

On the Civil Side

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Tick Tock: Mandatory Time Requirements to Enter A/N/D and TPR Orders

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Subchapter I of G.S. Chapter 7B (the Juvenile Code) governs child abuse, neglect, dependency, and termination of parental rights cases in North Carolina. The Juvenile Code “sets out a sequential process for abuse, neglect, or dependency cases, wherein each required action or event must occur within a prescribed amount of time after the preceding stage in the case.” *In re T.R.P.*, 360 N.C. 588, 593 (2006). Included in the statutory time frames are the timing for entry of orders. What exactly does the Juvenile Code require? And, why does it matter?

Mandatory Timelines: Entry of Order within 30 Days

Orders for all of the following types of hearings must be in writing, include appropriate findings of fact, and be entered (signed by judge and filed with clerk) within 30 days of completion of the hearing:

- continued nonsecure custody, **G.S. 7B-506(d)**;
- adjudication of abuse, neglect, or dependency, **G.S. 7B-807(b)**;
- disposition in abuse, neglect, or dependency case, **G.S. 7B-905(a)**;
- review and permanency planning, **G.S. 7B-906.1(h)**;

- placement on the Responsible Individuals List, **G.S. 7B-323(d)**;
- hearing on unknown parent in a TPR, **G.S. 7B-1105(e)**;
- TPR adjudication and disposition, **G.S. 7B-1109(e)**, **7B-1110(a)**; and
- reinstatement of parental rights, **G.S. 7B-1114(l)**.

What Constitutes an Entry of an Order?

The Juvenile Code provides for orders to be entered and served in accordance with **Rule 58 of the Rules of Civil Procedure**. **G.S. 7B-1001(b)**. An order is not entered until it is

1. reduced to writing,
2. signed by the judge, and
3. filed with the clerk. See **In re Thompson**, 232 N.C. App. 224 (2014) (discussing filing with the clerk, which may include a stamp-file or other marking that indicates a file date).

N.C. R. Civ. P. 58; **In re O.D.S.**, 786 S.E.2d 410 (N.C. 2016) (extensively discussing pre- and post-1994 amendments to N.C. R. Civ. P. 58, with applicable case law, and the impact of those amendments on when an order is entered versus orally rendered).

What about an Oral Announcement by the Judge?

The judge's rendition (or oral announcement) of his or her order in open court is not an order because it does not comply with N.C. R. Civ. P. 58. This means that when the judge makes a rendition of his or her order in open court,

- the terms are subject to change, meaning the trial court is not required to adhere to the rendition when making and

entering its written order. *In re O.D.S.*, 786 S.E.2d 410;

- the court may consider evidence presented after its rendition but before it enters a written judgment. and cases cited therein; ***In re B.S.O.***, 225 N.C. App. 541 (2013); and
- the rendition is not enforceable until it is reduced to writing, signed by the judge, and filed with the clerk. *In re O.D.S.*, 786 S.E.2d 410; ***In re K.S.***, 183 N.C. App. 315 (2007).

Who Drafts the Order?

Trial judges may draft their own orders, but nothing prevents the trial judge from directing the prevailing party to draft an order on the court's behalf. ***In re J.B.***, 172 N.C. App. 1 (2005). The court of appeals has recognized that district court judges have little or no support staff to assist with preparing orders, which has resulted in judges relying on the attorneys for the parties to assist in preparing the court's order. ***In re A.B.***, 239 N.C. App. 157 (2015); ***In re J.W.***, 772 S.E.2d 249 (N.C. 2015).

Regardless of who does the drafting, the trial court is ultimately responsible for the order. *In re A.B.*, 239 N.C. App. 157. That includes meeting the mandatory time requirements set forth in the Juvenile Code. See ***In re S.Z.H.***, 785 S.E.2d 341 (N.C. 2016) and ***In re L.L.O.***, ___ N.C. App. ___ (April 4, 2017) (noting in each case that the trial court "violated" the time periods in G.S. 7B-1109(e) and -1110(a) when 6 and 9 months respectively passed between the completion of the TPR hearing and entry of the order). Meeting the statutory time limits is not discretionary with the trial court. ***In re T.H.T.***, 362 N.C. 446 (2008).

The Impact of a Late Order

The North Carolina Supreme Court recognized "the difficulties facing a conscientious district court judge trying to balance a busy trial docket with the many other daily details requiring his or her attention, particularly when the volume of abuse, neglect, and dependency cases continues to increase" but noted that "regularly allowing bureaucratic failure to be the sole cause of delay in the entry of orders affecting a child's welfare is anathema to the principles underlying the Juvenile Code." *Id.* at 456–57. The statutory time limits were established by "An Act to Amend the Juvenile Code to Expedite Outcomes for Children and Families

Involved in Welfare Cases and Appeals....” **S.L. 2005-398**. These limits are consistent with the purpose of the Juvenile Code to achieve safe, permanent homes for children within a reasonable period of time. *In re T.H.T.*, 362 N.C. 446; see **G.S. 7B-100(5)**. Delays in entering orders are “directly contrary to the best interests of the children, which is the ‘polar star’ of the North Carolina Juvenile Code.” *In re T.H.T.* at 450; *In re S.Z.H.* at 349.

Delays can impact the case in a number of ways.

1. The timing of when an order is entered impacts the **progression of the case**. For example, a permanency planning hearing must be scheduled within 12 months of the date of the initial *order* removing custody. **G.S. 7B-906.1(a)**.
2. Until an order is entered and served, parties cannot **appeal**. *In re T.H.T.*, 362 N.C. 446; *In re Thompson*, 232 N.C. App. 224 (2014); G.S.7B-1001(b).
3. The **legal authority to act on an order** occurs when the order is entered (as opposed to rendered). **In re A.G.M.**, 773 S.E.2d 123 (N.C. 2015). That means, unless there is a prior order that continues to be in place or a temporary written order is entered, a county department has no authority to remove and/or maintain custody of a child upon an oral rendition made at the completion of a hearing. Visitation provisions establishing the minimum frequency, duration, and level of supervision are not enforceable until an order is entered. A county department is not bound by a rendition to make certain reasonable efforts for reunification with the child’s parents, guardian, or custodian but rather is only bound upon entry of the order. And a parent, guardian, custodian, or caretaker is not bound by provisions to participate in parenting classes or take appropriate steps to remedy conditions that led to the child’s adjudication or removal

until a dispositional order is entered. See **G.S. 7B-904**. As a result, a delay in the entry of the order that requires specific reasonable efforts by the department or remedial steps for a respondent to take could impact a child's permanency.

4. A court's **consideration of a party's failure to comply with an order is limited** to the time from which the order was entered (not rendered in court) and the hearing the court is current presiding over, which may include a TPR if one was initiated. See *In re A.G.M.*, 773 S.E.2d 123.

Remedies when an Order Is Not Timely Entered

1. Clerk Must Schedule a Hearing

The Juvenile Code requires that the clerk schedule a hearing when orders resulting from the following hearings are not entered within the 30-day time requirement:

- adjudication of abuse, neglect, or dependency, G.S. 7B-807(b);
- review and permanency planning, G.S. 7B-906.1(h);
- TPR adjudication and disposition, G.S. 7B-1109(e), 7B-1110(a); and
- reinstatement of parental rights, G.S. 7B-1114(l).

The subsequent hearings required by these statutes must be scheduled by the clerk at the first session of juvenile court after the 30-day period expires. The purpose of the hearing is to determine and explain the reason for the delay and to obtain any needed clarification about the contents of the order. An order must then be entered within 10 days after this hearing.

If an order is not entered within 30 days after the applicable substantive hearing and the clerk has not scheduled a subsequent hearing to address the delay, a party should file a request for such a hearing with the clerk. *In re T.H.T.*, 362 N.C. 446.

2. Petition for Writ of Mandamus

The appropriate remedy for a trial court's failure to enter a timely order is a petition for a writ of mandamus to proceed to judgment; it is not a new hearing or an appeal. *Id.* Application for a writ of mandamus is made pursuant to Rule 22 of the North Carolina Appellate Rules and requires that

- the party seeking relief show a clear legal right to the act requested;
- the defendant (in this context, the court) has a clear legal duty to perform the act;
- the duty relates to a ministerial act, not an act requiring the exercise of discretion (mandamus may be used to compel an official to exercise his or her discretion, but not to direct what the result should be);
- the official has neglected or refused to perform the act and the time to act expired; and
- an alternative legally adequate remedy is not available.

In re T.H.T., 362 N.C. 446.

A party may petition the court of appeals for a writ of mandamus when the trial court fails to (1) enter an order within 30 days of completion of the applicable substantive hearing, (2) schedule a hearing to address the delay, and/or (3) enter an order within 10 days following that hearing. *Id.*

Cooperation and Active Participation

Timely court orders require active participation by the court and the parties. If a court directs an attorney to draft the order, the attorney should be aware of the required time period. If the attorney fails to meet the deadline, the clerk must schedule a hearing. If the clerk fails to schedule the hearing, a party should request that the hearing to address the delay be scheduled. That hearing provides the opportunity for review of the contents of the order and an explanation for the delay. The result may be that the court directs another attorney to draft the order because it is not possible for the first attorney to timely draft the order (for example, a burdensome trial schedule during that time period), or the judge may decide to draft the order him/herself. If a delay continues, a party is encouraged to petition for a writ of mandamus when appropriate (e.g., the subsequent hearing to address the delay is not scheduled or the order is not entered within 10 days of that subsequent hearing). See *In re T.H.T.*, 362 N.C. 446.