



Parent Representation

Annick Lenoir-Peek

Parent Defender

May 27, 2026

Right to counsel

- **§ 7B-602. Parent's right to counsel; guardian ad litem.**
- (a) In cases where the juvenile petition alleges that a juvenile is abused, neglected, or dependent, the parent has the right to counsel and to appointed counsel in cases of indigency unless that person waives the right. When a petition is filed alleging that a juvenile is abused, neglected, or dependent, the clerk shall appoint provisional counsel for each parent named in the petition in
- **§ 7B-1101.1. Parent's right to counsel; guardian ad litem.**
- (a) The parent has the right to counsel, and to appointed counsel in cases of indigency, unless the parent waives the right. The fees of appointed counsel shall be borne by the Office of Indigent Defense Services. When a petition is filed, unless the parent is already represented by counsel, the clerk shall appoint provisional counsel for each respondent parent named in the petition

Provisional Counsel

- “Serving for the time being.”
- *Provisional*, Merriam-Webster
- “Arranged or existing for the present, possibly to be changed later.”
- *Provisional*, Oxford
- “To ensure a respondent parent’s rights are adequately protected.”
- *In re C.T.T.*, 288 N.C. App. 136, 142 (2023) (citation omitted).

STATE OF NORTH CAROLINA			File No. _____
_____ County			In The General Court Of Justice District Court Division
IN THE MATTER OF			JUVENILE SUMMONS AND NOTICE OF HEARING (ABUSE/NEGLECT/DEPENDENCY) G.S. 7B-406, -407, -504, -506
Name And Address Of Juvenile _____ _____ _____			
Date Of Birth _____	Age _____	Date Last Summons Issued _____	☐ Alias and Pluries Summons
To Each Of The Person(s) Named Below:			
Name And Address _____ _____ _____		Name And Address _____ _____ _____	
☐ Parent ☐ Other (specify) _____		☐ Parent ☐ Other (specify) _____	
A petition has been filed alleging that the juvenile named above is: ☐ abused. ☐ neglected. ☐ dependent.			
NOTICE TO PARENT(S) ABOUT THE PARENT'S RIGHT TO A LAWYER			
You have a right to be represented by a lawyer at all stages of the proceeding. If you want a lawyer and cannot afford to hire one, the Court will appoint a lawyer to represent you. You may hire a lawyer of your choice at any time, or you may waive the right to a lawyer and represent yourself. ☐ You may contact the Clerk of Superior Court immediately to ask for a court-appointed lawyer. ☐ If you want a court-appointed lawyer, you are encouraged to contact immediately the following lawyer who has been temporarily assigned to represent you. At the first hearing, the Court will determine whether you qualify for a court-appointed lawyer. If you do not qualify, the lawyer named below will be released.			
Name And Address Of Mother's Lawyer _____ _____ _____		Name And Address Of Father's Lawyer _____ _____ _____	
Telephone Number Of Attorney _____		Telephone Number Of Attorney _____	

Release in A/N/D and TPR

If the parent:

- Does not appear at the first hearing **after being served**
- Does not qualify
- Retains private counsel, or
- Enters valid waiver



TPR only

G.S. 7B-602; G.S. 7B-1101.1

In re C.T.T., 288 N.C. App. 136 (2023); *In re R.A.F.*, 384 N.C. 505 (2023)

Parents have the right to **hire** counsel of their choosing.

In re A.K., 295 N.C. App. 115 (2024)



The screenshot shows a website header for the UNC School of Government. Below the header is a navigation bar with links for Home, About, and Contributors. The main content area features a post titled "A Respondent Parent's Right to Retain Counsel: Lessons from a New Court of Appeals Decision, In re A.K." with social media sharing icons (X, Facebook, LinkedIn, Email, Print) on the left. The post text states that a recent decision by the North Carolina Court of Appeals considers the right of a respondent parent in a juvenile abuse, neglect, or dependency (AND) proceeding to hire counsel of their own choosing and what standards, if any, a retained attorney must meet to be allowed to represent a parent. It references the case *In re A.K.*, ___ N.C. App. ___ (August 6, 2024) and mentions discussion of the procedures for appointing a

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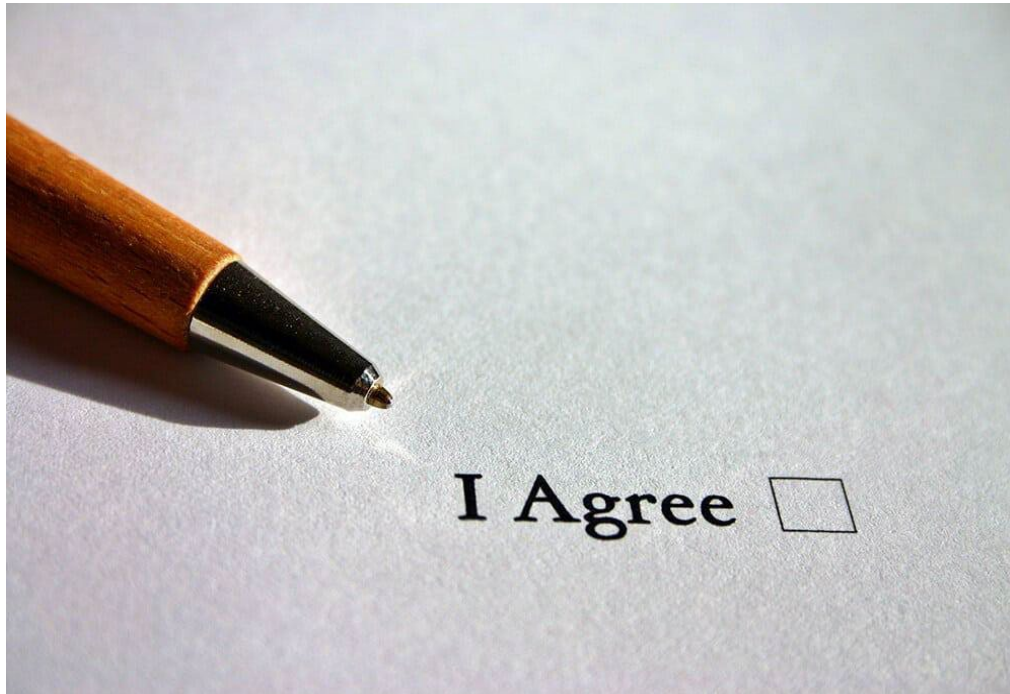
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A Respondent Parent's Right to Retain Counsel: Lessons from a New Court of Appeals Decision, In re A.K.

This entry was contributed by Timothy Heinle on August 21, 2024 at 9:18 am and is filed under Child Welfare Law.

A recent decision by the North Carolina Court of Appeals considers the right of a respondent parent in a juvenile abuse, neglect, or dependency (AND) proceeding to hire counsel of their own choosing and what standards, if any, a retained attorney must meet to be allowed to represent a parent. *In re A.K.*, ___ N.C. App. ___ (August 6, 2024). The case also includes discussion of the procedures for appointing a

Waiver of counsel



- Knowing and voluntary
- Examination by court*
- On the record
- Findings must support conclusion
- Court's discretion (no right to self-representation)

See G.S. 7B-602(a), (a1) (AND); 7B-1101.1(a), (a1) (TPR); *e.g., *In re K.M.W.*, 376 N.C. 195 (2020)

Waiver of counsel

Mom attempted to waive counsel at
AND



FOF:

- Risk of crim. charges + self-incrimination
- Influence + coercion by abusive boyfriend (caretaker)

COL:

- Waiver not knowing and voluntary

Knowing and voluntary waiver

By Parent

- *In re A.Y.*, 225 N.C. App. 29 (2013) (allowing mother to proceed pro se at PPH upheld)
- *In re J.M.*, 273 N.C. App. 280 (2020) (allowing mother to proceed pro se at PPH reversed for lack of findings on whether waiver was knowing and voluntary)

By Rule 17 GAL

- *In re P.D.R.*, 224 N.C. App. 460 (2012) (holding if respondent had a GAL of substitution based on incompetency, “the GAL would act on behalf of respondent mother, making the decision necessary to seek a result favorable to the mother”)

STATE OF NORTH CAROLINAFile No. CountyIn The General Court Of Justice
District Court Division**IN THE MATTER OF**Name Of Juvenile Date Of Birth Age Name And Address Of Parent **WAIVER OF PARENT'S RIGHT TO COUNSEL**

- ☐ ABUSE/NEGLECT/DEPENDENCY
☐ TERMINATION OF PARENTAL RIGHTS
☐ POST-DSS-PLACEMENT REVIEW AND PERMANENCY
PLANNING HEARINGS (DELINQUENT)
☐ POST-DSS-PLACEMENT REVIEW AND PERMANENCY
PLANNING HEARINGS (UNDISCIPLINED)

G.S. 7B-602, -1101.1, -2503(1)c., -2506(1)c.

I am the parent of the juvenile named above. I have been told that I have the right to have a lawyer represent me. I have been told of my right to have a lawyer appointed by the Court if I cannot afford to hire one. With full knowledge of these rights, I knowingly, willingly, and understandingly choose as follows:

(check only one)

- ☐ 1. I do not want a court-appointed lawyer. I will hire my own lawyer at my own cost.
☐ 2. I do not want the assistance of any lawyer. I understand that I have the right to represent myself, and that is what I intend to do.

Date Name Of Parent (type or print) Signature Of Parent **FINDINGS OF FACT**

NOTE TO JUDGE: G.S. 7B-602(a1) and G.S. 7B-1101.1(a1) require the court to examine the parent and make findings of fact sufficient to show that the parent's waiver is knowing and voluntary. G.S. 7B-2503(1)c. and G.S. 7B-2506(1)c. each provide an entitlement to court-appointed counsel unless the parent makes a knowing and voluntary waiver of the right to counsel.

AOC-J-143

STATE OF NORTH CAROLINA

File No.

County

In The General Court Of Justice
District Court Division

IN THE MATTER OF

Name Of Juvenile(s)

Name Of Applicant

Street Address Of Applicant

Permanent Mailing Address Of Applicant (if different than above)

Telephone Number Of Applicant

Full Social Security No.

☐ Has No Social Security No.

ORDER OF ASSIGNMENT OR

**DENIAL OF COUNSEL
(ABUSE, NEGLECT, DEPENDENCY;
TERMINATION OF PARENTAL RIGHTS;
POST-DISPOSITION MOTION TO MODIFY;
POST-DSS-PLACEMENT
REVIEW AND PERMANENCY PLANNING HEARINGS
(DELINQUENT/UNDISCIPLINED))**

G.S. 7A-450, -451(a); 7B-602, -1000(d), -1101.1, -2503(1)c., -2506(1)c.

Type Of Case

☐ Abuse/Neglect/Dependency (A/N/D)

☐ Post-DSS-Placement Review and Permanency Planning Hearings (Delinquent)

☐ Termination of Parental Rights (TPR)

☐ Post-DSS-Placement Review and Permanency Planning Hearings (Undisciplined)

☐ Post-Disposition Motion To Modify (A/N/D)

AOC-J-144

To Confirm or Release – Inquiry at TPR

1. Are parents present?
2. If so, are they represented?
3. If not represented,
 - a. Do they want counsel, and
 - b. Are they indigent?

Sufficient to engage in “a fairly lengthy dialogue with [a respondent parent] to determine awareness of her right to counsel and the consequences of waiving that right.”

In re J.M., 273 N.C. App. 280, 289 (2020) (sufficient inquiry, but findings required); G.S. 7B-1109(b)

Confirmed Counsel

- Represent the parent's express wishes
- Protect parent's rights
- Communicate with the client
- Offer/challenge evidence
- Make objections/preserve issues
- File pleadings (e.g., answer, motions, and notice of appeal)



Confirmed Counsel - Duration

Throughout remaining stages of the proceeding, unless

- Waived or forfeited,
- Allowed to withdraw, or
- Released when matter closes

What if there
is a TPR?



Status of TPR Counsel

If...

- ✓ There is no underlying AND matter
- ✓ TPR is filed
- Provisional counsel is appointed

Status of TPR Counsel

If...

- ✓ There is an underlying AND matter
 - ✓ No attorney represents Parent in AND
 - ✓ TPR *petition* is filed
- Provisional counsel is appointed

Status of TPR Counsel

If...

- ✓ There is an underlying AND matter
 - ✓ No attorney represents Parent in AND
 - ✓ TPR *motion* is filed
-
- Notice given of right to request attorney.
 - If requested, appoint provisional counsel.

Status of TPR Counsel

If...

- ✓ There is an underlying AND matter
 - ✓ Parent is represented in AND
 - ✓ TPR (petition *or* motion) is filed
- Attorney is confirmed counsel.

Status of TPR Counsel

A TPR is filed (petition or motion)



An attorney represents a parent in an underlying AND matter



That attorney is automatically confirmed counsel in the TPR.

In all other situations, counsel is provisional (until released or confirmed).

Reminders

- No provisional at adjudication
- Court acts sua sponte
- TPR court must ask if parent is present, if has/wants counsel, and is indigent.

STATE OF NORTH CAROLINA		File No.
County		In The General Court Of Justice District Court Division
IN THE MATTER OF		ORDER OF ASSIGNMENT OR DENIAL OF COUNSEL (ABUSE, NEGLECT, DEPENDENCY; TERMINATION OF PARENTAL RIGHTS; POST-DISPOSITION MOTION TO MODIFY; POST-DSS-PLACEMENT REVIEW AND PERMANENCY PLANNING HEARINGS (DELINQUENT/UNDISCIPLINED))
Name Of Juvenile(s)		
Name Of Applicant		
Street Address Of Applicant		
Permanent Mailing Address Of Applicant (if different than above)		
Telephone Number Of Applicant		
Full Social Security No. ☐ Has No Social Security No.		G.S. 7A-450, -451(a); 7B-602, -1000(d), -1101.1, -2503(1)c., -2506(1)c.
Type Of Case		
☐ Abuse/Neglect/Dependency (A/N/D)		☐ Post-DSS-Placement Review and Permanency Planning Hearings (Delinquent)
☐ Termination of Parental Rights (TPR)		☐ Post-DSS-Placement Review and Permanency Planning Hearings (Undisciplined)
☐ Post-Disposition Motion To Modify (A/N/D)		
INSTRUCTIONS: Use this form when the applicant is a parent named in a juvenile petition to terminate the applicant's parental rights or alleges abuse, neglect or dependency, or where the applicant's appointed counsel was released but applicant is now party to a proceeding in which a motion to modify has been filed, or where the applicant is a parent of a juvenile who was placed in the custody of the department of social services after being adjudicated delinquent or undisciplined.		
I. ASSIGNMENT OR DENIAL OF COUNSEL		

AOC-J-144

What should provisional counsel do?

- Contact client
- Explain process and procedure
- Discuss legal strategy
- File appropriate motions
- Assist the client in applying for indigent status
- Notify of upcoming hearings
 - *C.f. In re R.A.F.*, 384 N.C. 505 (2023) service on provisional counsel for TPR sufficient
- Ensure a parent's rights are adequately protected
 - *In re C.T.T.*, 288 N.C. App. 136 (2023)

Withdrawal (not release!)



Withdrawal of Confirmed Counsel

Court has discretion if:

- ✓ the motion is based on justifiable cause,
- ✓ the client receives prior notice of intent, and
- ✓ the court makes a sufficient inquiry into causes and notice.

Withdrawing - Example

Parents and attorneys were absent from TPR hearing. DSS attorney informs court that parents' attorneys have had no contact with their clients, and attorneys asked DSS to tell the court they wish to be released.

The court released the attorneys, received evidence, and terminated the parents' rights.

Court must inquire as to efforts attorney made to give notice before granting withdrawal or "relieving an attorney from any obligation to actively participate."

In re D.E.G., 228 N.C. App. 381, 386-87 (2013); See also Rule 16 of General Rules of Practice

Withdrawing - Example

Mom with history of unstable housing was absent from court. Mom's attorney made a motion to continue. Court inquired about contact with Mom, to which attorney stated:

- Communication has been hard.
- Unsure why Mom was absent.
- Mom may be confused re: dates.

Motion to continue denied. Subsequent motion to withdraw granted.

Error where “record is devoid of any evidence whatsoever” parent received notice. “Superficial inquiry” into cause and notice insufficient.

In re M.G., 239 N.C. App. 77, 84-5 (2015).

Withdrawing - Example

Mom had appointed counsel for AND but retained counsel for TPR. Retained counsel moved to withdraw. Attached to the motion was a certificate of service showing DSS received notice of the motion. The attorney stated:

- He encouraged client to attend.
- Client requested withdrawal.

Motion to withdraw granted.

Error to grant motion without inquiry into surrounding circumstances on need for withdrawal or whether client received notice.

In re K.M.W., 376 N.C. 195 (2020) (dissent).

“[W]here an attorney has given his client no prior notice of an intent to withdraw, the trial judge has **no discretion** and **must** grant the party affected a reasonable continuance or deny the attorney’s motion for withdrawal.”

In re D.E.G., 228 N.C. App. 381, 386 (2013) (emphasis added).

What if the parent
does not attend a
hearing?



Counsel should seek continuance before
withdrawing

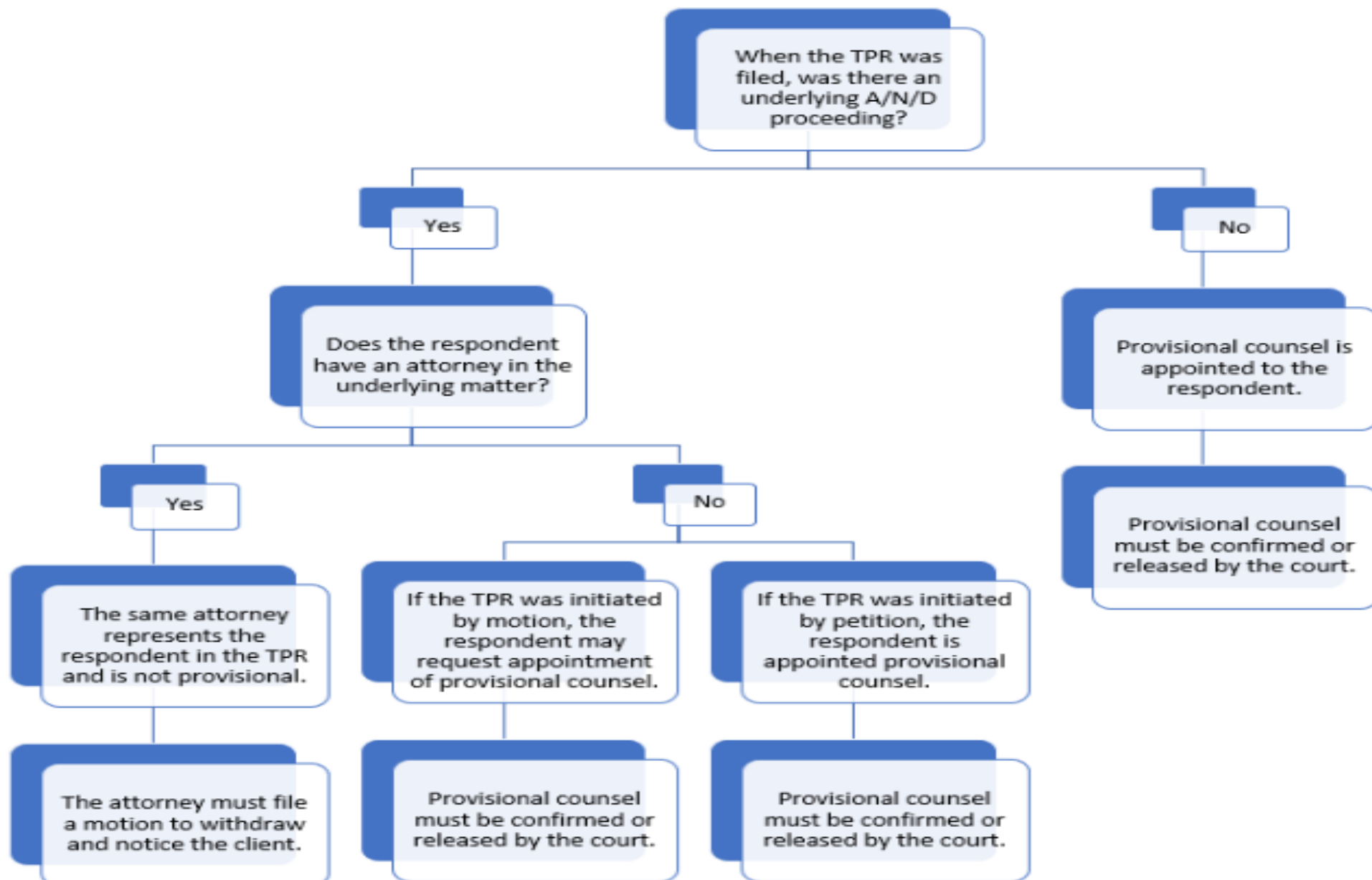
“Fundamental duty” of advocacy

Procedural safeguards > challenges posed by
client’s absence

Allowing attorney to “not participate” denies
client effective assistance of counsel

In re S.N.W., 204 N.C. App. 556, 561 (2010)

Respondent's Counsel in a TPR: Provisional or Confirmed?



To Be or Not to Be: How to Know When a Parent Attorney in a TPR Is Provisional Counsel and What That Means for Withdrawing



This entry was contributed by Timothy Heinle on April 9, 2021 at 3:15 pm and is filed under Child Welfare Law.

Consider the common scenario in which a proceeding under Article 11 of G.S. Chapter 7B is filed to terminate a parent's rights to their child. How and when an attorney is appointed for the respondent parent in a termination of parental rights proceeding (TPR), whether the attorney is provisional or confirmed, and how the attorney may withdraw, depends on a few factors. Ongoing confusion on these points has led to several appeals in recent years, including a new ruling by our Supreme Court. *See In re K.M.W.*, 376 N.C. 195 (2020). This post reviews the governing principles under North Carolina case law and statutes.

Appointment of Counsel

Underlying Matter. Often, if a Department of Social Services (DSS) believes that a child is abused, neglected, or dependent, the agency will file a petition in district court. G.S. 7B-402. In some instances, this proceeding leads to the later filing of a TPR petition by DSS to aid in achieving a permanent plan for the child. When a TPR petition is filed, the original juvenile abuse, neglect, or dependency action is casually referred to as the "underlying matter." It is not necessary that there be an underlying matter for a TPR to be filed; however, the existence (or nonexistence) of an underlying matter, and whether a parent has an attorney in that underlying matter, are important factors in the questions this post explores.

The statutory right to counsel. To ensure that a parent's due process rights in a TPR are protected, a parent has a statutory right to counsel. G.S. 7B-1101.1(a); *In re K.M.W.*, 376 N.C. 195 (2020). "When a petition [for a TPR] is filed, unless the parent is already represented by counsel, the

Forfeiture of counsel



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- Statutory right to counsel is not absolute.*
- Based on parent's "egregious, dilatory, or abusive conduct" that "totally undermine[s] the purposes of the right [to counsel] by making representation impossible and seeking to prevent trial from happening at all."**
 - C.f. Waiver (knowing and voluntary)

In re D.T.P.*, 291 N.C. App. 165 (2023); *In re K.M.W.*, 376 N.C. 195, 209 (2020) (citations omitted)

Forfeiture of counsel? No.

In re L.Z.S., 383 N.C. 309
(2022)

Inconsistent
communication
with counsel

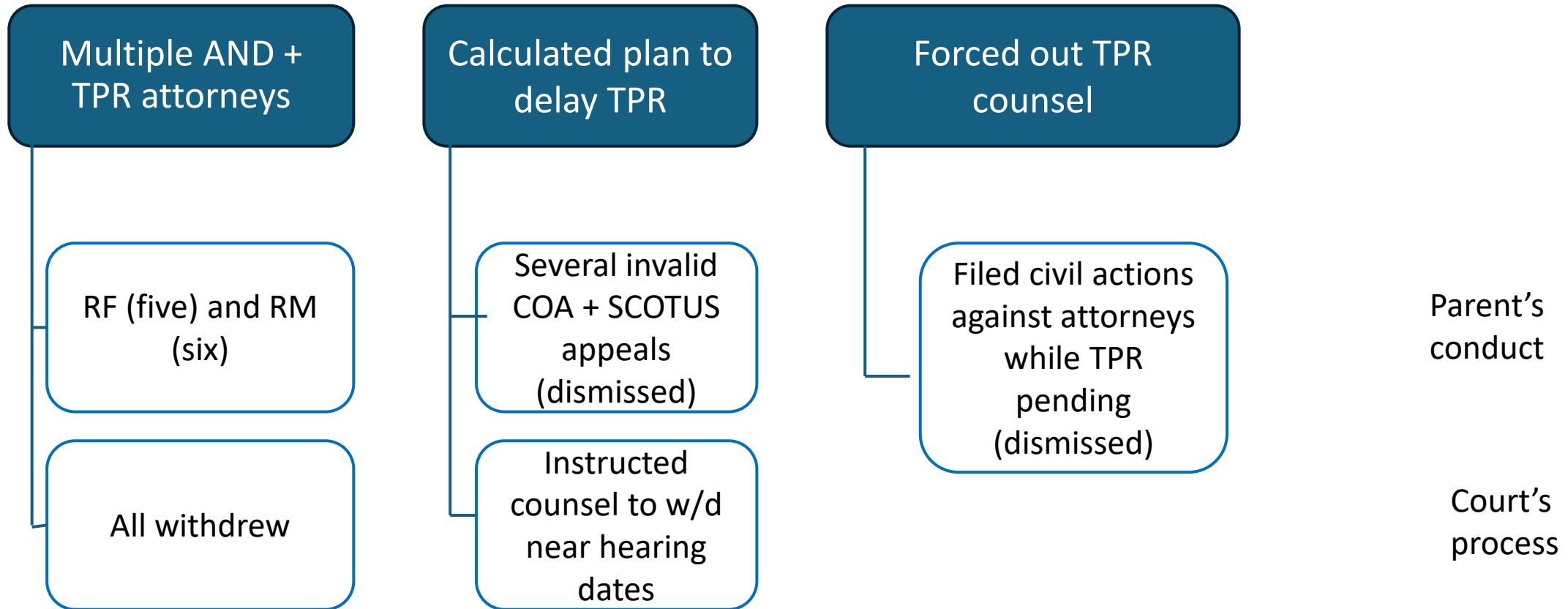
Inconsistent
contact with DSS

In re K.M.W., 376 N.C. 195
(2020)

Inconsistent
communication with
counsel

Mother late to
hearing; came and
went and came back

Forfeiture of counsel? Yes.



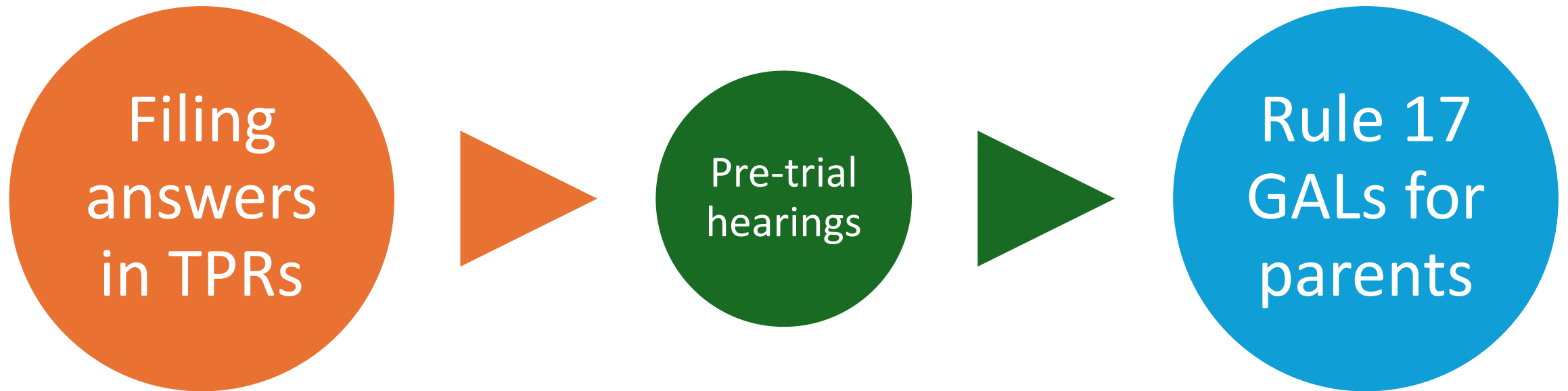
Parents Forfeited Their Right to Court-Appointed Counsel in TPR: What Is the Law for Attorney Representation of Parents in A/N/D and TPR Actions?

This entry was contributed by Sara DePasquale on December 6, 2023 at 5:55 pm and is filed under Child Welfare Law.



North Carolina law requires that parents in abuse, neglect, dependency (A/N/D) and termination of parental rights (TPR) cases receive court-appointed counsel if they are indigent. G.S. 7B-602; 7B-1101.1. Parents also have a right to knowingly and voluntarily waive their statutory right to counsel. *Id.* The question of whether a parent may forfeit their right to counsel in a juvenile proceeding based on their

Counsel has been confirmed – Pre-Trial Issues



To answer
or not to
answer –
that is the
question

Only a district court judge may grant an extension of time.

Denial of any material allegations triggers appointment of GAL for the child if not already in place. G.S. 7B-1108(b)

Even if late answer. *In re J.L.S.*, 168 N.C. App. 721 (2005).

Failure to appoint a GAL for child must be preserved. *In re A.D.N.*, 231 N.C. App. 54 (2013). (But Rule 2 has been invoked.)

Court's discretion to appoint at any time. G.S. 7B-1108(c), *In re M.J.M.*, 378 N.C. 477 (2021).

But no
default if
don't
answer

- G.S. 7B-1107. “Shall order a hearing on the petition or motion and may examine the petitioner or movant or others on the facts alleged in the petition or motion.”
- To allow a “default type” order terminating parental rights would require termination even when the facts do not support termination and thereby permit termination inconsistent with the best interests of the child. *In re Tyner*, 106 N.C. App. 480 (1992).

Parent Representation Odds and Ends



When may a court reconsider a parent's eligibility and desire for appointed counsel?

At any stage of the proceeding.

G.S. 7B-602(a), -1101.1(a).

Right to effective assistance of counsel

“When the State moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures.” In re K.N., 181 N.C. App. 736, 741, 640 S.E.2d 813, 817 (2007) (quoting Santosky v. Kramer, 455 U.S. 745, 753-54, 71 L. Ed.2d 599, 606 (1982)). The procedures established by the North Carolina Juvenile Code for terminating parental rights provide “[p]arents have a statutory right to counsel in all proceedings dedicated to the termination of parental rights. This statutory right includes the right to effective assistance of counsel.” In re Dj.L., 184 N.C. App. 76, 84, 646 S.E.2d 134, 140 (2007) (internal citations and quotation marks omitted); see also N.C. Gen. Stat. §§ 7B-1101.1, 1109(b) (2015).

In re T.D., 248 N.C. App. 366 (2016)

Are respondents who are not parents entitled to counsel?

No statutory right to counsel for non-parent respondents (guardians, custodians, and caretakers).

G.S. 7B-602; G.S. 7B-1002 (caretakers no standing to appeal); *In re J.C.B.*, 233 N.C. App. 641 (2014) (*companion case to R.R.N.*) We decline, however, to review [the adjudication of abuse] because he has no right to appeal the adjudication of abuse.

IDS Policy

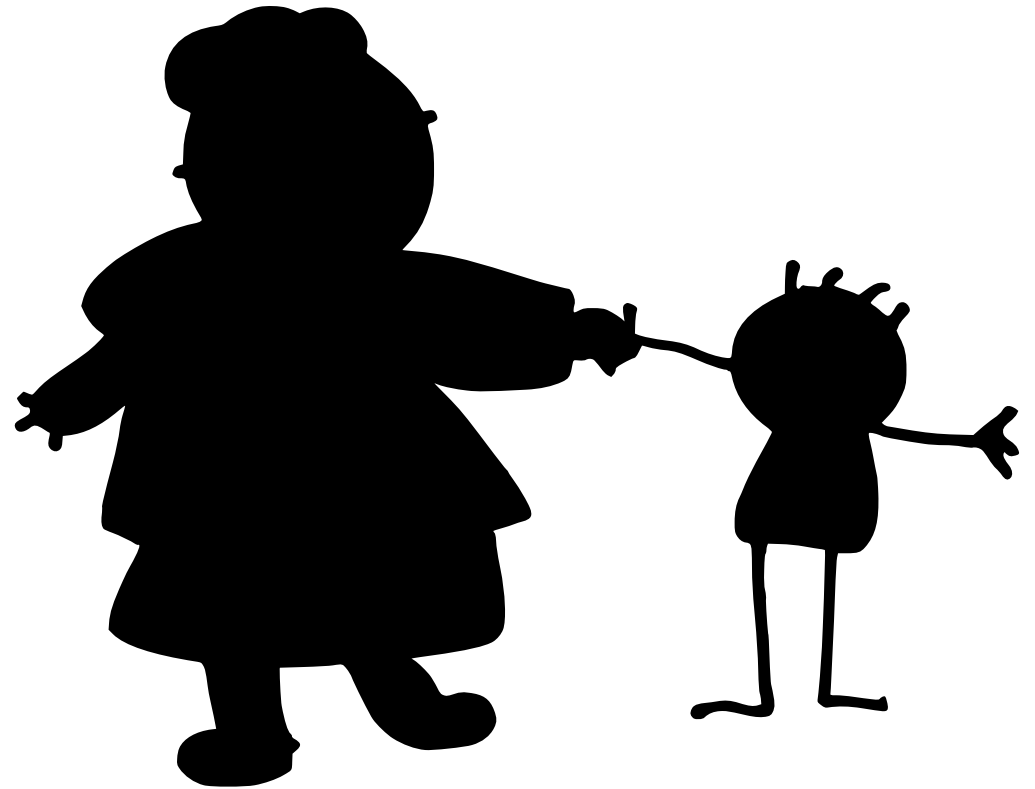
Court may find, pursuant to a *Matthews v. Eldridge*, 424 U.S. 319, 96 S. Ct. 893 (1976). Requires findings of all three prongs:

1. Nature of private interest at stake;
2. Nature of government's interest, including the cost to the State of providing a particular form of process; and
3. Likelihood of error if that form of process is not provided.

Does the right to appointed counsel still exist after permanency? (E.g., a motion filed a year after grandma gets custody)

Right to counsel at critical stage. G.S. 7A-451(b).

G.S. 7B-1000(d) says that *provisional* counsel is appointed to parents if parent attorneys were released.



IDS Policy:

- Release parent attorneys once permanency is achieved.
- Prefer term. of jurisdiction or Ch. 50 transfer.
- Presumes motion is not a critical stage.
- But court may find
 - Critical stage
 - Party is indigent, and
 - Party is entitled to counsel.
- If considering counsel for non-parent respondent, must engage in *Matthews v. Eldridge* 3-prong analysis

Is provisional counsel appointed to an unknown parent, not named in a TPR petition?

Probably not required. *See* G.S. 7B-1101.1(a); *see also* G.S. 7B-1105(d) (notice for service by publication does not reference provisional counsel).

Can the trial court appoint standby counsel to a respondent?

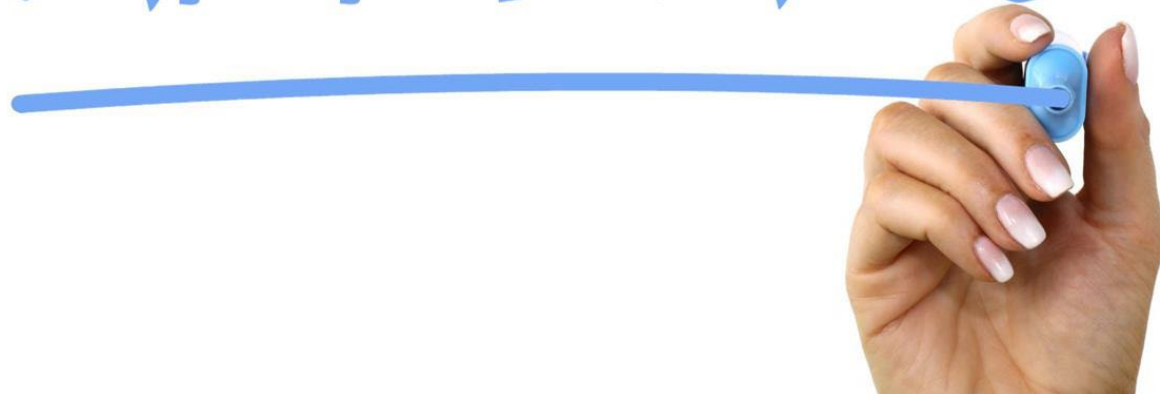
Criminal cases: G.S. 15A-1243. A defendant who waives the right to counsel may be appointed standby counsel. The duties of standby counsel are to:

- (i) Assist the defendant when called on to do so by the defendant; and
- (ii) Bring to the judge's attention matters favorable to the defendant that the judge should rule upon on his or her own motion.

- *In re J.M.*, 273 N.C. App. 280 (2020)
- *In re K.W.*, 272 N.C. App. 487 (2020)

What is trial counsel's role re: appeal?

APPEALS



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- Must file the Notice of Appeal if client requests it.
 - G.S. 7B-1001(c); 2008 Formal Ethics Opinion 17
- Must assist appellate counsel with the preparation and service of proposed record on appeal. *N.C. Rules of App. Pro.*, R. 3.1(h).

What is trial counsel's role during appeal?

Appeal of AND or change in custody order

- Represent client in on-going hearings
- Keep appellate counsel informed of proceedings at trial (could moot or resolve the appeal)

1 →

Appeal of TPR

- Ask for a stay

What happens when a notice of appeal is filed?

1

The clerk must complete the Expedited Juvenile Appeals Form within one business day.

2

The court reporting coordinator must assign within five business days from the submission of the Expedited Juvenile Appeals Form by the clerk.

3

Transcriptionist must deliver within forty (40) days from being assigned.



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