child in the social services department of the county in which the child is found, pending return of the child to authorities in the child's home state.

10. G.S. 7B-308(d); 7B-903(a)(3)a.; and 7B-904(c).

11. G.S. 7B-308(c) and (d). The statute provides that if a juvenile court proceeding is filed concerning a child who received treatment under this section and the court determines that the treatment took place in a county other than that of the child's legal residence, custody of the child may be transferred to the social services department in the county of the child's residence. It also provides that the cost of the treatment may be charged to the county of residence.

12. G.S. 7B-903(a)(2), which deals with dispositional authority, is cited incorrectly in G.S. 153A-257 as G.S. 7B-903(2). The other referenced sections are G.S. 7B-903 and 7B-904, which authorize the court to order the county to pay for treatment.

as well as social services departments should follow G.S. 153A-257 when there is a need to determine the legal residence of a child, parent, or other party in a juvenile abuse, neglect, or dependency proceeding.

## State Policy

State social services policy set out in the *Family Support and Child Welfare Manual*<sup>13</sup> issued by the state Division of Social Services recognizes over and over the need for counties to collaborate in the provision of child welfare services. In 2004 the Division added to the manual a new chapter specifically addressing cross-county issues.<sup>14</sup> These policies are designed to facilitate the identification of the county with primary case management responsibilities when more than one county is involved with a family or child and to define the respective roles of that county and any supportive or reciprocal county.<sup>15</sup>

The manual chapter on cross-county issues sets out thirteen guiding principles that county social services departments should consider to determine which county has overall case management responsibility.<sup>16</sup> The chapter also discusses and provides detailed examples of the responsibilities of home counties and reciprocal counties at intake, during investigative assessments, for case planning and case

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13. The *Family Support and Child Welfare Manual* and other manuals issued by the state Division of Social Services are available at <http://149.168.11.112/olm/manuals/dss/>.

14. N.C. Division of Social Services, "Cross-County Issues," Chapter V, *Family Support and Child Welfare Manual* (January 1, 2004), <http://info.dhhs.state.nc.us/olm/manuals/dss/csm-45/man/index.htm>.

15. The policies were developed by a county workgroup that included both county and state social services staff. See N.C. Division of Social Services, Cross County Issues Change Notice 01-2003 (December 22, 2003), [http://info.dhhs.state.nc.us/olm/manuals/dss/csm-45/chg/012003.htm#P0\\_0](http://info.dhhs.state.nc.us/olm/manuals/dss/csm-45/chg/012003.htm#P0_0). In response to comments from county departments of social services about the difficulties of administering the policy consistently, the Division of Social Services has convened another work group to review, clarify, cross-reference, and reorganize the cross-county policy. Email to author from Chris Z. Sinha, Assistant Attorney General, N.C. Department of Justice, July 26, 2006.

16. These principles are set out in Appendix B.

management services, and for permanency planning and adoption services in cases involving more than one county.

Chapter VIII of the *Family Support and Child Welfare Manual*, "Child Protective Services," also addresses inter-county issues relating to intake and screening,<sup>17</sup> investigative assessments involving a family that relocates,<sup>18</sup> investigative assessments when a county social services department has a conflict of interest,<sup>19</sup> transfer of cases for case planning and case management,<sup>20</sup> and alleged abuse or neglect in a child care facility.<sup>21</sup>

Awareness of these policies may strengthen a court's decision or lead a court to reexamine a decision that conflicts with policies and procedures county social services departments have been directed to follow. Some policies may suggest to the court additional inquiries it should direct to the parties. For example, before ordering that a child be placed with a relative in another county, a court is more likely to inquire about contacts with that county's department of

17. N.C. Division of Social Services, *Family Support and Child Welfare Manual*, Ch. VIII, Section 1408.II.B.(3) (January 18, 2002), [http://149.168.11.112/olm/manuals/dss/csm-60/man/CS1408-01.htm#P29\\_4623](http://149.168.11.112/olm/manuals/dss/csm-60/man/CS1408-01.htm#P29_4623).

18. N.C. Division of Social Services, *Family Support and Child Welfare Manual*, Ch. VIII, Section 1408.III.C.8.a) (January 18, 2002), [http://149.168.11.112/olm/manuals/dss/csm-60/man/CS1408-02.htm#P292\\_55439](http://149.168.11.112/olm/manuals/dss/csm-60/man/CS1408-02.htm#P292_55439).

19. N.C. Division of Social Services, "Conflict of Interest: Reciprocal County Protocol," *Family Support and Child Welfare Manual*, Ch. VIII, Section 1410 (January 18, 2002), <http://149.168.11.112/olm/manuals/dss/csm-60/man/CS1410.htm#TopOfPage>. The court of appeals quoted from this manual section in *In re S.D.A.*, 170 N.C. App. 353, 359, 612 S.E.2d 362, 365 (2005) (holding that trial court lacked subject matter jurisdiction when social services in home county filed petition after social services in the county to which the case had been referred failed to substantiate abuse or neglect). *See also* North Carolina Administrative Code (hereinafter NCAC) Title 10A (Health and Human Services), Chapter 70 (Children's Services), Subchapter A (Protective Services), section .0103 (1994).

20. N.C. Division of Social Services, "Case Planning and Case Management," *Family Support and Child Welfare Manual*, Ch. VIII, Section 1412, X. (January 18, 2002), [http://149.168.11.112/olm/manuals/dss/csm-60/man/CS1412-09.htm#P258\\_37190](http://149.168.11.112/olm/manuals/dss/csm-60/man/CS1412-09.htm#P258_37190).

21. N.C. Division of Social Services, *Family Support and Child Welfare Manual*, Ch. VIII, Section 1418, IV.I. (January 18, 2002), [http://149.168.11.112/olm/manuals/dss/csm-60/man/CS1418-03.htm#P72\\_8568](http://149.168.11.112/olm/manuals/dss/csm-60/man/CS1418-03.htm#P72_8568).

social services if the court knows that one of the state's guiding principles is that a county department of social services should never place a child in another county's jurisdiction without first notifying and obtaining the approval of that county's social services department.

## What Is the Proper Venue for the Proceeding?

A petition alleging that a child is abused, neglected, or dependent must be filed in the district where the child resides or is present.<sup>22</sup> In the case of C.C., the petition was filed in Orange County, where the child was found, before there was time to investigate fully whether her legal residence was there

### *In re C.C.*

*Just after midnight the police notify the on-call social worker for the **Orange County** Department of Social Services (DSS) that they have picked up a young child who was found walking down a dark street, wearing only diapers and crying. The social worker takes the child into temporary custody and, having no information about the child's family, makes arrangements to place her in a foster home.*

*When a woman calls the police about her missing child, two officers go to the address she gives, where they find the child's mother, M.M., and other adults extremely intoxicated and belligerent. An officer conveys that information to the social worker, who has taken the child to the hospital. A medical examination reveals that the child has pneumonia and an ear infection. After the social worker contacts the agency attorney, Orange County DSS files a petition alleging that the child is neglected and obtains a nonsecure custody order authorizing the department to retain custody of the child. The petition, custody order, summons, and notice of hearing are served on M.M.*

*A hearing on the need for continued nonsecure custody is held four days later. Evidence at that hearing shows, among other things, that M.M. lived in **Cumberland County** until three weeks ago, when she left to get away from her abusive boyfriend. Since then she and the child, C.C., have been staying with her sister and brother-in-law in Orange County. M.M. has two older children who are with M.M.'s mother in **New Hanover County**.*

22. G.S. 7B-400.

or elsewhere. If the court determines at any time that a petition was filed in a district that is not the juvenile's legal residence, the court may transfer the case to the district of the juvenile's legal residence.<sup>23</sup> In C.C.'s case, if M.M. reports at the first nonsecure custody hearing that she has reconciled with her boyfriend and moved back to Cumberland County, the court might conclude that the child's legal residence is Cumberland County and that the case should be transferred to Cumberland County. The court may do that on its own motion or the motion of any party.

Whether venue is legally proper is determined as of the time the petition is filed. The Juvenile Code, in G.S. 7B-400, addresses changes in venue only in cases in which the action was filed somewhere other than the district of the juvenile's residence. It seems certain that the court also has discretion under G.S. 1-83, at any stage of the proceeding, to order a change of venue "[w]hen the convenience of witnesses and the ends of justice would be promoted by the change."<sup>24</sup>

If M.M.'s return to Cumberland County does not occur until ten months after the petition was filed, just before a scheduled permanency planning hearing, the appropriateness of transferring the case to Cumberland County is much less clear. If asked to change venue, the court should consider the permanency plan for the child, the child's current placement, visitation issues, and any other relevant factor. If the court decides that a change in venue is not appropriate, even though the plan continues to be reunification with M.M., the court should expect to learn from the Orange County Department of Social Services how services to M.M. will be provided, including what, if any, involvement social services or other agencies in Cumberland County will have.

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23. *Id.* See Appendix C for the record-keeping rule that addresses the physical transfer of the juvenile file.

24. G.S. 1-83. Although this section is not technically one of the Rules of Civil Procedure, its applicability in juvenile proceedings is strongly suggested by cases holding that the Rules of Civil Procedure apply in juvenile cases unless a rule conflicts with the Juvenile Code or impedes the purposes of the Juvenile Code. See, e.g., *In re L.O.K.*, \_\_\_ N.C. App. \_\_\_, 621 S.E.2d 236 (2005). On the other hand, it appears that no appellate decisions in juvenile cases have discussed or even referred to G.S. 1-83, and one case, decided under an earlier version of the Juvenile Code, can be read to suggest that transfer is available only pursuant to provisions in the Juvenile Code. See *In re Phillips*, 99 N.C. App. 159, 392 S.E.2d 407 (1990). (For reasons that are not clear, the court in *Phillips* characterized the issue as one of jurisdiction, not venue.)

Suppose that in C.C.'s case, with M.M. in Cumberland County and the case still in Orange County, the permanent plan remains reunification and several trial placements and extended home visits have gone well. The parties recommend to the court that physical custody of C.C. be returned to M.M., with follow-up to ensure that the boyfriend has not returned to the home and that M.M. is providing proper supervision and medical care. Should the court, at that point, transfer venue to Cumberland County? What if the permanent plan is custody with a relative, and the parties all recommend that C.C. be placed in the physical custody of C.C.'s grandmother in New Hanover County? Would transfer of venue to New Hanover County be proper? In each case, the decision of whether to order a change of venue rests in the court's discretion. Any order changing venue should include findings of fact to support the court's conclusion that the change of venue is appropriate under G.S. 7B-400 or G.S. 1-83. In addition, the court should never order a change in venue without first considering the relationship between that decision and the question of who has legal custody of the child.

### **Who Has (or Should Have) Legal Custody of the Child?**

If the court at any stage of the case orders a change of venue and does nothing more, only venue changes. The case is transferred to another court, but custody is not automatically transferred to a different social services department and no other social services department is substituted as the petitioner in the case. In C.C.'s case, an order simply transferring the case to Cumberland County leaves C.C. in the legal custody of the Orange County Department of Social Services. While it is legally and theoretically possible for custody of a child to be in the department of social services in one county and for venue of the case to be in another county, a case in which that is appropriate would be unusual.

If the court's intention is to change legal custody to the Cumberland County Department of Social Services, the order must directly order that and must include findings sufficient to support a conclusion that Cumberland County is the county of the child's legal residence.<sup>25</sup> The Juvenile Code gives the court

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25. See *In re Phillips*, 99 N.C. App. 159, 392 S.E.2d 407 (1990). In *Phillips* the district court transferred a juvenile case to the county in which the child had been placed in a treatment facility and transferred legal custody of the child

dispositional authority to “[p]lace the juvenile in the custody of the department of social services in the county of the juvenile’s residence.”<sup>26</sup> This is consistent with the statute described above, G.S. 153A-257, making the county of legal residence responsible for providing social services for the child. When the social services department in a county that is not the place of the child’s legal residence initiates a juvenile proceeding and obtains nonsecure custody of the child, basic notions of fairness and due process suggest that an order changing custody of the child to another social services department should be entered only after that agency is given notice and an opportunity to be heard or consents in writing to entry of the order.

The county with legal custody of the child has placement responsibility, a range of decision-making authority, and numerous other responsibilities emanating from the Juvenile Code, state social services policy, and state administrative rules.<sup>27</sup> It is not, however, necessarily the agency that provides day-to-day supervision of a child’s placement. A child may be placed somewhere other than his or her home county for a variety of reasons—a need for specialized foster care, placement with a relative, relocation of a foster family with whom the child has a stable relationship, or placement for adoption. Frequently a county other than the county of the child’s legal residence provides supervision and oversight while the home county retains primary responsibility for and legal custody of the child. In fact, when a child in the custody of a social services department in one county is placed in foster care in another county, a state administrative rule requires the two counties to have a written agreement specifying each county’s responsibilities in relation to the child.<sup>28</sup>

from the social services department in the original county to the social services department in the county to which the case was being transferred. On appeal by the second county, the court of appeals reversed, holding that placement of the child in the treatment facility did not change the child’s legal residence and that the trial court lacked statutory authority to place the child in the legal custody of the second county. Referring to findings in the trial court’s order, the court of appeals noted that the absence of appropriate medical and foster care resources in the first county did not give the court authority to transfer the case or transfer legal custody to another county.

26. G.S. 7B-903(a)(2)c.

27. See 10A NCAC, Ch. 70, <http://reports.oah.state.nc.us/ncac.asp>.

28. 10A NCAC 70E .0203 (July 18, 2002). See Appendix D.

## Who Are (or Should Be) the Parties to the Proceeding?

The parties to a juvenile abuse, neglect, or dependency proceeding are the social services department that files the petition; the respondent parent(s), guardian, custodian, or caretaker; the child,<sup>29</sup> who in most cases will participate through a court-appointed guardian ad litem;<sup>30</sup> and anyone else the court determines to be a necessary party.<sup>31</sup>

Suppose that in C.C.’s case the court determines that Cumberland County is the county of C.C.’s legal residence and enters an order transferring venue to Cumberland County and transferring custody to the Cumberland County Department of Social Services. Surely the court’s intention is that the Cumberland County Department of Social Services become a party to the case. While there is some basis for thinking that occurs automatically, without being specifically ordered,<sup>32</sup> the better practice by far is to make any change in parties clear in the order.

Procedurally the addition of the Cumberland County Department of Social Services as a party could occur in several ways. When the court places custody of the child in the custody of the Cumberland County Department of Social Services, if not before, the department clearly would have an interest sufficient to

29. G.S. 7B-601(a) states that the child is a party in all proceedings under Subchapter I of the Juvenile Code, G.S. Chapter 7B.

30. Appointment of a guardian ad litem for the child is not required if the petition alleges only that the child is dependent. G.S. 7B-601(a).

31. See G.S. 7B-402(c).

32. In *Sloan v. Sloan*, 164 N.C. App. 190, 595 S.E.2d 228 (2004), the court of appeals affirmed an order allowing grandparents to intervene in the parents’ custody action, when earlier orders in the case already had given the grandparents temporary custody and visitation. The trial court’s order had concluded that the interveners already were *de facto* parties, and the court of appeals said that they were just seeking to be “formally recognized” as parties. The court of appeals also said, however, that “after a trial court has awarded custody to a person who was not a party to the action or proceeding, this Court has held that ‘it would be proper and advisable for that person to be made a party to the action or proceeding to the end that such party would be subject to orders of the court. ...[T]his may be done even after judgment and by the appellate court when the case is appealed.’ *In re Branch*, 16 N.C. App. 413, 415, 192 S.E.2d 43, 45 (1972).” *Sloan v. Sloan*, 164 N.C. App. at 194, 595 S.E.2d at 231.

allow it to intervene as a matter of right pursuant to G.S. 1A-1, Rule 24.<sup>33</sup>

When the court places C.C. in the custody of the Cumberland County Department of Social Services, the department may be considered a necessary party and joined in the proceeding as a petitioner pursuant to G.S. 1A-1, Rule 19.<sup>34</sup> Logically the social services department in the county of a child’s legal residence might be considered a necessary party any time a social services department in another county files a petition, since it is the home county that may be given custody of the child and be responsible for providing services to the child. The Juvenile Code, however, does not indicate that a child’s home county should be named in the petition or receive notice when another county files a petition on the basis that the child “is present” in that county.<sup>35</sup>

Cumberland County might enter the action pursuant to G.S. 1A-1, Rule 25, which deals with substitution of parties. The relevant part of the rule reads as follows:

(d) Transfer of interest. – In case of any transfer of interest other than by death, the action shall be continued in the name of the original party; but, upon motion of any party, the court may allow the person to whom the transfer is made to be joined with the original party.

The rule could apply on the basis that Orange County’s interest in the action (custody of the child) has been transferred to Cumberland County. Neither this statute nor any other rule provides explicitly for removing the Orange County Department of Social Services from the action. Nevertheless, at some point the county that initiated an action but no longer has custody of the child and has no financial responsibility to the child might argue that it should be released from the action on the basis that it is no longer a necessary party, a proper party, or the real party in interest.<sup>36</sup> Despite the lack of clear statutory authority for releasing the

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33. G.S. 1A-1, Rule 24(c) requires that a written motion to intervene, stating the grounds for intervention and accompanied by a pleading setting forth the intervener’s claim or defense, be served on all parties.

34. The rule does not specify any particular procedure for joining a necessary party who was not joined in the initial pleadings.

35. G.S. 7B-400 provides that a petition alleging that a child is abused, neglected, or dependent may be filed in the district where the juvenile resides or is found.

36. G.S. 1A-1, Rule 17(a) requires that “[e]very claim . . . be prosecuted in the name of the real party in interest.”

petitioner from the action, it is likely that the court and the parties would assume that a substitution of parties had occurred unless a party objected to the release of the original petitioner.<sup>37</sup>

Regardless of the conceptual basis relied on to bring a county department of social services into a pending abuse, neglect, or dependency proceeding, that department should not be made a party without notice and a chance to be heard unless the agency has sought party status or consented to being made a party.

## Conclusion

There is no excuse for a social services department, an attorney, a judge, or a clerk to be made to feel blindsided by an order that changes venue, transfers custody, or substitutes parties in a juvenile case.

In an abuse, neglect, or dependency proceeding, a court order that affects a social services department in another county should reflect, not initiate, communications between the two departments. Although the court is not bound by agency recommendations or by state social services policies regarding interagency collaboration, the court should ensure that an agency has taken those policies into account in arriving at a recommendation that involves another county.

An order that will impact the court in another county or district should lay the proper groundwork for doing that. At the very least, an order changing venue should include clear findings and conclusions that indicate the legal basis and the court’s reasoning for the transfer. It should address the process of physically getting the case file, including the recordings of any hearings, to the clerk in the other county expeditiously. And it should describe precisely what has occurred in the case and what next steps are required—scheduling of a nonsecure custody or other hearing, appointment of a new guardian ad litem for the child, appointment of new attorneys for the parties, and so forth. In some cases, proper groundwork should include a telephone call to the clerk of superior court or the chief district court judge, or both, in the county or district to which the case is being sent.

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37. Former G.S. 1-74, repealed in 1967 by S.L. 1967-954, did provide for the actual substitution of parties upon a transfer of interest in the action. See Alan D. Woodlief, Jr., *Shuford North Carolina Civil Practice and Procedure*, § 25.5 (6<sup>th</sup> ed. 2003).

## Appendix A

**North Carolina General Statutes  
Chapter 153A. Counties  
Article 13. Health and Social Services  
Part 2. Social Service Provisions**

**§ 153A-257. Legal residence for social service purposes.**

(a) Legal residence in a county determines which county is responsible (i) for financial support of a needy person who meets the eligibility requirements for a public assistance or medical care program offered by the county or (ii) for other social services required by the person.

Legal residence in a county is determined as follows:

- (1) Except as modified below, a person has legal residence in the county in which he resides.
- (2) If a person is in a hospital, mental institution, nursing home, boarding home, confinement facility, or similar institution or facility, he does not, solely because of that fact, have legal residence in the county in which the institution or facility is located.
- (3) A minor has the legal residence of the parent or other relative with whom he resides. If the minor does not reside with a parent or relative and is not in a foster home, hospital, mental institution, nursing home, boarding home, educational institution, confinement facility, or similar institution or facility, he has the legal residence of the person with whom he resides. Any other minor has the legal residence of his mother, or if her residence is not known then the legal residence of his father; if his mother's or father's residence is not known, the minor is a legal resident of the county in which he is found.

(b) A legal residence continues until a new one is acquired, either within or outside this State. When a new legal residence is acquired, all former legal residences terminate.

(c) This section is intended to replace the law defining "legal settlement." Therefore any general law or local act that refers to "legal settlement" is deemed to refer to this section and the rules contained herein.

(d) If two or more county departments of social services disagree regarding the legal residence of a minor in a child abuse, neglect, or dependency case, any one of the county departments of social services may refer the issue to the Department of Health and Human Services, Division of Social Services, for resolution. The Director of the Division of Social Services or the Director's designee shall review the pertinent background facts of the case and shall determine which county department of social services shall be responsible for providing protective services and financial support for the minor in question.

## Appendix B

**North Carolina Department of Health and Human Services  
Division of Social Services  
Family Support and Child Welfare Manual  
Chapter V: Cross County Issues<sup>38</sup>**

### INTRODUCTION

Interagency collaboration among county departments of social services is vital if children are to be protected and families strengthened. Because family residences may change during the provision of child welfare services, county departments of social services need to rely on each other to ensure that appropriate services are provided in a timely and consistent manner. This section provides examples of some situations requiring interagency collaboration, however these examples are not exhaustive. Consequently, some general principles have been identified to enable county departments of social services to decide which agency has overall case management responsibility in specific situations.

### GUIDING PRINCIPLES

The following guiding principles should be considered whenever [there is] a difference of opinion between two or more county departments of social services as to which agency has overall case management responsibility. If, after consideration of these principles, two or more county departments of social services cannot, in good faith, resolve the difference of opinion, any one of the agencies may contact the Division of Social Services, Family Support and Child Welfare Section to make the determining decision.

- Child safety shall come first.
- All children at risk of abuse, neglect or dependency in NC are the responsibility of all county departments of social services. Child protection does not stop at county or state lines.
- County departments of social services must help each other to protect the state's children.
- Every effort must be made to honor a request by one county department of social services to assist in the protection, provision of services and placement of children. When a request is made, it is acceptable for the Reciprocal county to seek an explanation from the Home county in an effort to understand the rationale and reasonableness of the request.
- The county where the child is found will initiate the investigative assessment and complete the Safety Assessment.
- In those counties where tertiary care centers are located, the DSS where the center is located frequently is the first to receive the report. Counties containing tertiary care centers should provide information on an ongoing basis to these centers on making reports directly to the child's county of residence. While the responsibility to initiate an investigative assessment is placed with the county where the child is found, when the report is made to the county of residence, that county should initiate the investigative assessment whenever possible and when driving distance is reasonable. It is important for the county DSS where the tertiary care center is located and the county of residence to coordinate their responses in order to accomplish timely initiation and to ensure safety of the child.
- No child shall be placed by one county department of social services in another county's jurisdiction without prior notification and approval of that county department of social services.
- With few exceptions, when a foster care or adoptive placement prior to the issuance of the Final Decree of Adoption disrupts, the county that has legal custody of the child is responsible for the child's care and maintains overall case management responsibility.

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38. In addition to the sections set out here, Chapter V includes sections on "Legal Basis" and "Examples of Interagency Collaboration." The chapter can be found at <http://149.168.11.112/olm/manuals/dss/csm-45/man/cci.htm>.

- With few exceptions, if a Final Decree of Adoption has been issued and the adoptive placement dissolves, the county in which the parents reside at the time of the dissolution is responsible for the child and maintains overall case management responsibility.
- When the home county notifies the reciprocal county that a child's residence has changed to the reciprocal county, the notification shall be made to the CPS Intake unit during normal business hours. Notification shall be made to the after-hours social worker after normal business hours.
- A person in a residential substance abuse treatment center is not considered a resident of the county where the treatment center is located unless he/she is already a resident of that county prior to admission.
- Homeless shelters and domestic violence shelters are not considered residences unless one of the following situations applies:
  - the person says they intend to remain in the county where the shelter is located as a resident, or
  - the person has a job in the county where the shelter is located, or
  - the person has a child enrolled in a school in the county where the shelter is located.
- In determining whether a home county social worker will come into another county to complete a task, consideration shall be given to the driving distance of the home county. It is up to the home county to determine whether a situation falls within the agency's "driving distance". If the home county decides that the situation is greater than the agency's driving distance, the reciprocal county must perform the tasks requested by the home county. (Refer to Administrative Letter #2-03, dated March 3, 2003, entitled "Temporary Placements with Safety Resources" for further discussion of this issue.)

#### DEFINITIONS

- **Home county:** county receiving report; or county where victim child resides; county where the child is found, unless noted otherwise. The home county has overall case management responsibility unless noted otherwise.
- **Reciprocal county:** county requested to assist in performing those activities that are necessary for the protection, provision of services, or placement of a child, unless noted otherwise.
- **Overall Case Management Responsibility:** for child protective services, this means the county where the child resides, according to NCGS 153A-257. For foster care services, this means the county with legal custody or placement responsibility of the child. For adoption services, this means the county where the child resides either at the time that a Final Decree of Adoption is issued or, if the Decree has been issued, the county where the child resides.

## Appendix C

### North Carolina Administrative Office of the Courts Records of the Clerks of Superior Court Rules of Recordkeeping Chapter XII. Juvenile

#### 12.7 CHANGE OF VENUE, OR TRANSFER OF CASE TO ANOTHER COUNTY:

The clerk shall ask the judge for instructions regarding whether the entire case or portions thereof are being transferred and what specifically the clerk should send to the other county. The clerk should transfer only those documents ordered transferred by the judge. Upon the filing of an order of the court transferring a case from one county (venue) to another the clerk in the original county shall prepare a certified copy of the order of transfer and forward it along with all original papers in the file related to the juvenile proceedings specified in the order, to the clerk in the receiving county by certified mail or other secure method. The clerk in the original county shall retain the original order of transfer along with photocopies of all the papers transferred.

#### COMMENT:

Transfers of cases should be done as rapidly as possible.

*Approved August 2006*

## Appendix D

### 10A NCAC 70E .0203. DEPARTMENT OF SOCIAL SERVICES INTERCOUNTY AGREEMENT

(a) When children are placed in a family foster home in a county (the supervising county) other than the county of their home (the responsible county), the two county departments of social services shall agree in writing that the supervising county will:

- (1) accept full responsibility for supervising the child;
- (2) not initiate placement planning for the child without prior agreement from the responsible county, except where emergency replacement is necessary;
- (3) immediately inform the responsible county when emergency replacement precludes prior approval;
- (4) engage in no treatment or planning relationship with the child's birth parents or relatives, except upon request of the responsible county;
- (5) keep the case confidential; and
- (6) submit to the responsible county, at intervals specified in the agreement, a written evaluation of the child's adjustment.

(b) In the agreement the responsible county shall agree to:

- (1) make payments for room and board, difficulty of care or respite care, if applicable, to the supervising county, in amounts and at times specified in the agreement;
- (2) take responsibility for placement of the child;
- (3) make restitution, in accordance with a plan specified in the agreement, for damage that the child causes to the foster parents' property;
- (4) inform the supervising county concerning future planning for the child; and
- (5) write the room and board check in a manner specified in the agreement, in order to protect confidentiality.

(c) The agreement shall specify the manner in which payment for clothes, medical costs, and allowances will be made.

(d) The agreement shall specify the dates between which the agreement will be effective. The agreement shall be signed by the directors of the two county departments. The responsible county shall have one signed copy, and the supervising county shall have the other copy. The responsible county shall provide the children's services program representative with a signed copy.

*History Note: Authority G.S. 131D, Art. 1A; 143B-153;  
Eff. February 1, 1976;  
Readopted Eff. October 31, 1977;  
Amended Eff. July 18, 2002.*

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