

UNC SCHOOL OF GOVERNMENT

Child Welfare Case Compendium

The most efficient way to conduct a search is to use the pre-existing drop-down menus, which start with one of the six main Categories of annotations (see the drop-down menu for "All Categories"). When each Category, additional items have been revealed to allow a user to conduct a more focused search. When you select a Category, a new "Tagged" drop-down menu will appear. When you select a "Tagged" drop-down menu will appear. A search may also be conducted by going a key-word in the "Search Term" box below. If your search phrase is composed of more than one word, please use quotation marks. If the drop-down menus are not used, the search based on a word or phrase will apply to all the annotations contained in the UNC.

Search Term:

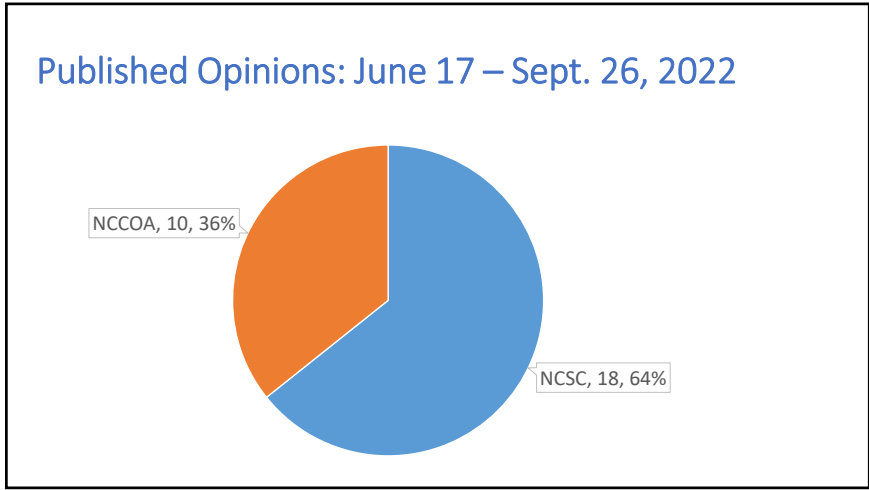
All Categories All Tags

Results: 208

Case Update District Court Judges Conference (Fall 2022)

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2

2022-FEO-1 Rule 3.7

New Ethics Opinion on Dual Role GAL—Attorney Advocates in Juvenile Proceedings

This entry was contributed by Timothy Heale on August 17, 2022 at 10:45 am and is filed under Child Welfare Law, Juvenile Law, Social Services.

The State Bar has issued an ethics opinion discussing the role of attorneys who are appointed as a guardian ad litem (GAL) volunteer, GAL attorney advocate, or both, in juvenile abuse, neglect, dependency or termination of parental rights matters. See [N.C. State Bar, Formal Ethics Opinion 1 \(2022\)](#), hereinafter 2022 FEO 1. While the opinion does not specifically mention termination proceedings, G.S. 7B-601—the statute that details the duties of a GAL in an abuse, neglect, dependency matter—also applies to GALs in termination proceedings. G.S. 7B-1108, 2022 FEO 1 should be considered as applying to GAL appointments in both juvenile and termination proceedings. This ethics opinion places new obligations on the appointed attorney and includes a role for the district court judge making the appointment. Typically, the attorney appointed to serve as both GAL attorney advocate and volunteer is an attorney known to the juvenile court for representing parents. The guidance provided in 2022 FEO 1 is important for parent attorneys and all other court actors in juvenile proceedings.

3

Attorney Duty

- At time of appointment
- Identify Conflict under Rule 3.7
- Clarify in Order if Dual Role
- Otherwise, appoint 2nd person

4

AOC-J-207

ORDER OF APPOINTMENT

Pursuant to the authority contained in G.S. 7B-601 or 7B-1108, the following Guardians ad Litem and attorney advocate are appointed to represent the juvenile(s) named above in this proceeding.

Name Of Guardian Ad Litem Volunteer	Name And Address Of Attorney Advocate
Name Of Guardian Ad Litem Program Staff	
Address	
Telephone No.	Telephone No.

[] Attorney Advocate is also acting as Guardian ad Litem.

5

Clarify Attorney Advocate

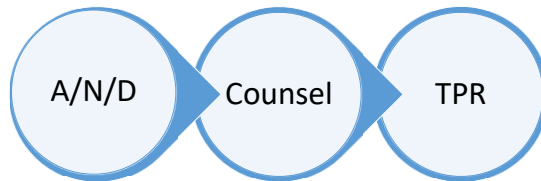


The duties and responsibilities of the Guardian ad Litem program are as follows:

1. To make an investigation to determine the facts, the needs of the juvenile, and the available resources within the family and community to meet those needs.
2. To facilitate, when appropriate, the settlement of disputed issues.
3. To offer evidence and examine witnesses at adjudication.
4. To explore options with the Court at the dispositional hearing.
5. To conduct follow-up investigations to insure that the orders of the Court are being properly executed.
6. To report to the Court when the needs of the juvenile are not being met.
7. To protect and promote the best interests of the juvenile until formally relieved of responsibility by the Court.

6

Today's Topics



7

Neglect G.S.7B-101(15)

Not provide proper care, supervision, or discipline

Injurious Environment

It is relevant if another child dies or is abused or neglected by adult who regularly lives in the home

8

Neglect Adjudication Siblings

In re G.C. (p. 2)

Stipulations

- 2017: 2 older siblings adjud. A/N/D
- 2019: Mom convicted misdemeanor child abuse

Other evidence: 2020

- Infant sibling dies while sleeping in pack and play
- Parents trained on not having blankets with young infant
- Cause of death undetermined but asphyxiation cannot be ruled out



9

Is this sufficient?



10

Harm or Substantial Risk of Harm

- Court determines weight of relevancy of siblings
- Must be presence of other factors indicating present risk
- Cannot be based on prior DSS case alone



11

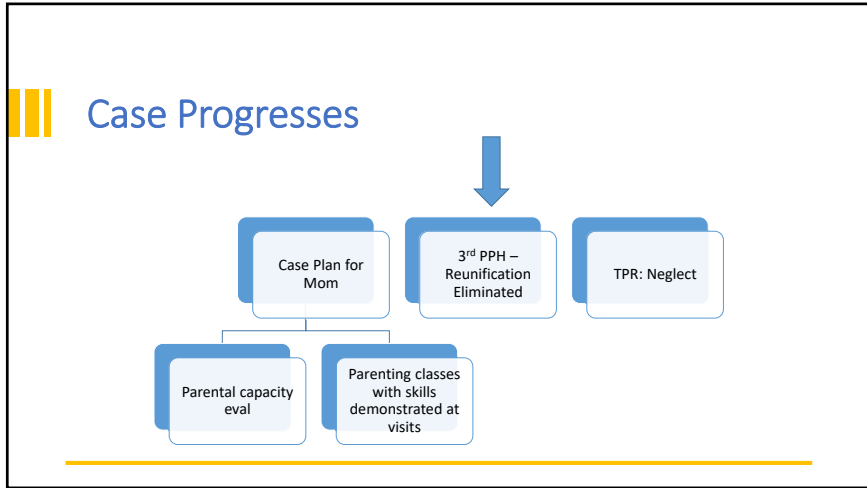
Eliminate Reunification

In re M.T. (p. 4)

- Adjudicated A/N/D (infant); neglected (sibling)
- Nonaccidental injuries, no explanation, sole care of parents
- Dad pleads to child abuse charge; mom's charged dismissed



12



13

Lack of Explanation for Injuries

- Mom completes services
- Findings: Services did not address issues for coming into care, including lack of explanation

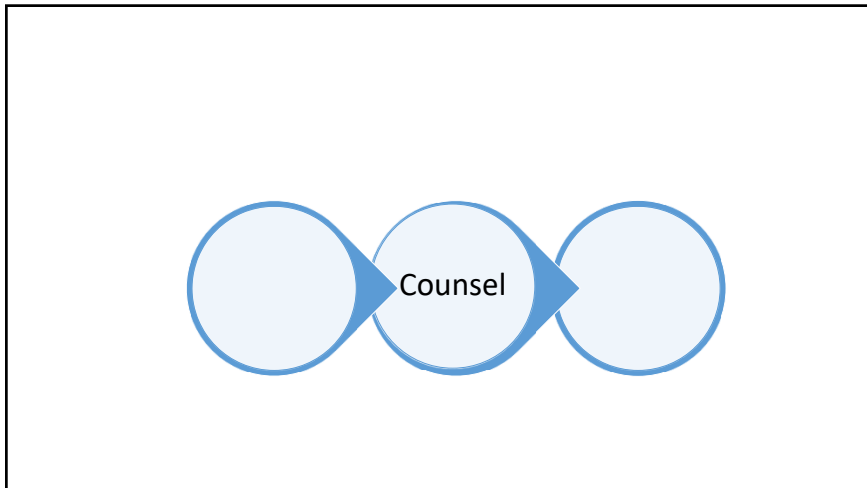
Is this a basis to eliminate reunification?

14

Rationale

- Compliance with case plan is not always sufficient to preserve parental rights
 - Parenting capacity – findings deficient
 - Parenting classes – findings deficient
- Need changed behaviors and acknowledge why children came into care
- Could permissibly determine both parents responsible directly or indirectly
 - In re Y.Y.E.T.

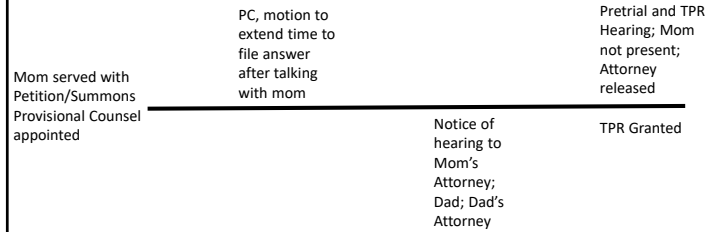
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16

Release of Counsel

In re R.A.F. (p. 9)



Was It Proper to Release Provisional Counsel?

17

Fundamental Fairness & Due Process

- 7B-1101.1 presumes notice of hearing
- 7B-1108.1 pretrial
 - Consider release/retain provisional counsel
 - Whether all summons, service of process, & notice requirements met
- Court should have inquired as to efforts made by counsel to contact mother
- Did she have notice of hearing?

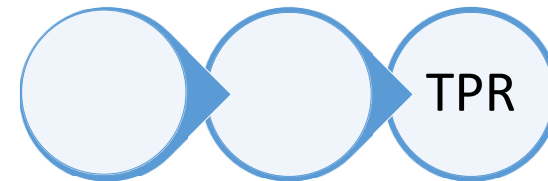


18

Prejudice Not Required

at 79. Because of the trial court's lack of inquiry concerning whether Mother knew about the termination hearing and the efforts made by counsel to communicate with Mother, the trial court committed reversible error by not ensuring that Mother's substantial rights to counsel and to adequate notice of such proceedings were protected. *In re D.E.G.*, 228 N.C. App. at 386-87, 747 S.E.2d at 284; *In re K.N.*, 181 N.C. App. at 737, 640 S.E.2d at 814. Accordingly, we vacate and remand for a new hearing.

19



20

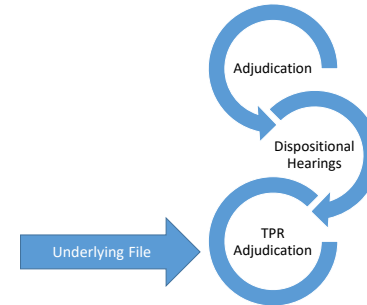
Judicial Notice of Non-adjudicatory Orders

In re J.D.O. (p. 13)
In re H.B. (p. 21)



21

Can You Use Prior Dispositional Orders?



22

But,

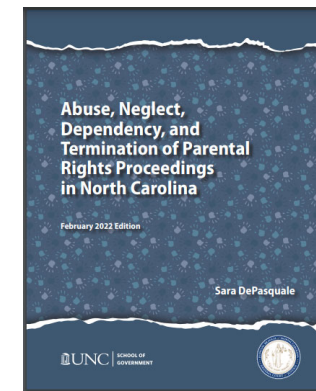
- Cannot rely solely on prior order and court reports
- Need
 - Oral testimony
 - Independent determination of evidence presented



23

Judicial Notice Resource

Chapter 11
Section 11.7



24

Neglect: G.S. 7B-1111(a)(1)

= Status of Child


Neglected Juvenile

NO!

≠ Parent Culpability

Does Petitioner Have to Show Past Neglect and Not Just Adjudication?

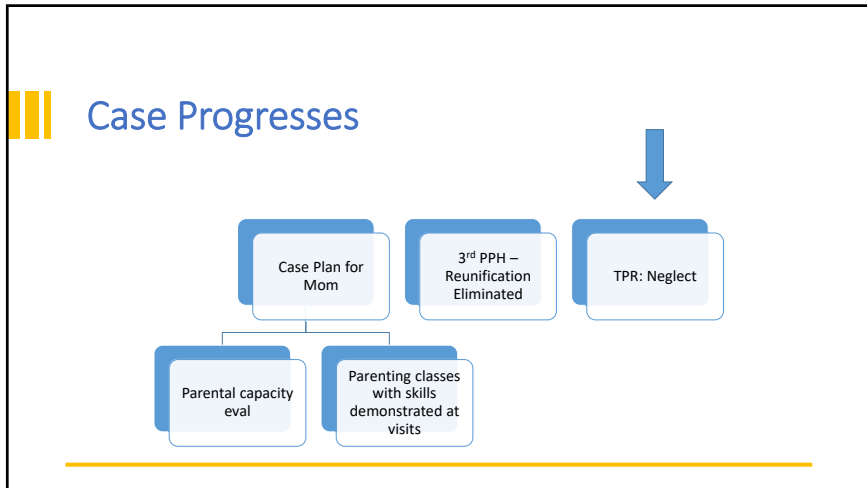
25



TPR: Neglect
In re M.T. (p. 17)

- Adjudicated A/N/D (infant); neglected (sibling)
- Nonaccidental injuries, no explanation, sole care of parents
- Dad pleads to child abuse charge; mom's charged dismissed

26



27

Likelihood of Future Neglect

Mom completes services

Findings:

- Explanations not credible
- Services did not address reason for removal

28

Amicus

- DV Coalition: inference
- ACLU: constitutional issues waived
- NC Justice Center and Community Bail Fund re: pre-trial incarceration

29

G.S. 7B-1111(a)(3)

The juvenile has been placed in the custody of a county department of social services, a licensed child-placing agency, a child-caring institution, or a foster home, and the parent has for a continuous period of six months immediately preceding the filing of the petition or motion willfully failed to pay a reasonable portion of the cost of care for the juvenile although physically and financially able to do so.

30

Do in kind contributions count?

In re M.C.; In re J.C.J.; In re L.M.B. (p. 22-23)

31

Lack of notice is not a defense

In re J.C.J. (p.22)

Parents have inherent duty to support

Responsibility

32

Note: New Federal Guidance!

- Not default refer to IV-D for impoverished families
- Impedes reunification
- Longer time to permanency
- Not cost effective



ADMINISTRATION FOR
CHILDREN & FAMILIES
330 G Street, S.W., Washington, D.C. 20201 | www.acf.hhs.gov

July 29, 2022

Dear Colleague:

Best Interests

33

34

Expert Witness

In re M.T. (p. 25)

- Mother's Bond with Child
- Importance of maintaining family relationships, esp. for African-American families
- Child Welfare Policy
- **Voir Dire: Found Irrelevant**
 - Not all the records for case
 - Not familiar with NC DHHS practices

Was there an abuse of discretion?



35

Reasoned Decision

Trial court's responsibility to find facts based on evidence re: specific child and parents and determine best interests of child based on those facts and the law

Amicus

- NC NAACP & ACLU: disproportionality in child welfare
- May be of great assistance to policy making branches of government
- No direct relevance to particular child or family



36

Abuse of discretion?

In re A.A. (p. 29)

TPR of Mother

- Stepmother w/custody file TPR
- GAL recommend against TPR
- Child did not want TPR
- Father's rights not terminated



37

Child Paramount

Not bound by GAL recommendation

- Court weighs evidence

Other parent not being TPR does not preclude TPR

- Issue is not equity between parents



38

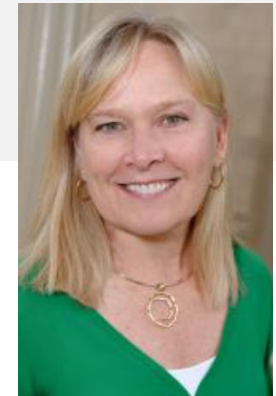
Jurisdiction Pending Appeal

In re B.B. (p. 32)



39

Rules 52 & 63



40



41