

**FAMILY COURT LOCAL RULES**  
**DELINQUENT AND UNDISCIPLINED JUVENILES**  
**JUVENILE COURT**  
**28<sup>TH</sup> JUDICIAL DISTRICT**

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## **RULE 1. SCOPE, CONSTRUCTION AND ENFORCEMENT**

1. These rules apply to all cases in which a juvenile is alleged to be delinquent or undisciplined. The rules are intended to supplement and compliment the statutory requirements of Subchapter II of Chapter 7B of the North Carolina Juvenile Code. These rules shall not be applied or construed so as to restrict or modify the statutory procedures set for juvenile court in the North Carolina Juvenile Code.

2. These rules shall be liberally construed to accomplish the purposes set forth in the North Carolina Juvenile Code. The Court may impose sanctions for failure to comply with these rules. No rule shall be construed, applied or enforced in a manner that will endanger or harm a juvenile or prejudice the rights of any juvenile.

## **RULE 2. APPOINTMENT OF COUNSEL**

The Office of the Public Defender for the 28<sup>th</sup> Judicial District shall be appointed to represent any juvenile alleged to be delinquent or undisciplined. The Public Defender shall be responsible for assignment of counsel from the Public Defender's Office. In any case where the Office of the Public Defender has a conflict of interest, outside counsel shall be appointed by the Public Defender or by the Judge.

## **RULE 3. HEARING SCHEDULE**

All juvenile delinquent and undisciplined matters, including but not limited to, delinquent and/or undisciplined adjudications, disposition hearings, secure custody hearings, probation violation hearings, probable cause hearings, first appearances and review hearings, shall be scheduled on Thursdays in Juvenile Court.

Detention review hearings may also be scheduled for Tuesday mornings as necessary to comply with time standards set forth in the N.C.Gen.Stat.7B-1906.

#### **RULE 4. CALENDAR AND JUDICIAL ASSIGNMENTS**

The juvenile calendar shall be maintained by the Clerk assigned to Juvenile Court. Court calendars shall be provided to the Department of Juvenile Justice, the Public Defender's Office and the District Attorney's Office, by placing calendars in the designated location in the office of the Juvenile Clerk.

Cases involving juveniles alleged to be delinquent or undisciplined shall be assigned to a Family Court Judge. If there has been no prior involvement with the juvenile or the juvenile's family prior to the First Appearance than the juvenile's case will be assigned to the Family Court Judge who presides over the First Appearance. If a Family Court Judge has been assigned as the judge for a family and a juvenile subsequently is alleged to be delinquent or undisciplined, the same Family Court Judge shall be assigned the delinquent or undisciplined matter if at all possible.

Whenever possible any matter to be heard involving a juvenile shall be scheduled for hearing before the assigned Family Court Judge. If a case needs to be scheduled on a date other than the assigned judge's court date, the Family Court Case Manager may take appropriate action to adjust the schedule to allow the assigned judge to hear the case. However, nothing herein shall prevent a juvenile case from being heard by any judge whenever necessary.

At or before the conclusion of each hearing, the next hearing date shall be set and the date announced in open court.

#### **RULE 5. SERVICE OF SUMMONS AND PETITION**

When a juvenile and his/her parent(s) or guardian attend an Intake meeting and the decision is made to file a juvenile petition, the Court Counselor will serve a summons and a copy of the petition on the juvenile and the parent(s) or guardian before they leave the Intake meeting.

If the juvenile and the parent(s) or guardian do not attend the Intake meeting and do not make themselves available for service of the petition and summons, the Buncombe County Sheriff's Department may assist the Court Counselor in serving the summons and petition on the juvenile and the parent(s) or guardians.

**RULE 6. DUTY OF JUVENILE COURT COUNSELOR AND DSS REGARDING SUSPICIONS OF ABUSE AND NEGLECT**

Whenever a Juvenile Court Counselor has cause to suspect a juvenile is abused, neglected or dependent, the Court Counselor shall immediately notify DSS and document the notification to DSS in the record. The notification to DSS shall include the date of any scheduled hearing in juvenile court. If DSS accepts the report as a protective services complaint, DSS shall follow the standard procedure for investigation of the complaint. At the next juvenile court hearing involving the juvenile, DSS shall advise the Court of the status of the investigation. If DSS substantiates the allegations of abuse, neglect or dependency, a DSS representative shall inform the Court of whether or not DSS intends to file a juvenile petition.

**RULE 7. DETENTION HEARINGS**

If a juvenile is placed in secure custody, the first detention hearing must be held within five days of placement in secure custody. As long as a juvenile remains in secure custody, further hearings to determine the need for continued secure custody must be held at intervals of no more than ten calendar days. Non-secure custody hearings may only be waived with the consent of the juvenile, through counsel for the juvenile.

**RULE 8. FIRST APPEARANCES**

The First Appearance for juveniles alleged to have committed a delinquent offense that would be a felony if committed by an adult must be held within ten days of the filing of the juvenile petition. For juveniles in secure custody, the First Appearance will be incorporated in the juvenile's first Detention Hearing.

At the First Appearance the Judge shall:

1. Inform the juvenile of the allegations in the petition;
2. Appoint counsel for the juvenile unless the juvenile or the juvenile's family has retained private counsel for the juvenile;
3. Advise the juvenile of the date of the probable cause hearing which shall be scheduled within 15 days of the first appearance;
4. Advise the parent(s), guardian, or custodian that a parent, guardian or custodian must attend all scheduled court hearings and may be held in contempt for failure to attend any scheduled hearing.

5. The Court shall also advise the parent or guardian that he/she may be required to reimburse the State of North Carolina for all or part of the juvenile's legal fees.

## **RULE 9. PROBABLE CAUSE HEARINGS**

Probable cause hearings shall be scheduled at the First Appearance and shall be held within 15 days after the First Appearance unless the Court continues the hearing for good cause. Whenever possible, the District Attorney shall inform the juvenile at the First Appearance of the intent to seek a transfer to Superior Court.

If the juvenile waives probable cause or the court finds probable cause than the adjudication date shall be announced in open court.

## **RULE 10. ADJUDICATIONS AND DISPOSITIONS**

Absent good cause, cases shall be adjudicated on the date first scheduled for adjudication of the juvenile petition. Consent of the parties alone is not good cause to continue the adjudication.

Motions to continue the adjudication hearing shall be in writing and whenever possible motions to continue shall served on all parties at least one day prior to the scheduled hearing. Service may be by hand delivery, mail, e-mail or fax. A copy of the motion shall be provided to the Family Court Case Manager. All parties shall have the opportunity to be heard on the motion to continue.

The moving party is responsible for preparing the order granting the motion to continue. The order shall include the grounds for the continuance, the basis of any objections to the motion to continue, and the new court date.

Whenever possible, the disposition hearing shall be held immediately after the adjudication. However, the disposition may be continued to obtain any necessary information or evaluations concerning the juvenile.

In cases where a juvenile is held in secure custody pending disposition, the juvenile shall be scheduled a detention review hearing every 30 days.

## **RULE 11. PREDISPOSITION REPORTS**

The Juvenile Court Counselor shall prepare a written pre-dispositional report to be presented to the Court if the juvenile is adjudicated to be delinquent or

undisciplined. If feasible, the report shall include the following information when available:

- a. The results of any home study;
- b. Information concerning both parents, including their location, their contact with the juvenile, any mental health or substance abuse history, and any other relevant information;
- c. A summary of the juvenile's court history;
- d. A summary of services previously provided to the juvenile;
- e. The juvenile's educational history and present school placement;
- f. A summary of evaluations the Court Counselor deems necessary;
- g. A summary of appropriate community resources needed by the juvenile and their availability;
- h. An opinion as to whether or not there is reason to suspect that the juvenile is abused, neglected or dependent;
- i. A risk and needs assessment;
- j. The level of sanctions according to the dispositional grid as set forth in N.C.Gen.Stat. 7B-2507 with the total number of points as of the date of the disposition.
- k. The recommended disposition for the juvenile.

The pre-disposition report may be provided to the juvenile's attorney prior to the disposition but shall not be provided to the Court until after the adjudication. Pre-disposition and other court reports should be made available to the juvenile's attorney at least two days prior to the scheduled hearing date. If the report contains information that, in the Juvenile Court Counselor's opinion, should not be disclosed to the juvenile or the juvenile's parent(s) or guardian, the counselor shall so inform the court and the juvenile's attorney. The Court may enter protective orders as necessary restricting the release of certain information. The juvenile's attorney shall not disclose any such information to the juvenile or the parent so long as the protective order remains in effect.

## **RULE 12. PLACEMENT OF JUVENILES IN DSS CUSTODY**

If at any stage of the proceedings a party or the Court determines it is in the best interests of the juvenile that the juvenile be placed in the custody of the Buncombe County Department of Social Services, the Family Court Case Manager shall schedule a Child Planning Conference at the earliest available date to discuss

with all necessary parties issues of placement and services that could be provided to avoid the necessity of placement or to increase the likelihood of success of the placement. The Child Planning Conference shall include the juvenile's parent(s), guardian, custodian, guardian ad litem, Court Counselor, DSS, District Attorney, Public Defender, and representatives from mental health, the schools, the health department and any other agency or individual deemed necessary. The Family Court Case Manager shall preside over the Child Planning Conference.

The Child Planning Conference shall be scheduled within five days notice to the Family Court Case Manager of the need for placement with DSS. Nothing shall restrict the right of the Court to make immediate DSS placement if necessary. If the Court enters an order placing a juvenile in the immediate non-secure custody of DSS the Family Court Case Manager shall contact DSS and communicate all information involving the juvenile and the date of the next court hearing.

### **RULE 13. RESPONSIBILITY OF ATTORNEYS**

An attorney who represents a juvenile shall be in court for any scheduled court hearings. If an attorney has a conflict with another court, the attorney shall keep the Clerk informed of the attorney's location and when the attorney expects to be available for juvenile court.

Juvenile Court in Buncombe County has precedence over all other Buncombe County District Courts.

### **RULE 14. REVIEW HEARINGS**

A review hearing may be scheduled at any time by the Office of Juvenile Justice or the Juvenile. A copy of the motion for review shall be filed with the Clerk and served on every party. The Clerk shall schedule the motion and send each party a notice of hearing on the motion.