Chapter 10
Post-TPR and Post-Relinquishment Reviews, Adoptions, and Reinstatement of Parental Rights

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10.1 Post-Termination of Parental Rights Review Hearings

A. Circumstances and Purpose

1. Circumstances. Review hearings that take place after a termination of parental rights (TPR) are required when the child is in the custody of a department of social services (DSS) or another licensed child-placing agency and

- both parents' parental rights have been terminated pursuant to a petition or motion by one of the following persons or agencies with proper standing under G.S. 7B-1103(a)(2) through (6):
    - a court–appointed guardian of the person of the child,
    - a DSS or licensed child-placing agency with custody of the child pursuant to a court order or resulting from an executed relinquishment,
    - a person with whom the child has lived continuously for at least eighteen months immediately preceding the filing of the action, or
    - a guardian ad litem appointed to represent the child pursuant to G.S. 7B-601 who has not been relieved of that responsibility; or

- one parent's rights have been terminated by court order and the other parent's rights have been relinquished under G.S. Chapter 48.

G.S. 7B-908(b). *See* G.S. 48-3-705(b)(1) (legal and physical custody vests with the agency to whom the child is relinquished); 48-1-101(4) (definition of "agency").

Note, this hearing is commonly referred to in practice as a "post-TPR review hearing" and will be referred to as such in this Manual. For purposes of this Manual, a "department of social services" or "DSS" refers to a department as defined by G.S. 7B-101(8a) regardless of how it is titled or structured.

Additional Note, throughout this Chapter the word "agency" is sometimes used as shorthand for "DSS or licensed child-placing agency." "Agency" is defined in G.S. 48-1-101(4) and refers to a public or private entity that is licensed or otherwise authorized by law to place children for adoption and specifically includes a county department of social services. Sometimes the statutes, especially G.S. 7B-1112.1, refer only to DSS when it is clear from the context that a provision applies equally to a licensed child-placing agency. In those instances, this Chapter uses "agency."

2. Purpose. The purpose of post-TPR review hearings is to ensure that when a child is in the custody of a DSS or licensed child-placing agency every reasonable effort is being made to provide for the permanent plan for the child that is consistent with the child's best interests. G.S. 7B-908(a). When there is an underlying abuse, neglect, or dependency action involving the same juvenile, the post-TPR review hearings replace permanency planning hearings. G.S. 7B-906.1(o). See Chapter 7.2.A.3 (discussing timing of permanency planning hearing), 7.3 (discussing the child's best interests), 7.8.B–C (discussing permanency planning requirements), 7.9 (explaining reasonable efforts) and 7.10 (discussing permanent plans).

Practice Note: G.S. 7B-908 does not limit post-TPR review hearings to those situations where a child is placed in the custody of an agency by a court order entered in an abuse, neglect, or dependency proceeding. A child may be placed in the custody of a licensed child-placing agency, including DSS, by (1) operation of law upon an executed relinquishment or (2) an order entered in a termination of parental rights action. *See* G.S. 48-3-705(b); 7B-1112.

B. Timing of Hearing

The first post-TPR review hearing must be conducted within six months of the date of the hearing at which parental rights were terminated pursuant to the circumstances stated in section 10.1.A.1, above. Thereafter, hearings must be conducted at least every six months until the child is adopted. G.S. 7B-908(b). Post-TPR review hearings replace permanency planning hearings when the same juvenile who is the subject of the TPR action is the subject of an underlying abuse, neglect, or dependency action. G.S. 7B-906.1(o). Once there is a decree of adoption, any calendared review hearings must be cancelled, and the clerk must provide notice of the cancellation to all persons previously notified of the hearing. G.S. 7B-908(e). Although notice of a final decree of adoption terminates the court's jurisdiction in the

post-TPR review hearing and if applicable abuse, neglect, or dependency proceeding, the adoption decree must not be filed in the juvenile action. G.S. 7B-908(e); *see* G.S. 48-2-102(b) (terminating district court jurisdiction in juvenile proceeding).

A post-TPR review hearing may also be combined with an interim hearing on a motion to reinstate parental rights pursuant to G.S. 7B-1114 (discussed in section 10.4, below). G.S. 7B-1114(h).

C. Notice and Participation

1. Timing and procedure for notice. Notice must be given by the clerk between fifteen and thirty days prior to each post-TPR review hearing. DSS must either provide the clerk with the name and address of the person providing care for the child or file written documentation with the clerk that DSS has sent notice of the hearing to the child's current care provider. G.S. 7B-908(b)(1).

2. Persons entitled to notice. Notice must be given to

- the child, if the child is 12 years of age or older;
- the child's legal custodian or guardian;
- the person who is caring for the child;
- the child's guardian ad litem, if there is one; and
- any other person or agency the court specifies.

G.S. 7B-908(b)(1).

Based on due process grounds, while not required by G.S. 7B-908(b)(1), notice should be given to a parent whose rights have been terminated if there is a pending appeal of the order terminating the parent's rights and a court has stayed the TPR order while the appeal is pending. In that case, the parent remains a party. G.S. 7B-908(b)(1).

AOC Form:
AOC-J-141, Notice of Hearing in Juvenile Proceeding (Abuse/Neglect/Dependency).

3. Right to participate and party status. Unless otherwise directed by the court, only the following persons may participate in the post-TPR review hearing:

- the child (regardless of age);
- the child's legal custodian or guardian;
- the person who is caring for the child; and
- the child's guardian ad litem, if there is one.

G.S. 7B-908(b)(1); *see* G.S. 7B-908(a).

A person is not made a party to the proceeding simply because they are entitled to notice and an opportunity to be heard at the post-TPR review hearing. G.S. 7B-908(b)(1).

A parent who has executed a relinquishment for adoption that is no longer revocable and a parent whose rights have been terminated are not parties unless there is a pending appeal of the order terminating the parent's rights and a court has stayed the TPR order pending the appeal. G.S. 7B-908(b)(1). When these criteria are met such that the parent is a party, due process requires that the parent have a right to notice and the opportunity to meaningfully participate in the post-TPR review hearing.

D. Appointment of GAL

If a guardian ad litem (GAL) was appointed previously to represent the child in the TPR proceeding, the GAL will continue to represent the child for purposes of post-TPR review hearings. If a GAL was not appointed previously, the court has the discretion to appoint a GAL at the first post-TPR review hearing and may continue the case to give the GAL time to prepare. G.S. 7B-908(b)(2).

E. Evidence and Considerations for Hearings

1. Evidence. The court may consider any evidence, including hearsay, that the court finds to be relevant, reliable, and necessary to determine the needs of the child and the most appropriate disposition. G.S. 7B-908(a).

2. Sources of information. The court may consider information from DSS, the licensed child-placing agency, the child's guardian ad litem, the child, the person providing the child's care, and any other person or agency the court determines is likely to aid in the review. G.S. 7B-908(a).

3. Required considerations and findings. The court must consider at least the following four factors and make written findings regarding those that are relevant.

(a) Adequacy of the plan. The court must consider the adequacy of the permanency plans developed by DSS or a licensed child-placing agency for a permanent placement in the child's best interests and the efforts made by the agency to implement those plans. G.S. 7B-908(c)(1).

(b) Adoption listing. The court must consider whether the child has been listed for adoptive placement with the NC Kids Adoption and Foster Care Network or any other child-specific recruitment program, or whether there is an exemption to listing that the court finds is in the child's best interest. G.S. 7B-908(c)(2).

(c) Previous efforts. The court must consider any previous efforts made by DSS or the child-placing agency to find a permanent placement for the child. G.S. 7B-908(c)(3).

(d) Best interest. The court must consider whether the current placement is in the child's best interest. G.S. 7B-908(c)(4).

The North Carolina Supreme Court has held that findings are relevant when "there is conflicting evidence concerning the factor, such that it is placed in issue by virtue of the evidence presented before the district court." *In re A.R.A.*, 373 N.C. 190, 199 (2019) (citing *In re H.D*, 239 N.C. App. 318, 327 (2015)); *In re A.P.W.*, 378 N.C. 405, 411 n. 4 (2021); *In re E.S.*, 378 N.C. 8, 12 (2021) (addressing relevant findings for dispositional stage of a TPR; quoting *In re C.J.C.*, 374 N.C. 42, 48 (2020) (cleaned up and quoting *In re A.R.A.*, 373 N.C. at 199) (agreeing with court of appeals and quoting *In re H.D*, 239 N.C. App. at 327). The court of appeals has also stated that a relevant factor is one that has "an impact on the trial court's decision[.]" *In re S.Z.H.*, 247 N.C. App. 254, 265 (2016) (citations omitted) (addressing dispositional stage of TPR).

Practice Note: The court is not limited to these considerations, but these factors are the minimum the court must consider.

F. The Order

1. Contents. In its order, the court, after making findings of fact that it is in the child's best interests, must either

- affirm DSS's or the child-placing agency's plan or
- order a different plan specified in G.S. 7B-906.2(a).

G.S. 7B-908(d).

The court may

- order concurrent permanent plans that is in the child's best interests;
- specify efforts necessary to accomplish a permanent plan that is in the child's best interests; and
- if a child is not placed with prospective adoptive parents as selected in G.S 7B-1112.1, order a placement that the court finds to be in the child's best interest after considering the agency's recommendations.

G.S. 7B-908(d), (d1). See section 10.3.B, below, regarding the selection of prospective adoptive parents. See Chapters 7.10 (discussing concurrent permanency planning) and 9.15.C (discussing the court's authority related to child placement upon entering TPR order).

2. Timing. The order must be reduced to writing, signed, and entered (filed with the clerk) within thirty days of the completion of the hearing. G.S. 7B-908(e1); *see* N.C. R. CIV. P. 58 (entry of order). If the order is not entered within thirty days, the juvenile clerk must schedule a hearing at the next juvenile session of court for a determination and explanation of the reason for the delay and for any needed clarification as to the contents of the order. The order must then be entered within ten days of this follow-up hearing. G.S. 7B-908(e1). The appropriate remedy for a trial court's failure to enter a timely order is a petition to the court of appeals for a writ of mandamus to require the trial court to proceed to judgment. *In re T.H.T.*, 362 N.C. 446 (2008). See Chapters 4.9.C (discussing what constitutes entry of the

order), 4.9.D (discussing the effect of and the remedy for delay), and 12.10.D (discussing writ of mandamus).

10.2 Post-Relinquishment Review Hearings

A. Circumstances Requiring Review

The Juvenile Code (G.S. Chapter 7B) requires the court to conduct periodic reviews of cases in which a child is in the custody of a DSS or licensed child-placing agency after a relinquishment for adoption has been made to that DSS or a child-placing agency by a

- parent,
- G.S. Chapter 35A guardian for the child (or other state's equivalent), or
- guardian ad litem appointed for an incompetent parent pursuant to G.S. 48-3-602 (discussed in section 10.2.B.1(d), below).

G.S. 7B-909(a). *See* G.S. 48-1-101(8) (definition of "guardian").

Practice Note: If one parent has executed a relinquishment and the other parent's rights were terminated by court order, the court must hold a post-TPR review, not a post-relinquishment review, discussed in section 10.1, above. *See* G.S. 7B-908(b).

B. Relinquishment for Adoption

A relinquishment of a child for adoption is governed by G.S. 48-3-701 through -707. This section is meant to provide general information on relinquishment and does not comprehensively address requirements and procedures for relinquishment.

Resource: For a more thorough discussion of relinquishment for adoption, see Sara DePasquale, *A Guide to Relinquishments and Post-Relinquishment Review Hearings,* UNC SCHOOL OF GOV'T: ON THE CIVIL SIDE BLOG (July 22, 2022).

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1. Who may relinquish. A parent may relinquish all parental rights and a guardian appointed pursuant to G.S. Chapter 35A may relinquish all guardianship powers, including the right to consent to adoption, to a DSS or licensed child-placing agency. G.S. 48-3-701(a); 48-1-101(4) (definition of "agency"); 48-1-101(8) (definition of "guardian").

Practice Note: When a relinquishment is executed by one parent only, the other parent's rights must be taken into account. Although the adoption statutes do not address the status of the non-relinquishing parent, the North Carolina Supreme Court recognized the non-relinquishing parent's constitutional rights to care, custody, and control of that parent's child in *In re E.B.*, 375 N.C. 310 (2020). The supreme court in reversing a TPR, discussed DSS's and the district court's interference with the father's constitutional rights to care, custody, and control of his child after the mother executed a relinquishment to DSS.

Resource: For a discussion of the non-relinquishing parent's rights, see Sara DePasquale, *The Rights of the Parent Who Does Not Execute a Relinquishment*, UNC SCHOOL OF GOV'T: ON THE CIVIL SIDE BLOG (Dec. 8, 2022).

(a) Married parents living together. If the parents are married to each other and living together, the parents must act jointly in relinquishing their child to an agency. G.S. 48-3-701(a).

(b) Mother. The mother of a child may execute a relinquishment at any time after a child is born but not sooner. G.S. 48-3-701(b). *But see In re E.B.*, 375 N.C. 310 (reversing TPR; discussing interference with father's constitutional rights to care, custody, and control of his child by DSS and the district court after mother executed a relinquishment to DSS; father's access to his child was conditioned on permanency planning orders the court had no jurisdiction to enter; DSS never filed petition to invoke the jurisdiction of the district court).

(c) Father or possible biological father. A relinquishment may be executed by a man whose consent is required under G.S. 48-3-601 either before or after the child is born. G.S. 48-3-701(b). For a discussion of cases related to whether a man's consent for adoption is required based on his knowledge (or lack thereof) of the child's existence, see Chapter 9.11.E.4.

(d) Incompetent parent. If a parent has been adjudicated incompetent, the court must appoint a guardian ad litem (GAL) for the parent and, unless the child already has a guardian, a GAL for the child to investigate whether the adoption should proceed. The investigation must include an evaluation of the parent's condition and any reasonable likelihood that the parent will be restored to competency, the relationship between the child and the parent, alternatives to adoption, and any other relevant fact or circumstance. If the court determines after a hearing that it will be in the child's best interest for the adoption to proceed, the court is required to order the parent's GAL to execute a consent or relinquishment on behalf of the incompetent parent. G.S. 48-3-602.

Practice Note: The GAL appointed pursuant to G.S. 48-3-602 is appointed by the clerk of superior court who has jurisdiction over the adoption proceeding. *See* G.S. 48-2-100(a); 1-7 (when "court" means clerk). The GAL for purposes of executing a relinquishment on behalf of a parent who has been adjudicated incompetent is not the Rule 17 GAL appointed by the district court in the juvenile proceeding (if a GAL has been appointed for the respondent parent) unless the clerk of court also appoints that person as the GAL for the incompetent parent pursuant to G.S. 48-3-602.

(e) Minor parent. A parent who is younger than 18 years old has the legal capacity to execute a relinquishment of (as well as a consent to) their child for adoption and is fully bound by such relinquishment. G.S. 48-3-605(b); 48-3-702(b). There is an additional procedure that applies for a minor parent executing a relinquishment relating to the minor parent's identity. The minor parent's identity may be identified to the person authorized to administer oaths or take acknowledgements by (1) methods of identification permitted

by G.S. Chapter 10B or other applicable law or (2) an affidavit of a teacher, licensed professional social worker, health service provider, adult relative (of the minor), or if none of these persons are available, an adult the minor has known for more than two years. G.S. 48-3-605(h); 48-3-702(b), as amended by S.L. 2023-124, sec. 3.1, effective January 1, 2024.

(f) Guardian. A child's guardian may execute a relinquishment of guardianship powers, including the right to consent to adoption, at any time. G.S. 48-3-701(a), (c). In the adoption context, "guardian" refers only to an individual

- appointed in a proceeding under G.S. Chapter 35A to exercise the powers conferred by G.S. 35A-1241 (including a standby guardian whose authority has commenced) or
- appointed in another jurisdiction, according to the law of that jurisdiction, who has the power to consent to adoption under the law of that jurisdiction.

G.S. 48-1-101(8).

Practice Note: Under the definition of guardian for adoption purposes, a guardian appointed by the district court in an abuse, neglect, or dependency proceeding under G.S. 7B-600 cannot execute a relinquishment for the child's adoption. *See* G.S. 7B-600(a) (listing what the guardian can consent to; adoption is not included). However, as a person who has custody of the child via the G.S. 7B-600 guardianship, if the adoption petitioner has been informed of the guardianship, notice of the adoption petition must be served on the G.S. 7B-600 guardian. *See* G.S. 48-2-401(c)(4).

2. Types of relinquishment. A child may be relinquished only to a county DSS or a licensed child-placing agency, not to an individual. *See* G.S. 48-3-201(b), (c). The relinquishment is effective only when accepted by the agency. *See* G.S. 48-3-702(c). A relinquishment may be "general," allowing the agency full discretion to choose the adoptive parent, or "designated," meaning that the parent consents only to the child's adoption by the person(s) the parent designates in the relinquishment form. G.S. 48-3-703(a)(5); 48-3-704. In a designated relinquishment, the parent indicates whether they want to be notified if the adoption by the designated person(s) cannot be completed. After a parent is notified that the adoption cannot be completed, the parent has ten days from the date they receive that notice to revoke the relinquishment. If the parent elects not to be notified or does not timely revoke the relinquishment after being notified, the designated relinquishment becomes a general relinquishment, and the agency may place the child with a prospective adoptive parent it selects. G.S. 48-3-704.

NCDHHS DSS Form:
DSS-1804, Relinquishment of Minor for Adoption by Parent or Guardian or Guardian ad Litem of the Mother/Father. Note that the parent's guardian ad litem (GAL) referenced on the form applies to a GAL appointed to an incompetent parent under G.S. 48-3-602 and is not the Rule 17 GAL appointed in an abuse, neglect, dependency, or TPR proceeding, if one is appointed.

3. Right to counsel. Parents must be advised of their rights to seek legal advice from an attorney before they execute a relinquishment (or consent), and notice that the parent has been informed of this right must be included in the relinquishment (or consent). G.S. 48-3-702(b1)(5); 48-3-703(a)(12)c. (relinquishment); 48-3-605(c)(5); 48-3-606(14)c. (consent). Although a parent has the right to be advised by an attorney, a parent who is indigent does not have a right to court-appointed counsel for purposes of the relinquishment process, with one exception.

The Juvenile Code explicitly addresses a parent's relinquishment to DSS when that parent is a respondent in an abuse, neglect, dependency, or termination of parental rights action in G.S. 7B-909.1. When that parent has either retained an attorney or when their provisional attorney (appointed by the district court pursuant to G.S. 7B-602(a) or 7B-1101.1(a)) has been confirmed by the court, before the relinquishment is executed, DSS must

- give notice by any reasonable and timely means to the parent's attorney or if the attorney is unavailable, to the attorney's law partner or employee, that it has made arrangements for the parent to execute a relinquishment at a specific date, time, and location; and
- advise the parent of their right to seek the advice of their attorney before executing the relinquishment and to have their attorney present when executing the relinquishment.

G.S. 7B-909.1.

This statute codifies the holding of a 1994 published opinion by the court of appeals – *In re Maynard*, 116 N.C. App. 616 (1994). In that case, the court of appeals affirmed the decision made by the district court hearing a neglect proceeding to set aside a relinquishment that was executed by the respondent mother. The respondent mother was represented by court-appointed counsel in a neglect action. During the neglect proceeding, DSS asked respondent mother to sign a relinquishment for adoption but, after conferring with her attorney, she declined and notified the court of her interest in having her children returned to her. Later, during supervised visitation but without her attorney being present or informed of the discussions, DSS asked respondent mother to sign a relinquishment, which she did. Respondent mother's attorney did not become aware of the relinquishment until after the revocation period expired, and as a result, filed a motion to set aside the relinquishment. Because an adoption petition had not been filed, the district court hearing the neglect proceeding had jurisdiction to hear the motion. Because the signing of the relinquishment occurred following and as a consequence of a neglect proceeding in which the respondent was entitled to and had not waived her right to counsel, the court of appeals held that the signing of the relinquishment was directly related to the neglect proceeding and based on the findings of fact by the trial court, the respondent mother was entitled to counsel when she signed the relinquishment forms.

Practice Note*:* In addition to notifying the parent of their right to consult with and have their attorney present, in most instances DSS should involve its own attorney before discussing a relinquishment with the parent.

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4. Revocation. A relinquishment may be revoked within seven days, except that a second identical relinquishment is irrevocable. A revocation must be in writing and either delivered to the agency that accepted the relinquishment within seven days or sent to the agency by registered mail or overnight delivery service (as long as the revocation is placed in the mail or with the overnight delivery service by the seventh day). *See* G.S. 48-3-706(a), (d). *See In re Adoption of Baby Boy*, 233 N.C. App. 493, 505 (2014) (the birth mother attempted a revocation on the eighth day that was treated by the agency as ineffective; in addressing an appeal on a different issue regarding the relinquishment, the court of appeals stated "there was a valid relinquishment in this matter, which the birth mother failed to timely revoke").

When interpreting the statutes addressing consent and the purpose of the adoption chapter, as a matter of first impression, the court of appeals held that the seven-day revocation period does not begin to run until an original or copy of the signed consent is actually delivered to the parent. *In re Ivey*, 257 N.C. App. 622 (2018) (affirming trial court's order dismissing adoption based on findings that mother timely revoked her consent when she did so within seven days of her receipt of the consent rather than within seven days of when she signed the consent, which was weeks earlier). The statutory language relied upon by the court of appeals included the requirement that the parent executing the consent has "been given an original or copy of his or her fully executed" consent. G.S. 48-3-605(c)(3). This same language is included in the companion procedures for relinquishment statute – G.S. 48-3-702(b1)(3).

NCDHHS DSS Form:
DSS-1805, Revocation of Relinquishment for Adoption by Parent, Guardian, or Guardian ad Litem of the Mother/Father. Note that this form has a page 2 that contains an acknowledgement under oath; however, the statute does not require the revocation to be made under oath.

5. Rescission. A relinquishment may be rescinded at any time by mutual agreement of the parent and the agency to which the child was relinquished, but only if the child has not been placed with a prospective adoptive parent. G.S. 48-3-707(a)(2). After a child has been placed with a prospective adoptive parent but before the entry of the adoption decree, a relinquishment may be rescinded if agreed upon by the agency, the person relinquishing the child, and the prospective adoptive parent. G.S. 48-3-707(a)(3).

6. Voiding the relinquishment. Before a final adoption decree is entered, a relinquishment becomes void if the parent establishes by clear and convincing evidence that the relinquishment was obtained by fraud or duress. G.S. 48-3-707(a)(1). A relinquishment also can be voided for fraud or duress after a final order of adoption is entered, but only if a parent moves to set aside the adoption within six months of the time the fraud or duress reasonably should have been discovered. G.S. 48-2-607(c).

If the court finds, on motion of DSS or a child-placing agency, that a consent or relinquishment that is necessary for the child's adoption cannot be obtained from a parent and that no further steps are being taken to terminate that parent's rights, the court may void the relinquishment by the other parent upon finding that it is in the child's best interest. Before voiding the relinquishment, the court must require the agency to give at least fifteen days'

notice to the relinquishing parent whose rights will be restored. That parent then has a right to be heard on whether the relinquishment should be voided and their plan to provide for the child if the relinquishment is voided. If the relinquishing parent cannot be located with due diligence, notice of the hearing must be sent by U.S. mail, return receipt requested, to the address of the parent given in the relinquishment. G.S. 7B-909(b1); *see* G.S. 48-3-707(a)(4).

7. Consequences of relinquishment. A relinquishment vests legal and physical custody of the child in the agency and empowers the agency to place the child for adoption consistent with the manner specified in the relinquishment (designated or general, discussed in subsection 2, above). G.S. 48-3-705(b). *See In re A.L.*, 245 N.C. App. 55 (2016) (holding the relinquishment executed by the mother gave DSS custody); *cf. In re E.B.*, 375 N.C. 310, 315 (2020) (after mother executed relinquishment, father "who seize[d] the opportunity to become involved as a parent in his child's life . . . enjoyed a constitutionally protected right to the 'custody, care, and nurture' of his child"; discussing interference with father's constitutional rights to care, custody, and control of his child by DSS and the district court when father's access to his child was conditioned on permanency planning orders the court had no jurisdiction to enter; DSS never filed petition to invoke the jurisdiction of the district court).

Custody of the child vests in the agency by operation of law such that there is no court order. However, after the expiration of the revocation period, the agency to whom the child was relinquished may apply ex parte to the clerk of superior court for an order that finds the child has been relinquished to the agency and confirms that the agency has legal custody of the child for purposes of obtaining a certified copy of the child's birth certificate, Social Security number, or federal or state benefits for the child. G.S. 48-3-705(e).

A parent who relinquishes a child gives up their custodial rights, the right to consent to the child's adoption, and unless the parent has filed an action to set aside the relinquishment for fraud or duress, the right to notice of the adoption petition being filed. G.S. 48-3-705(c); 48-2-401(b)(3). A parent who has relinquished the child for adoption is not required to be a party in the abuse, neglect, or dependency action; however, the court may order that the parent be a party. G.S. 7B-401.1(b)(2). A relinquishment does not terminate parental rights and does not affect the child's right to inherit or the parent's support obligation, which continues until the final decree of adoption. *See* G.S. 48-3-705(d); *Stanly Cnty. Dept. of Social Services ex rel. Dennis v. Reeder*, 127 N.C. App. 723 (1997). A relinquishment does give the agency to whom the child was relinquished standing to seek a TPR. G.S. 7B-1103(a)(4). If a TPR is not sought and granted, all parental rights and duties terminate when the final decree of adoption is entered. G.S. 48-3-705(d); 48-1-106(c).

8. Compliance with ICWA. For relinquishments involving an "Indian child," the requirements of the Indian Child Welfare Act (ICWA) must be complied with, and those requirements differ from the procedures set forth in G.S. Chapter 48. G.S. 48-3-605(f); 48-3-702(b); *see* 25 U.S.C. 1901 *et seq.*; 25 U.S.C. 1903(4) (definition of "Indian child"). For example, a relinquishment cannot be made until ten days after the child's birth and any relinquishment executed before then is invalid. 25 C.F.R. 23.125(e). A relinquishment must be executed and recorded before a court of competent jurisdiction. 25 U.S.C. 1913(a); 25 C.F.R. 23.125; *see* G.S. 48-3-605(g); 48-3-702(b). A relinquishment may also be withdrawn at any time before

the adoption decree is final. 25 U.S.C. 1913(c); 25 C.F.R. 23.125(b)(2)(iii) and 23.128(b). For a discussion of ICWA, see Chapter 13.2 (for relinquishments specifically, see section K).

C. Timing and Petition or Motion for Review

When a child has not been adopted within six months following a relinquishment, the DSS or child-placing agency with custody of the child must promptly file a petition for post-relinquishment review or, if the court is exercising jurisdiction over the child, a motion for post-relinquishment review. G.S. 7B-909(a), (c); *see In re E.B.*, 375 N.C. 310, 316-17 (2020) (district court lacked subject matter jurisdiction to enter permanency planning orders when after accepting a relinquishment from mother, DSS did not file a petition alleging the juvenile's abuse, neglect, or dependency (opinion does not discuss ability to file a G.S. 7B-909 petition)). The post-relinquishment review hearing must be conducted within thirty days following the filing of the petition or motion unless the court directs otherwise. After the first review, the court must continue to conduct reviews every six months until a final decree of adoption is entered or the relinquishment is voided under G.S. 7B-909(b1). G.S. 7B-909(a), (c). Although notice of a final decree of adoption terminates the court's jurisdiction in the post-relinquishment and if applicable abuse, neglect, or dependency proceeding, the adoption decree must not be filed in the juvenile action. G.S. 7B-908(e); *see* G.S. 48-2-102(b) (terminating district court jurisdiction in juvenile proceeding).

AOC Form:
AOC-J-140, Motion for Review (Abuse/Neglect/Dependency).

If the form is used as a petition for review, DSS or the child-placing agency should change the title from "Motion" to "Petition."

D. Parent's Party Status

A parent who relinquished the child for adoption is not a party to the post-relinquishment review hearing. A parent whose rights have been terminated is considered a party only if an appeal of the order terminating that parent's rights is pending and a court has stayed the order pending the appeal. G.S. 7B-909(c).

E. Procedure for Hearing

The procedure for post-relinquishment review hearings is the same as for post-TPR review hearings, explained in section 10.1, above. If the post-relinquishment review hearing is a new action that is initiated by a petition, the Indian Child Welfare Act (ICWA) applies. The court must make the inquiry as to whether the participants know or have reason to know the child is an "Indian child." 25 C.F.R. 23.103; *see* 25 C.F.R. 23.107; 25 U.S.C. 1903(4) (definition of "Indian child"). See Chapter 13.2 (discussing ICWA).

10.3 Selected Adoption Provisions

A. Introduction

Adoption procedures and requirements are primarily contained in Chapter 48 of the General Statutes. This Manual does not attempt to explain adoption law but does seek to explain the relationship between juvenile court proceedings and adoption proceedings.

As discussed in Chapter 7.10 of this Manual, adoption is one of six possible permanent plans for a child who is the subject of an abuse, neglect, or dependency proceeding. *See* G.S. 7B-906.2(a). If the court determines that adoption is a permanent plan, DSS has responsibilities related to placing the child for adoption as well as ensuring that necessary relinquishments, consents, and/or termination of parental rights (TPR) orders are obtained. *See, e.g.*, G.S. 48-3-201(d); 7B-1112.1. The responsibilities of the child's guardian ad litem (GAL) to protect and promote the child's best interests remain intact during the adoption process and include participating in the adoption selection process and having standing to initiate a TPR proceeding. G.S. 7B-1112.1; 7B-1103(a)(6). Unless waived by the court presiding over the adoption proceeding, a child who is 12 or older must consent to their own adoption. G.S. 48-3-601(1); 48-3-603(b)(2). A parent who has executed a valid relinquishment or whose rights have been terminated has no role in the adoption process. *See* G.S. 7B-1112; 48-3-703(a)(10); 48-3-705(b), (c). The role of the district court in an adoption proceeding is limited.

The Indian Child Welfare Act (ICWA) applies to adoption proceedings. G.S. 48-1-108. ICWA sets forth specific procedures that must be followed, including the court inquiring into whether the participants know or have reason to know the child is an "Indian child" and additional requirements for consents, relinquishments, termination of parental rights, and placement preferences. *See, e.g.*, 25 C.F.R. 23.103 and 23.107; 25 U.S.C. 1903(4) (definition of "Indian child"). See Chapter 13.2 (discussing ICWA).

Resources:

In addition to G.S. Chapter 48, resources for adoption information include the following:

- Subchapter 70M of Title 10A of the North Carolina Administrative Code, "Adoption Standards" (sections .0101 to .0604).
- The DHHS policies and procedures related to DSS adoption services, found in DIV. OF SOC. SERVS., N.C. DEP'T OF HEALTH & HUMAN SERVICES, CHILD WELFARE MANUAL "Adoptions," available here.
- CHERYL D. HOWELL, JAN S. SIMMONS, NORTH CAROLINA TRIAL JUDGES' BENCH BOOK DISTRICT COURT: VOL. 1, FAMILY LAW (UNC School of Government 2021). In particular, see Chapter 8 "Adoption."
- SARA DEPASQUALE, FATHERS AND PATERNITY: APPLYING THE LAW IN NORTH CAROLINA CHILD WELFARE CASES (UNC School of Government 2016). In particular, see Chapter 7 "A Child's Permanent Plan of Adoption: The Process and the Role of Fathers."
- Website for the North American Council on Adoptable Children, a resource for publications, training, support, and a wide range of information related to adoption.

- "Adoption" on the Child Welfare Information Gateway website, with resources on aspects of domestic and international adoption.

B. Prospective Adoptive Parents

1. DSS responsibility and discretion to select. DSS (or a licensed child-placing agency) with legal and physical custody of the child has the sole responsibility and discretion for the selection of specific adoptive parents, unless a designated relinquishment has been executed and accepted. G.S. 48-3-203(a), (d); 7B-1112.1. The agency is required to consider any current placement provider who wants to adopt the child. G.S. 7B-1112.1. The agency may consult with the child's parent. *See* G.S. 48-3-203(b), (d)(2). The agency may also consult with the child. If the child is 12 or older, the child must consent to the adoption, unless the court hearing the adoption action waives this requirement after finding it is not in the child's best interests. G.S. 48-3-601(1); 48-3-603(b)(2). See Chapter 9.12.C.4.(e) (discussing juvenile's consent to adoption in context of TPR proceeding).

The child's GAL may consult with and request information from DSS (or the child-placing agency) regarding the selection process. G.S. 7B-1112.1. If the GAL requests information related to the selection, the agency must provide the information within five business days. G.S. 7B-1112.1. The GAL's duties to see that the child's interests and needs are being met (*see* G.S. 7B-601) extend to involvement in the child's placement for adoption. *See In re N.C.L.*, 89 N.C. App. 79 (1988) (confirming the GAL's duty and right to inquire into DSS's handling of the child's adoption and the authority of the court to order DSS to turn over information requested by the GAL); *Wilkinson v. Riffel*, 72 N.C. App. 220 (1985) (affirming trial court's order that DSS disclose confidential information, specifically the children's adoptive placement, to the GAL, who has the right to confidential information that she believes is relevant to the case and had an ongoing duty to conduct follow-up investigations and report to court when the child's needs are not being met) (both opinions were decided under the former law).

Because the Indian Child Welfare Act (ICWA) applies to adoptions, DSS should consider the placement preferences under ICWA if the child is an Indian child or there is reason to know the child is an Indian child. *See* G.S. 48-1-108. *See* 25 U.S.C. 1915; 25 U.S.C. 1903(4) (definition of "Indian child"); 25 C.F.R. 23.129–132 (placement preferences). See Chapter 13.2 (discussing ICWA).

Practice Notes: In practice, DSS and the GAL often communicate openly throughout the process of selecting an adoptive placement, sharing information, and discussing concerns as they arise. Such open communication may avoid a motion for review that could delay and complicate the adoption.

Although the GAL has an ongoing duty in the abuse, neglect, dependency, or termination of parental rights action until the GAL is relieved or the court's jurisdiction terminates, the GAL has no statutorily defined responsibilities or authority in the adoption proceeding. It is possible the GAL could be called as a witness in an adoption hearing. If the adoption proceeding is

contested, the court in that action may appoint an attorney or GAL to represent the child's interests in that action. G.S. 48-2-201(b); *see* G.S. 7B-601(a).

2. Notice of adoptive parent selection to GAL and foster parent. While the GAL and foster parents have no authority with respect to the selection of adoptive parents, the agency is required to notify the GAL and the foster parents of the prospective adoptive parent selection within ten days after the selection is made and before the filing of the adoption petition. G.S. 7B-1112.1. The statute does not designate whether that notice must be in writing. But, the agency must provide the foster parents who are not selected with a copy of a motion for judicial review of adoption selection. G.S. 7B-1112.1. This suggests the notice should be provided in writing.

AOC Form:
AOC-J-140, Motion for Review (Abuse/Neglect/Dependency).

3. Review hearing on selection. After receiving notice of who the agency selected as prospective adoptive parents, if the GAL disagrees or the foster parents who want to adopt the child were not selected, either may file a motion for judicial review. The motion for judicial review must be filed with the district court within ten days of the agency's notification of who was selected. The case should be scheduled for hearing on the next juvenile calendar. Foster parents do not acquire party status solely based on their right to receive notice and to be heard by filing a motion.

At a hearing on a motion to review the selection, the court must consider the agency's and GAL's recommendations and other facts related to the selection of adoptive parents. The court determines whether the proposed adoptive placement is in the child's best interests. G.S. 7B-1112.1.

Practice Note: The judicial review is governed by G.S. 7B-1112.1, which has limiting language. The court is determining whether the proposed adoptive placement that was selected by DSS is in the child's best interests. The statutory language does not authorize the court to decide that a different specific placement should have been selected or to order a new selected placement.

4. Placement with prospective adoptive parent(s). An agency may acquire the authority to place a child for adoption and consent to the child's adoption only by means of a relinquishment or by termination of parental rights (TPR) when the child is in the agency's custody. G.S. 48-3-203(a); *see* G.S. 48-3-601(3)a. (consent by agency). When a parent executes a relinquishment to an agency, legal and physical custody of the child vest with the agency, and the agency may place the minor for adoption as specified in the relinquishment. G.S. 48-3-705(b). When a child is in DSS custody at the time a TPR petition or motion is filed, entry of a TPR order gives DSS all the rights for adoptive placement of the child that the agency would have if the parents had relinquished the child to it, except as otherwise

provided in G.S. 7B-908(d)[1]. G.S. 7B-1112(1). Cases based on the law as it read before October 1, 2011, held that the trial court did not have subject matter jurisdiction to order the child placed with a relative following TPR, because the statute gave DSS exclusive placement authority. *See, e.g.*, *In re I.T.P-L.*, 194 N.C. App. 453 (2008); *In re Asbury*, 125 N.C. App. 143 (1997). That continues to be true once DSS places the child for adoption. However, until the child is placed with prospective adoptive parents as selected in G.S. 7B-1112.1, the court at a post-TPR review hearing or post-relinquishment review hearing may order a placement different from the one proposed by DSS, as long as the court considers DSS's recommendations and finds that the placement it is ordering is in the child's best interest. G.S. 7B-908(d1). See Section 10.1, above (discussing post-TPR review hearings) and 10.2, above (discussing post-relinquishment review hearings).

If the child must be moved from their current placement to the home of the prospective adoptive parents, the agency may not move the child until after the time for the GAL or foster parent to file a motion for review of the selection of prospective adoptive parents has expired and a motion has not been filed. G.S. 7B-1112.1.

When DSS has custody or placement responsibility for a child, DSS may not place the child with the prospective adoptive parents until a criminal history investigation, determination of the individual's fitness for having responsibility of children's safety and well-being, and determination of whether other individuals who reside in the home are fit to have the child live with them are completed. G.S. 48-3-203(d1); 48-3-309; 131D-10.3A. There must also be a favorable preplacement assessment. G.S. 48-3-203(d); *see* G.S. 48-3-301 through -309. The Interstate Compact on the Placement of Children (ICPC) applies to interstate placements of children in pre-adoptive homes. G.S. 48-3-207; 7B-3800. See Chapter 7.4.H (discussing the ICPC).

Unless the court orders otherwise, when an agency makes an adoptive placement, the agency retains legal custody but not physical custody of the child until the adoption decree becomes final. The agency may delegate responsibility for the child's care and support to the adoption petitioner. G.S. 48-3-502(a). The agency may notify the parent when a placement has been made. G.S. 48-3-203(c).

Before an adoption is final, the agency may petition the court for cause to dismiss the adoption proceeding and restore its full legal and physical custody of the child. The basis for the court's determination is the best interests of the child. G.S. 48-3-502(b); *see* G.S. 48-2-604(a).

5. Prospective adoptive parent is petitioner. A prospective adoptive parent has standing to file a petition when the child has been placed with them pursuant to G.S. 48-3-201 through -207 unless the court presiding over the adoption proceeding has waived the placement requirement for cause. G.S. 48-2-301(a); *see In re D.E.M.*, 254 N.C. App. 401, 411 (2017),

[1] S.L. 2017-161, sec. 9, amends G.S. 7B-908(d) and creates G.S. 7B-908(d1), which addresses the court's authority to order a placement for a child who has not been placed with prospective adoptive parents selected by G.S. 7B-1112.1. G.S. 7B-1112(1) was not simultaneously amended to refer to G.S. 7B-908(d1), and the failure to do so appears to be an oversight.

aff'd per curiam, 370 N.C. 463 (2018) (stating, "N.C. Gen. Stat. § 48-2-301(a) expressly authorizes a waiver of the requirement of an adoption placement 'for cause'."). There is no summons in an adoption proceeding; instead, the petitioner serves notice that the adoption petition was filed pursuant to G.S. 48-2-401 through -407.

C. District Court Jurisdiction When Adoption Is Filed

1. Adoption is a special proceeding. An adoption proceeding is separate from an abuse, neglect, dependency, or termination of parental rights proceeding that is before the district court, even when the child's primary permanent plan in the abuse, neglect, or dependency action is adoption.

An adoption is a special proceeding before the clerk of superior court. G.S. 48-2-100(a). However, the district court may acquire jurisdiction over the adoption proceeding if

- the proceeding must be transferred by the clerk when an issue of fact, equitable defense, or request for equitable relief is raised (G.S. 48-2-601(a1); 1-301.2(b)) or
- a final order entered by the clerk is appealed pursuant to G.S. 48-2-607(b).

The adoption proceeding remains a separate special proceeding from the juvenile action. When the action is transferred, the district court judge may hear and determine all the matters in the adoption proceeding, unless it appears to the judge that justice would be more efficiently administered by the district court disposing of only the matter that resulted in the transfer and remanding the special proceeding to the clerk. G.S. 1-301.2(c).

2. Jurisdiction in a G.S. Chapter 7B action. If a child who is the subject of an adoption petition is also the subject of a pending abuse, neglect, dependency, or termination of parental rights proceeding (TPR), the district court having jurisdiction under G.S. Chapter 7B retains jurisdiction in the juvenile proceeding until the final order of adoption is entered. The district court may waive jurisdiction for good cause. G.S. 48-2-102(b).

An adoption hearing or disposition on the petition occurs at least ninety days after and within six months of when the adoption petition is filed, unless the court presiding over the adoption proceeding waives these time requirements for cause. G.S. 48-2-603(a)(1); 48-2-601(c). A hearing may be continued on the court's own motion for further evidence. G.S. 48-2-603(c). While an adoption is pending, a permanency planning, post-TPR review, post-relinquishment review, or modification hearing may be required or requested pursuant to G.S. Chapter 7B. The district court has jurisdiction over those hearings. See sections 10.1 and 10.2, above (discussing post-TPR and post-relinquishment review hearings) and Chapter 7 (discussing dispositional hearings, including modification and permanency planning hearings).

A TPR may be necessary for the adoption to be achieved. An adoption petition and TPR action may be filed concurrently. G.S. 48-2-302(c). The adoption petitioner has standing to initiate a TPR action. G.S. 7B-1103(a)(7). The district court has jurisdiction to hear the TPR action, and the clerk of superior court has jurisdiction to hear the adoption proceeding. G.S. 7B-1101; 7B-200(a)(4); 48-2-100(a). When the adoption is a result of a placement made by

DSS or a licensed child-placing agency (an "agency placement"), a TPR stays the adoption proceeding. *See* G.S. 48-2-402(c); *In re Adoption of S.D.W.*, 367 N.C. 386 (2014). A TPR is not required to be stayed when an adoption for the same child is pending, even if there is a pending appeal of an order entered in the adoption proceeding. In the case of *In re Adoption of Baby Boy*, 233 N.C. App. 493 (2014), the trial court found the mother's relinquishment for adoption of her baby boy void, and the adoptive parents appealed the order. While that appeal was pending, the adoptive parents filed a TPR petition, and the district court terminated the mother's parental rights. In an appeal from the TPR order, in *In re Baby Boy*, 238 N.C. App. 316 (2014), the court of appeals affirmed the TPR order and held that G.S. 7B-1003 prohibits the district court from exercising jurisdiction over a TPR proceeding when there is a pending appeal of an order designated in G.S. 7B-1001 only. The trial court may exercise jurisdiction over a TPR proceeding while an appeal of an adoption order, entered pursuant to G.S. Chapter 48, is pending. For a discussion of the trial court's jurisdiction to proceed with a TPR action during pendency of appeal in an adoption case or in other cases, see Chapter 12.11.A.3.

D. The Adoption

1. The determination. An adoption is resolved after a hearing, but if the adoption is uncontested, the court may dispose of the petition without a formal hearing. G.S. 48-2-601. There are several factors that must be found before the adoption may be granted, including

- by a preponderance of the evidence, that the adoption will serve the adoptee's best interest;
- each necessary consent, relinquishment, waiver, or termination of parental rights order has been obtained;
- each petitioner is a suitable adoptive parent; and
- unless waiving the placement requirement for cause, that the child has been in the petitioner's physical custody for at least ninety days.

G.S. 48-2-603(a); 48-2-606(a)(7). *See* G.S. 48-3-601 and 48-3-603 for whose consent is or is not required.

The Indian Child Welfare Act (ICWA) applies to adoption proceedings. G.S. 48-1-108. ICWA sets forth specific procedures that must be followed, including the court inquiring into whether the participants know or have reason to know the child is an "Indian child" and additional requirements for consents, relinquishments, termination of parental rights, and placement preferences. *See, e.g.*, 25 C.F.R. 23.103 and 23.107; 25 U.S.C. 1903(4) (definition of "Indian child"). See Chapter 13.2 (discussing ICWA).

If the court denies the petition, custody of the child reverts to the agency or person who had custody immediately before the filing of the petition. G.S. 48-2-604(c). Post-TPR or post-relinquishment reviews continue.

2. Notice of decree. Within ten days of receiving notice of a final decree of adoption, the agency must file with the court hearing the post-TPR or post-relinquishment reviews and serve on the child's GAL (if any) written notice of the entry of adoption. The adoption decree

itself should never be filed in the district court file. The clerk must cancel any review hearings and provide notice of the cancellation to those required to receive notice of the hearings. G.S. 7B-908(e).

The agency may notify the parent when an adoption decree is issued. G.S.48-3-203(c).

Practice Note: The Juvenile Code requirements that adoption petitions, motions, and decrees should never be filed in the juvenile case likely relate to the confidentiality provisions contained in G.S. Chapter 48 and have the effect of protecting adoption information from unintended inspection. While certain individuals are permitted access to the juvenile court file pursuant to G.S. 7B-2901(a), the adoption file can be opened only by order of the court presiding over the adoption proceeding pursuant to G.S. 48-9-102(b) and 48-9-105. *See* G.S. 1-7 (when "court" means clerk).

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3. Effect of decree. A final decree of adoption has the legal effect of a complete substitution of families for the adoptee. G.S. 48-1-106(a); *but see* G.S. 48-1-106(d), as amended by S.L. 2023-124, sec. 1.2, effective January 1, 2024 (exception for stepparent adoption). However, a child's grandparent has visitation rights when the grandparent has a substantial relationship with the child and the child is adopted by a relative or stepparent. G.S. 48-1-106(f); 50-13.2(b1); 50-13.2A; 50-13.5(j).

The relationship of parent and child is established between the adoption petitioner and adoptee. G.S. 48-1-106(b). The relationship of parent and child is severed between the adoptee and the biological or previous adoptive parent of the adoptee, except for a stepparent adoption, where the relationship between the parent who is the stepparent's spouse and the child continues. G.S. 48-1-106(c), (d), as amended by S.L. 2023-124, sec. 1.2, effective January 1, 2024.

If there is an underlying abuse, neglect, or dependency proceeding, the district court's jurisdiction is terminated upon the final decree of adoption. G.S. 48-2-102(b); *In re W.R.A.*, 200 N.C. App. 789 (2009).

10.4 Reinstatement of Parental Rights

A. Introduction

As discussed in Chapter 7.10 of this Manual, reinstatement of parental rights is one of six possible permanent plans for a child who is the subject of an abuse, neglect, or dependency proceeding. *See* G.S. 7B-906.2(a). This permanent plan is an option in very limited circumstances and requires that there was a termination of parental rights for one if not both of the child's parents. The criteria and procedures to reinstate parental rights are codified at G.S. 7B-1114.

Resource: For the state policy, see DIV. OF SOC. SERVS., N.C. DEP'T OF HEALTH & HUMAN SERVICES, CHILD WELFARE MANUAL "Permanency Planning," available here.

B. Circumstances for Reinstatement

Circumstances in which the procedure is available are narrow:

- A motion to reinstate parental rights may be filed only by a child whose parent's rights have been terminated, the child's guardian ad litem (GAL) attorney advocate, or a department of social services (DSS) that has custody of the child.
- The child must be at least 12 years old or, if the child is younger than 12, the motion must allege extraordinary circumstances requiring consideration of the motion.
- The child must not have a legal parent, must not be in an adoptive placement, and must not be likely to be adopted within a reasonable time.
- The order terminating parental rights must have been entered at least three years before the motion is filed, unless the court has found or the child's GAL attorney advocate and the DSS with custody stipulate that the child's permanent plan is no longer adoption.

G.S. 7B-1114(a).

Although it is not stated explicitly, the statute read as a whole limits its application to children who are in the custody of DSS.

C. Hearing Procedures

1. Notification to child and appointment of GAL. If a parent contacts DSS or the child's GAL about reinstatement of the parent's rights and a motion can be filed under G.S. 7B-1114(a), DSS or the GAL must notify the child that the child has a right to file a motion for reinstatement of parental rights. G.S. 7B-1114(b). DSS and the child's GAL attorney advocate also have standing to bring a motion. When a motion to reinstate parental rights is filed, the court must appoint a GAL for the child if the child does not have one. The appointment, duties, and payment of the GAL and GAL attorney advocate are the same as in G.S. 7B-601 and 7B-603. G.S. 7B-1114(c). See Chapter 2.3.D (discussing the child's GAL).

2. Service of motion. The party filing the motion (the child, DSS, or the GAL attorney advocate) must serve the motion on each of the following who is not the movant:

- the child,
- the child's GAL or GAL attorney advocate,
- the DSS with custody of the child, and
- the former parent whose rights the motion seeks to have reinstated.

G.S. 7B-1114(d).

3. Former parent not a party and not entitled to appointment of counsel. Although the former parent must be served, they are not a party. The former parent is not entitled to appointed counsel if indigent but may retain counsel at their own expense. G.S. 7B-1114(d).

4. Timing. The party filing the motion must ask the clerk to calendar a preliminary hearing on the motion for reinstatement of parental rights within sixty days of the filing of the motion and must give at least fifteen days' notice to those who were required to be served and to the child's placement provider (who is not made a party by virtue of receiving notice). G.S. 7B-1114(e). At the conclusion of the preliminary hearing, the court must either dismiss the motion or order that the child's permanent plan become reinstatement of parental rights. If the motion is not dismissed at the preliminary hearing, the court must conduct interim hearings at least every six months until the motion is granted or dismissed. G.S. 7B-1114(h). The court must grant or dismiss the motion within twelve months from the date the motion was filed unless the court makes written findings about why that cannot occur and specifies a time frame for entering a final order. G.S. 7B-1114(j). After an order reinstating parental rights is entered, the court is not required to conduct further reviews. G.S. 7B-1114(k).

Note that the phrase "preliminary hearing" is used in this statute to refer to the first hearing on a motion to reinstate parental rights, and the phrase "interim hearing" (see section 10.4.E, below) is used to refer to subsequent periodic hearings.

5. Pre-hearing reports. At least seven days before the preliminary hearing, DSS and the child's GAL must provide the court, the other parties, and the former parent with reports that address a list of factors specified in section 10.4.D, below. G.S. 7B-1114(f); *see* G.S. 7B-1114(g).

6. Participants. At the preliminary hearing and any subsequent hearing on the motion, the court must consider information from the DSS that has custody of the child, the child, the child's GAL, the child's former parent whose parental rights are the subject of the motion, the child's placement provider, and any other person or agency that may aid the court in its review. G.S. 7B-1114(g). Although the child's former parent and current placement provider are entitled to notice and may be heard at the hearings, they are not parties to the proceeding. G.S. 7B-1114(d), (e).

7. Evidence and standard for review. The court may consider any evidence, including hearsay evidence, that the court finds to be relevant, reliable, and necessary to determine the needs of the child and whether reinstatement of parental rights is in the child's best interest. G.S. 7B-1114(g).

D. Criteria and Findings

The court must consider the following criteria and make written findings regarding those that are relevant:

- efforts that were made to achieve adoption or a permanent guardianship;

- whether the parent whose rights the motion seeks to have reinstated has remedied the conditions that led to the child's removal and termination of the parent's rights; (see *In re P.L.E.*, ___ N.C. App. ___, 891 S.E.2d 613 (2023) (discussion of jurisprudence that the affirmation of a single ground does not require the appellate court to review the remaining grounds for the TPR, if any; raising the issue but not answering whether this single ground line of jurisprudence should continue because of the potential impact on a parent's rights to later seek reinstatement of their parental rights));
- whether the child would receive proper care and supervision in a safe home if placed with the parent;
- the child's age, maturity, and ability to express their preference;
- the parent's willingness to resume contact with the child and to have parental rights reinstated;
- the child's willingness to resume contact with the parent and to have parental rights reinstated;
- services that would be needed by the child and the parent if the parent's rights were reinstated;
- any other criteria the court deems necessary.

G.S. 7B-1114(g). *See* G.S. 7B-101(19) (definition of "safe home").

E. Interim Hearings and Reasonable Efforts

Interim hearings may be combined with post-TPR review hearings (discussed in section 10.1, above). At each interim hearing the court must assess whether the plan of reinstatement of parental rights continues to be in the child's best interest and whether DSS has made reasonable efforts to achieve that permanent plan. G.S. 7B-1114(h).

F. Orders

After every hearing, whether preliminary or interim, the court must make findings of fact and conclusions of law and may

- enter an order for visitation under G.S. 7B-905.1 or
- order that the child be placed in the former parent's home and supervised by DSS either directly or, when the former parent lives in a different county, through coordination with the DSS in that county, or by other personnel available to the court, subject to any conditions the court specifies.

G.S. 7B-1114(i). See Chapter 7.5 (discussing visitation under G.S. 7B-905.1).

If the court places the child with the former parent, the order must state the child's placement and care remain the responsibility of the DSS with custody and that DSS is to provide or arrange for the child's placement. G.S. 7B-1114(i).

Orders from any type of reinstatement of parental rights hearing must be entered within thirty days following the completion of the hearing. If an order is not entered within that time, the

clerk must schedule a subsequent hearing at the next session of juvenile court to determine and explain the reason for the delay and to obtain any needed clarification as to the contents of the order. The order must be entered within ten days of the subsequent hearing. G.S. 7B-1114(*l*). Where the court fails to enter a timely order, the appropriate remedy is a petition to the court of appeals for a writ of mandamus to require the trial court to proceed to judgment, not a new hearing. *In re T.H.T.*, 362 N.C. 446 (2008). See Chapter 4.9.D.3 (discussing mandamus as the remedy) and Chapter 12.10.D (discussing writ of mandamus).

G. Effect of Reinstatement

An order reinstating parental rights restores all rights, powers, privileges, immunities, duties, and obligations of the parent to the child, including those relating to custody, control, and support. G.S. 7B-1114(k). A parent whose rights are reinstated is not liable for child support or the cost of services provided to the child after the termination of parental rights order and before the order reinstating parental rights. G.S. 7B-1114(n). Reinstatement of parental rights does not vacate or otherwise affect the validity of the original order terminating those rights. G.S. 7B-1114(m).

Practice Note: When a parent's rights are reinstated, a permanent plan for the child has been achieved. *See* G.S. 7B-906.2(a), (a1). The statute governing reinstatement of parental rights does not address the status of the underlying abuse, neglect, or dependency action. The court should consider whether jurisdiction in the abuse, neglect, or dependency proceeding should continue such that jurisdiction over the proceeding is retained or whether the case may be dismissed with the reinstatement of parental rights and child's return to a parent's custody and control. *See* G.S. 7B-903(a)(1). With the reinstatement of the parent's rights, that parent should be made a party to the abuse, neglect, or dependency proceeding. *See* G.S. 7B-401.1(b). If the court retains jurisdiction, it is not obligated to conduct periodic permanency planning hearings under G.S. 7B-906.1 because custody is with a parent; however, the court may continue to hold those hearings. *See* G.S. 7B-906.1(k). In addition, any party may file a motion for a permanency planning or modification hearing in the abuse, neglect, or dependency action. *See* G.S. 7B-906.1(n); 7B-1000. However, if permanency planning hearings have been waived and DSS receives a new report of abuse, neglect, or dependency, completes an assessment, and determines court action is needed, DSS must file a new petition rather than a motion for a permanency planning or modification hearing. G.S. 7B-401(b). *See In re T.P.*, 254 N.C. App. 286 (2017). See Chapter 7.2.A.4(c) (discussing waiving permanency planning hearings).
