

# 25<sup>th</sup> JUDICIAL DISTRICT – RULES OF COURT

## **ARTICLE 2. JUVENILE COURT RULES**

### **ARTICLE 2A. JUVENILE COURT RULES - GENERAL**

#### **Juv Rule 1. Scope. Effective date.**

- 1.1 Scope. These rules apply to all cases in which a petition is filed alleging that a juvenile is abused, neglected, dependent, delinquent and undisciplined.
- 1.2 Effective date. Unless otherwise stated in a particular rule, the effective date of the rules contained herein is February 1, 2009.

#### **Juv Rule 2. Purpose; Atmosphere of Mutual Respect.**

- 2.1 Purpose. These rules are designed to help achieve stable and secure homes for children who come into the court's juvenile jurisdiction. To that end, these rules serve the following purposes:
- a) To provide for judicial oversight of case planning;
  - b) To ensure a coordinated decision-making process;
  - c) To eliminate unnecessary delays in court proceedings;
  - d) To encourage early involvement of families and children in the planning and decision-making process; and
  - e) To achieve results that truly reflects the best interests of children.
- 2.2 Atmosphere of mutual respect. The Court and all parties -- including but not limited to DSS, the GAL, parent(s), juvenile(s), district attorney, court counselors, and any service providers -- and their attorneys shall at all times show respect to one another. Differences and disagreements regarding the proper course to be taken on particular issues shall be addressed in a dignified manner. When the Court, a party or attorney believes in good faith that the child's interests has been adversely affected by the conduct or omission of duty of a party, social worker, mental health professional or attorney the matter should be addressed, whenever possible, outside the public arena of the courtroom. When the facts necessitate debate on such issues in a courtroom setting, such debate shall occur in a dignified, respectful manner with due regard for the legitimate concerns, interests and responsibilities of the person or agency whose conduct is being questioned.

### **Juv Rule 3. Construction and Enforcement.**

- 3.1 These rules shall be liberally construed to accomplish the purposes set forth in **Juv Rule 2**. The Court may impose sanctions against a party or attorney who fails to comply with these rules; however, no rule shall be construed, applied, or enforced in a manner that will endanger or harm a child.

### **Juv Rule 4. Definitions.**

- 4.1 Unless the context clearly requires otherwise, for purposes of these rules:
- a) "Case Coordinator" means an employee of the District Court Judges' Office, designated by the Chief District Court Judge.
  - b) "Clerk" means the Clerk or assistant or deputy clerk of superior court.
  - c) "Child Planning conference" means a meeting of the parties in a juvenile case, their attorneys and associated community agency representatives, with a case coordinator, held during the first week after a juvenile is taken into non-secure custody or after a new abuse, neglect or dependency petition is filed.
  - d) "Court" means the district court or a district court judge.
  - e) "Court Counselor" means the Chief Court Counselor or any court counselor designated by the Chief Court Counselor of the district to supervise delinquent and undisciplined juveniles.
  - f) "DSS" means the county department of social services.
  - g) "Judge" means a district court judge in the district in which a petition is filed.
  - h) "UCCJA" means the Uniform Child Custody Jurisdiction Act, Chapter 50A of the North Carolina General Statutes.
  - i) "GAL" – means the court appointed guardian ad litem. The GAL is a party to all proceedings wherein they are appointed and have the right to present reports and other evidence at every proceeding.
  - j) "Attorney Advocate" – means the court appointed attorney for the GAL contracted and designated by the GAL administrator to represent the GAL in all proceedings.
  - k) "TPR" – means a termination of parental rights proceeding.

### **Juv Rule 5. Training Encouraged.**

- 5.1 The Chief District Court Judge shall from time to time arrange for and schedule training sessions for judges, court counselors, attorneys, social workers, guardians ad litem and other professionals who participate on a regular basis in juvenile court matters. Judges, court counselors, attorneys, social workers, guardians ad litem and other professionals who participate on a regular bases in juvenile court matters are encouraged to attend the training sessions offered by their respective professions or disciplines as well as the sessions scheduled in **Juv Rule 5 a)** above as may be necessary to achieve and maintain a working knowledge of the relevant issues of juvenile proceedings as well as the practices and procedures in effect in the 25<sup>th</sup> Judicial District.

### **Juv Rule 6. Priority of Juvenile Court.**

- 6.1 Juvenile cases shall have priority over all other district court matters. Where conflicts arise, judges in conflicting courts should communicate with one another to facilitate the most efficient disposition of their cases.

### **Juv Rule 7. Sharing Information Among Agencies.**

- 7.1 Information involving juveniles alleged or adjudicated to be Abused, Neglected, Dependent, Delinquent or Undisciplined shall be shared between agencies as authorized and required by Sections .0101 to .0104, Subchapter 5G , North Carolina Administrative Code.

## **ARTICLE 2B. RULES APPLICABLE TO ABUSE, NEGLECT AND DEPENDENCY CASES**

### **Juv Rule 8. Appointment of Counsel.**

- 8.1** Separate counsel appointed. When a new petition alleging abuse, neglect or dependency is filed, the clerk shall immediately appoint separate counsel to represent each respondent named in the petition.
- 8.2** Notice of appointment. The clerk shall prepare a *Notice of Appointment of Counsel* to be served on the parent with the petition and summons. The notice shall include the attorney's name and business address and telephone number and shall encourage the parent to contact the attorney. The notice also shall inform the parent:
- a) That the parent may retain counsel;
  - b) That the Court or the Clerk, at the first hearing or at the juvenile planning conference, will determine whether the parent qualifies for appointed counsel and whether the parent waives the right to counsel; and
  - c) That the Court will dismiss the appointed counsel if the parent does not qualify for appointed counsel or the parent waives the right to counsel.
- 8.3** Attorney must be available. Before appointing a specific attorney, the clerk shall ensure that the attorney will be available for the juvenile planning conference and the first hearing in the case and, to the best of the attorney's knowledge, for other stages of the proceeding. The clerk may make this determination either by talking with the attorney or by pre-arrangement with one or more attorneys on the appointment list.
- 8.4** Same attorney appointed. In any case in which a petition for termination of parental rights is filed, the clerk shall appoint the same attorney to represent the parent in the termination proceeding if the parent whose rights are sought to be terminated has been represented by an appointed attorney in a prior abuse, neglect or dependency proceeding. The petitioner shall mail the attorney a copy of the summons and petition. In the event the termination of parental rights proceeding is filed as a Motion in the Cause, the current appointed counsel, if any, and including the attorney advocate for the GAL shall continue representation, unless the attorney has properly moved the Court to withdraw. In other cases, where a parent has not previously been represented by counsel, counsel shall be appointed at the preliminary hearing pursuant to **Juv Rule 20 b) i)** when the respondent is indigent.

## **Juv Rule 9. Responsibilities of Attorneys.**

- 9.1** Attorneys to be qualified. Before being eligible for appointment to represent parents, attorneys must satisfy the Court:
- a) That they have sufficient experience and skills to provide competent representation;
  - b) That they have a good working knowledge of juvenile law and juvenile court procedures; and
  - c) That they have a good understanding of child protective services and the related mandates that apply to DSS and to guardians ad litem.
- 9.2** Attorneys to be available. Except for unforeseen conflicts, an attorney should not accept an appointment pursuant to **Juv Rule 8** unless the attorney can be available for the child planning conference, if any, and the first hearing in the case and, to the best of the attorney's knowledge, for other stages of the proceeding.
- 9.3** When client remains unserved. After the first hearing in a case, an attorney appointed to represent a parent who has not been served and who does not appear at the hearing shall not be responsible for further appearances until the clerk notifies the attorney that the parent has been served.
- 9.4** Duty when conflict occurs. An attorney who has conflict in another court shall comply with the relevant rules relating to priority and, when absent from juvenile court because of a conflict, shall keep the case coordinator and courtroom clerk informed of his or her location at all times. An attorney who has a conflict has the burden of proving the conflict and that the court having priority refuses to allow the attorney be present.
- 9.5** Withdrawal. Leave of court for an attorney to withdraw from a case shall be granted only for compelling reasons.

## **Juv Rule 10. Appointment of Guardian ad Litem and Attorney Advocate.**

- 10.1** Judge shall appoint. When a petition is filed alleging abuse and neglect, the judge shall appoint a guardian ad litem and, if the guardian ad litem is not an attorney, also an attorney advocate, to represent the juvenile named in the petition.
- 10.2** Judge may appoint. For petitions filed alleging dependency only, the Court may appoint a guardian ad litem and/or attorney advocate.

- 10.3** Release. At any point in the proceeding, if the judge determines that a guardian ad litem or attorney advocate is not necessary for a juvenile who is alleged only to be dependent, the judge may dismiss the guardian ad litem or attorney advocate or both.

**Juv Rule 11. Service; Summons and Petition; Notice.**

- 11.1** Identification and location of parents. From the date the petition is filed until the adjudication hearing, the petitioner shall have a continuing duty to identify and locate **any** parent or other respondent who has not been served with a copy of the summons and petition and to have the summons and petition served on any such parent or other respondent. At each hearing the Court shall make inquiry as to the progress in these areas and shall direct the petitioner as appropriate in these efforts.
- 11.2** Hearing required when parent unknown. If the identity or location of a parent is unknown, the court shall inquire of the mother at the first appearance or first non-secure hearing in order to ascertain any relevant information which would assist the Petitioner in locating the unknown parent and shall direct the Petitioner regarding specific efforts which should be made to locate said parent.
- 11.3** Notice of Child Planning conference. At the time a respondent is served with a petition alleging abuse, neglect, or dependency, the respondent shall also be served with a notice informing the respondent of the nature, date, place and time of the child planning conference and / or the first hearing.
- 11.4** Law enforcement must give priority. The law enforcement agency responsible for serving summons, petitions, notices, subpoenas and other legal documents in juvenile cases shall give priority to the timely service of such documents.

**Juv Rule 12. UCCJEA Affidavit.**

- 12.1** The information required by N.C.G.S. 50A-9 shall be included in the petition, in an affidavit attached to and served with the petition, or in a separate affidavit filed with the Court and served on the parties as soon as feasible after the petition is filed.

**Juv Rule 13. Child Planning Conference.**

- 13.1** Child planning conference scheduled. Whenever a petition is filed alleging abuse, neglect or dependency, a child planning conference shall be held as soon as practicable after the petition is filed, as close to compliance with the Court Improvement Project modality as possible.

**13.2** Case coordinator to facilitate. A case coordinator shall conduct the child planning conference.

**13.3** Duties of case coordinator at child planning conference. At the child planning conference, the case coordinator shall:

- a) Introduce himself/herself and the parties;
- b) Advise the parties that participation in the conference is voluntary and that a non-secure custody hearing will be held before a district court judge, if necessary;
- c) Explain the nature of the proceeding and the purposes of the conference;
- d) Review the adequacy of notice and service of process;
- e) Attempt to ascertain the identity and whereabouts of any parent, guardian, or custodian of the juvenile who is not present, whether that person has been served, and what steps need to be taken to identify, locate, or serve any such person;
- f) Hear information from the parties, aimed at determining:
  1. What condition is alleged in the petition, what condition or risk precipitated the non-secure custody order, including consideration of the results of the petitioner's risk assessment,
  2. Whether a condition or risk justifying non-secure custody under G.S. 7B-503 exists,
  3. What efforts the petitioner has made to prevent or eliminate the need for non-secure custody,
  4. The identity of possible relative placements,
  5. Conditions, if satisfied, which would allow the child(ren) to be placed back with parent(s),
  6. Services available immediately to assist the parent(s) and/or child(ren) in addressing the conditions giving rise to the petition.
  7. Encourage the parties to engage in a limited discovery of records and documents, which may be relevant to a party's case preparation. (See discovery limitations in **Juv Rule 17**)
- g) After giving all parties an opportunity to present information and to ask brief questions of other parties, the case coordinator shall determine whether there is agreement among the parties as to the need for the juvenile to remain in non-secure custody.
- h) Before the conclusion of the child planning conference, the case coordinator shall inform the parties that information regarding all possible relative placements shall be provided by the end of the Disposition hearing.

- i) In addition, a list of proposed relative placements, indicating priorities for which relatives should be considered first, and provide said list to the attorney for the Petitioner to be provided to the Court at the Disposition hearing.
  
- j) If all parties agree that the juvenile does not need to remain in non-secure custody, the case coordinator shall:
  - 1. Summarize in writing, in the form of a proposed consent order releasing the juvenile from non-secure custody, the basis for the agreement, including the proposed plan for the child pending a hearing;
  - 2. Give all parties an opportunity to review the proposed consent order and to decide whether to sign it; and
  - 3. Sign the proposed consent order, present it as soon as possible to a district court judge, who shall determine whether to approve it as an order of the Court.
  
- k) If the parties do not agree that the juvenile shall be released from non-secure custody, the case coordinator shall explore the following with the parties:
  - 1. Placement options for the juvenile, including possible relative placements and efforts to keep siblings together,
  - 2. Efforts needed to ensure that a school-aged juvenile's school placement and attendance are not disrupted,
  - 3. Parental visitation,
  - 4. Sibling visitation,
  - 5. Service needs and referrals,
  - 6. Financial support for the juvenile,
  - 7. Whether a court order is needed to address the juvenile's immediate needs, such as an immediate need for medical treatment or evaluation or the need to secure items belonging to the juvenile; and
  - 8. Specific steps the parties agree to take before the non-secure custody hearing.
  
- l) If a judge signs a consent order releasing the juvenile from non-secure custody, the case coordinator shall explore the following with the parties:
  - 1. Service needs and referrals, and
  - 2. Specific steps the parties agree to take before the first hearing.



- m) Before the conclusion of the child planning conference, the case coordinator shall:
1. Give all parties an opportunity to ask brief questions,
  2. Set a specific date for the first hearing,
  3. Explain the purpose of the hearing,
  4. Prepare and ensure that all parties have a copy of any order a judge has signed or any written agreement entered as a result of the child planning conference;
  5. In any case in which a parent's identity or whereabouts are unknown or the paternity of the child has not been legally established, specify in writing any steps that are to be taken to identify the parent, locate the parent, or establish paternity. A hearing date should be established and, if possible, service of the motion, any necessary subpoenas and notice of such hearing should be accomplished.
- n) Although the child planning conference is designed as a preliminary information sharing session, it is not intended to be an extensive discovery session. The conference should be conducted as briefly as possible taking into account its stated objectives.

**Juv Rule 14 [Reserved].**

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## **Juv Rule 15. Non-secure Custody Hearing.**

- 15.1** Time of hearing. If a juvenile remains in non-secure custody after a child planning conference, the non-secure custody hearing required by N.C.G.S. 7B-506 to determine the need for continued non-secure custody shall be held **within seven (7) calendar days** after the juvenile was taken into non-secure custody unless the non-secure custody was issued without judicial approval, then, in such event, the hearing shall occur at the next session of district court in the county where the matter is pending.
- 15.2** Judge to preside. Non-secure custody hearings shall be held before a district court judge.
- 15.3** Duties at non-secure. At a non-secure custody hearing, the judge shall:
- a) Review the nature of the proceeding and the purposes of the hearing;
  - b) Address any issues relating to adequacy of notice and service of process;
  - c) Follow up on any pending issue regarding the identity or whereabouts of any parent, guardian, or custodian of the juvenile;
  - d) If necessary, hear sworn testimony and/or receive evidence from the parties aimed at determining:
    1. Whether a condition or risk justifying continued non-secure custody exists under N.C.G.S. 7B-503,
    2. What efforts the petitioner has made to eliminate the need for non-secure custody,
    3. What other steps the parties have taken since the child planning conference;
  - e) Encourage the parties to engage in a limited discovery of records and documents, which may be relevant to a party's case preparation. (See discovery limitations in **Juv Rule 17.**)
  - f) After giving all parties an opportunity to present their case, the judge shall make appropriate findings of fact and conclusions of law, indicating:
    1. Whether there is a reasonable factual basis to believe:
    2. That the matters alleged in the petition are true,
    3. That continued non-secure custody is supported by one or more of the criteria set forth in N.C.G.S. 7B-703, and
    4. That there is no other reasonable means available to protect the juvenile;
    5. Whether the petitioner has presented clear and convincing evidence that no less intrusive alternative will suffice to protect the juvenile; and
    6. Whether the petitioner has made reasonable efforts to eliminate the need for the juvenile's placement.

**15.4** Duties when non-secure continued. If the judge finds that continued non-secure custody is necessary, the judge shall review or explore with the parties the following:

- a) The appropriateness of the juvenile's placement and other placement options, including possible relative placements and efforts to place or keep siblings together,
- b) Any efforts needed to ensure that a school-aged juvenile's school placement and attendance are not disrupted,
- c) Parental visitation,
- d) Sibling visitation,
- e) Service needs and referrals,
- f) Financial support for the juvenile,
- g) Whether additional orders are needed to address the juvenile's immediate needs, such as an immediate need for medical treatment or evaluation or the juveniles need to secure any personal items; and
- h) Specific steps to be taken by the parties before the next hearing.

**15.5** Duties when non-secure discontinued. If the judge finds that continued non-secure custody is not warranted, the judge shall explore with the parties the following:

- a) service needs and referrals, and
- b) specific steps to be taken by the parties before the next hearing.

**15.6** Further duties at non-secure hearing. Before the conclusion of the non-secure custody hearing, the judge shall:

- a) set specific dates for a pretrial conference and the adjudicatory hearing or, for good cause, another non-secure custody hearing,
- b) explain the purpose of the pretrial conference, if applicable, and of the next hearing,
- c) orders resulting from non-secure hearings shall be prepared by the Petitioner. Such orders need not to be distributed to all parties for approval prior to signature and filing,
- d) in any case in which a parent's identity or whereabouts are unknown or the paternity of the child has not been legally established, specify in the order any steps that are to be taken to identify the parent, locate the parent, or establish paternity,
- e) ensure that all documents introduced for consideration at the hearing become a part of the court file, and
- f) identify efforts made by DSS and determine whether those efforts were reasonable.

- 15.7** Second Non-secure Custody Hearings: If any party requests a second non-secure custody hearing pursuant to NC General Statute 7B-506(e), the Court, at that hearing, shall consider only evidence of changed circumstances since the first non-secure hearing.
- 15.8** Request for additional non-secure hearing. If an additional non-secure custody hearing is not scheduled pursuant to **Juv Rule 15 g)** above, any party may request an additional non-secure custody hearing by filing a written request with the clerk, who shall calendar the hearing. The requesting party shall provide at least five days notice of the hearing to all other parties.
- 15.9** Stipulations at non-secure. At a non-secure custody hearing, the judge may accept stipulations and approve consent orders relating to continued non-secure custody, subject to the provisions of **Juv Rule 16**.

#### **Juv Rule 16. Stipulations Before Judge.**

- 16.1** Must be knowing, voluntary. Before accepting a stipulation to findings, conclusions, or provisions of an order, the judge, in open court, shall determine that the stipulating parties understand the content and consequences of the stipulation and that they voluntarily consent to the stipulation. The Court shall, if necessary, make inquiry to determine that the stipulation is voluntary and knowing. The Court's findings shall be set forth on the record.
- 16.2** Court not bound. The Court shall not be bound by any stipulation in which:
- a) fewer than all of the parties who have appeared, including the guardian ad litem, have agreed, or
  - b) if the Court finds that such stipulation is not supported by the facts in the case or that such stipulation is not in the best interests of the children in the case.

#### **Juv Rule 17. Discovery.**

- 17.1** Matters not discoverable. Unless specifically allowed by statute or court order the following matters are not discoverable:
- a) Privileged communications;
  - b) Identity of reporter of instances of abuse, neglect or dependency;
  - c) Work product of attorneys;
  - d) Notes, dictation of DSS social workers and GAL ; and
  - e) Information in DSS file relating to collateral parties.

**17.2** Initial disclosures required. At the pretrial conference for all adjudicatory hearings, all parties shall provide a witness list including witnesses to be called at trial, as well as a list of any exhibits to be introduced at trial. If available at the time of said conference, each party shall provide a copy of said exhibits. If the information is known, any contested allegations shall be identified. Failure to provide witness information and exhibits not available at the time of the pretrial conference shall not prevent their use at trial.

Furthermore, if any potential attorney conflicts or requests for guardians ad litem exists, and is known at any conference prior to adjudication, they shall be submitted in writing to the Clerk of Court to request an assignment change.

**17.3** Compelling discovery. Any party may request discovery in addition to that required in Rule 17.2 above. However, any party requesting additional discovery shall first file a written answer to the petition identifying which allegations in the petition are contested.

**17.4** Means of discovery. In general, all means of discovery permitted by the Rules of Civil Procedure shall be available. However, in order to coordinate the completion of discovery and to avoid unnecessary delay, all such discovery shall be conducted with Court guidance as to expedited timelines for its completion. Further, all requests for discovery should be made in writing outlining the specific information requested. If the request is made more than twenty-one (21) days after the filing of the petition, the party from whom the information is requested shall provide the information **within seven (7) business days** or provide within such time written notification of the reason such information cannot or should not be provided.

**17.5** Sanctions. The Court may take any action on motions to compel authorized by N.C.G.S. 1A-1, Rule 37.

**17.6** Restricting discovery. Upon written motion, hearing and a finding of good cause, the Court may at any time order that discovery be denied, restricted or deferred. The Court may also enter such orders as may be necessary to prohibit a party, attorney or agency from divulging information to a juvenile, a juvenile's parent(s)/guardian(s)/custodian(s) or to a particular party where appropriate.

## **Juv Rule 18. Pre-Adjudication Conference : Petitions and TPR's.**

- 18.1** Scheduling. A pre-adjudication conference shall be held **within thirty (30) days** of the filing of a Petition alleging abuse, neglect and/or dependency unless the judge determines that it is unnecessary or, for good cause, orders that it be held at a later time.
- 18.2** Parties must attend. All parties and their attorneys shall attend the pre-adjudication conference except that either the GAL, GAL staff or the Attorney Advocate shall attend. Sanctions may be imposed by the Court upon a party or attorney for failure to attend.
- 18.3** Purpose of conference. The purposes of the conference shall be to explore the possibility of settlement, to narrow the issues as much as possible, and to stipulate to the introduction of evidence and to facts that are not in dispute.
- 18.4** Lists, exhibits to be provided. At or before the conference, each party shall provide to all other parties a written list of prospective witnesses and exhibits and copies of all available listed exhibits intended for use at the adjudication hearing. Any listed exhibit that is not available for distribution at or before the pre-adjudication conference shall be distributed as soon as it is available.
- 18.5** Managing pre-trials. At the pre-adjudication conference, the judge or case coordinator shall assist the parties in:
- a) Sharing witness lists, exhibit lists, and exhibits,
  - b) Defining the issues,
  - c) Estimating the time necessary to hear the matter,
  - d) Establishing a time schedule for the case on the hearing date,
  - e) Identifying matters that can be stipulated and making stipulations, and
  - f) Considering any proposed consent order.
- 18.6** Memo or order to be prepared, distributed. If the parties reach stipulations or a consent to adjudication at the pretrial conference, their agreement shall be reduced to writing in the form of a Memorandum of Judgment, signed by all parties present, and introduced by the attorney for the Petitioner at the adjudication hearing.
- 18.7** Unidentified or unlocated parents. If a parent's identity or whereabouts remain unknown or the paternity of the child has not been legally established, the order or memorandum shall specify any steps that are to be taken to identify the parent, locate the parent, or establish paternity.

**18.8** Judge to sign order, memo. Any agreed upon order or memorandum shall be presented to the judge at or before the adjudicatory hearing for approval and adoption by the court. Upon following the procedures set forth in **Juv Rule 16**, the order or memorandum, if approved and adopted shall be filed.

**Juv Rule 19. Adjudication of Petitions (Abuse, Neglect and Dependency)**

**19.1** When adjudication hearing scheduled. The adjudication hearing for petitions alleging abuse, neglect and or dependency shall be held **within forty (40) days** from the filing of the petition, unless the Court, for good cause, orders that it be held at a later time.

**19.2** Copies of orders, memos distributed. Following each adjudication hearing, the party preparing the order shall circulate to attorneys for all represented parties a copy of the proposed order and shall allow at least five full business days for comments and requested revisions before submitting to the judge for signature.

**19.3** Attendance mandatory. Parties **must attend** the Adjudication hearing whether or not stipulations are agreed upon about some or all issues at the pre-adjudication conference unless the judge attended the conference and had an opportunity to address the parties at that time.

**Juv Rule 20. Adjudication of Motions and Petitions to Terminate Parental Rights [Reserved].**

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**Juv Rule 21. Disposition Reports (Abuse, Neglect and Dependency Petitions).**

**21.1** Contents of dispositional, review reports. In each case, DSS shall prepare a disposition report that include at least the following:

- a) A description of the placement plan for the child and how that plan is appropriate to the child's needs;
- b) A description of the plan of services for the child and the child's family, and how that plan is appropriate to meet the child's needs;
- c) A statement of changes in parental behavior that are needed to correct the conditions that led to the abuse, neglect, or dependency, and the actions the parents must take;
- d) If there is a recommendation that the child be removed from the home, a statement of the efforts by DSS to prevent the need for placing the child outside the home;

- e) A description of the efforts by DSS to reunify the family, including services that have been offered, provided, or rejected;
- f) A statement of why the child cannot be protected from the identified problems while remaining in the home;
- g) The identity of all relatives and friends who have been contacted about providing a placement for the child, and a description of the nature and results of those contacts;
- h) A suggested visitation plan for the child;
- i) A statement of the child's special needs and how they may be met;
- j) The identity and location of the child's siblings, and a statement of steps required to maintain contact between the siblings and reunify the family;
- k) If applicable, a description of the child's school or day-care situation and any proposed changes related to it; and
- l) The status of any treatment previously ordered.

**21.2** GAL reports. The guardian ad litem for the child shall prepare a disposition report to assist the Court in reaching a disposition that will best serve the child's needs.

**21.3** When reports provided. All parties with written disposition reports shall provide copies of their reports to all other parties and their counsel at the regularly scheduled pretrial conference. Every effort should be made to include all attachments to said reports at the pretrial conference. Necessary changes and additions to said reports following the pretrial conference shall be made in the form of an addendum to the report. Failure of a party to submit their report at least seven days prior to the scheduled hearing shall be grounds for a continuance if requested by any other party.

**21.4** Reports considered after adjudication. Disposition reports shall not be submitted to or considered by the Court until the adjudication is completed or the parties have settled all adjudication issues.

**21.5** Respondent reports. Respondent parents or their attorneys are encouraged to submit written reports setting forth information regarding the matters listed in **Juv Rule 21 a)** above. Attorneys submitting reports shall also provide said reports at the pretrial conference as listed in **Juv Rule 21.3** above.



## **Juv Rule 22. Pre-disposition Conference.**

- 22.1** Predisposition conference to be held. A pre-disposition conference shall be held immediately following the pre-adjudication conference. If disposition occurs on a date after the adjudication, a pre-disposition conference shall be held no more than two weeks before the dispositional hearing.
- 22.2** Attendance mandatory. All parties and their attorneys shall attend the pre-disposition conference.
- 22.3** Purpose. The purposes of the conference shall be to explore the possibility of settlement, to narrow the issues as much as possible, and to stipulate to evidence and facts or provisions of the dispositional order that are not in dispute.
- 22.4** Case coordinator to facilitate. At the pre-disposition conference, the case coordinator shall assist the parties in:
- a) Sharing witness lists, exhibit lists, and exhibits,
  - b) Defining the issues,
  - c) Estimating the time necessary to hear the matter,
  - d) Establishing the time schedule for the case on the hearing date,
  - e) Identifying matters that can be stipulated and making stipulations, and
  - f) Considering any proposed consent order.
- 22.5** Memo, order to be prepared. At the conclusion of the pre-disposition conference, the Petitioner shall prepare an order or memo reflecting the outcome of the conference and ensure that each party is provided a copy of the proposed order.

## **Juv Rule 23. Services from Other Public Agencies; Mental Health Assessments.**

- 23.1** Notice to be given. Any time after adjudication, if it appears that the best interest of the juvenile may require, or that a party is recommending, that the juvenile receive services from a public agency, the Court may direct the clerk or a party to serve the director or other appropriate representative of the agency with a notice of the dispositional hearing or a subsequent hearing and of the issues to be addressed that involve that agency. If the notice is served on a county agency, it also shall be served on the county attorney.
- 23.2** Evidentiary hearing. At the dispositional or subsequent hearing for which the agency has been served with notice, the Court may hear evidence and

enter orders relating to the level and type of services that the agency can and should provide to meet the juvenile's needs.

- 23.3** Mental health assessments. When it appears that good cause exists to require a parent or other respondent to undergo some type of mental health assessment, in most cases, the Dispositional Order should direct that the parent or other respondent undergo a preliminary assessment by a mental health professional or agency designated by DSS. The preliminary assessment should designate the particular area of further assessments or evaluations, which are, appropriate for the individual to identify that individual's treatment needs. If an evaluation, assessment or other analysis is needed to address a particular concern, such as "parenting capabilities", the Order should specify the area of particular concern. The mental health professional or agency may then limit its inquiry to the specified area.

**Juv Rule 24. Disposition (Abuse, Neglect and Dependency Petitions).**

- 24.1** Time hearing scheduled. The dispositional hearing shall be held immediately following the adjudication, if possible, but **no later than thirty (30) days thereafter.**
- 24.2** Setting review date. If the juvenile remains out of the home at the conclusion of the dispositional hearing, the judge shall specify in the order a specific time for a review hearing.
- 24.3** Sending information to other agencies. At the conclusion of the dispositional hearing, the judge shall determine whether any person or agency not present or represented at the dispositional hearing needs information about the disposition in order to help meet the child's needs. The judge may order that either a copy of the dispositional order or a summary of appropriate portions of the order be provided to any such person or agency. The Court also may order the parties to share specified types of information on an ongoing basis with designated persons or agencies.
- 24.4** Each party provided copy of order. Following each dispositional hearing, the party preparing the order shall circulate to attorneys for all represented parties a copy of the proposed order and shall allow at least five full business days for comments and requested revisions before submitting to the judge for signature.

- 24.5** Unknown or unlocated parent. If a parent's identity or whereabouts remain unknown or the paternity of the child has not been legally established, the judge shall specify in the order any steps that are to be taken to identify the parent, locate the parent, or establish paternity.
- 24.6** Relative Placements Considered. At the initial disposition hearing, the Court shall review the list of relative placements developed by the parties at the Child Planning Conference and shall inquire of the parties of any additional relatives that the parties wish to be considered.
- a) The Department of Social Services shall report on any efforts made thus far to assess said relatives.
  - b) The initial disposition order shall specify that, absent extraordinary circumstances, no relative placements not identified at or before the initial disposition hearing shall be considered for the minor child/children, provided that any parent who makes his/her first appearance after the initial disposition shall be advised to provide all potential relative placements within seven days of his/her first appearance.
  - c) Extraordinary circumstance may include circumstances where no appropriate permanent home for the minor child has other wise been located.
  - d) Any consideration of relative placements proposed after the initial disposition shall be made with due consideration of the relationships and bonds the child/children have formed in the interim.
  - e) Nothing in this rule shall preclude the Department, or the Court from exploring possible permanent placements, whether relative or otherwise, for children for whom no possible permanent placement has yet been identified.

## **Juv Rule 25. Review Hearings.**

- 25.1** First review date set. When a juvenile remains out of the home following the initial dispositional hearing, a review hearing shall be held at a time the judge designates in the dispositional order, but in no event more than **ninety (90) days** from the date of the dispositional hearing.
- 25.2** Second review; permanency planning. When a juvenile remains out of the home following the first review hearing, the judge shall determine and specify in the review hearing order an appropriate date for the next review hearing. In no event shall the second review hearing be held more than **six (6) months** from the date of the first review hearing. A goal of the second review hearing shall be to develop a **permanent plan** for the juvenile.

- 25.3** Subsequent reviews; permanency planning. As long as the juvenile remains out of the home, subsequent review hearings shall be held at times the judge finds appropriate, but in no event more than **six (6) months** from the date of the previous review hearing, unless the judge orders otherwise pursuant to G.S. 7B-906. A goal of each review hearing shall be to develop a **permanent plan** for the juvenile. In no event shall a **permanency planning hearing** be held **more than 365 days** from the date of the filing of the petition.
- 25.4** Permanency planning set when no further reunification efforts. At any hearing when the Court finds that reasonable efforts to prevent or eliminate the need for placement *are not required or shall cease*, the **permanency planning hearing** must be held **within thirty (30) calendar days** of the hearing.
- 25.5** Post-TPR reviews. A post TPR review hearing shall be held **no more than six (6) months** from the time of the TPR adjudication.
- 25.6** Reports due. All parties with written disposition reports shall provide copies of their reports to all other parties and their counsel at the regularly scheduled pretrial conference. Every effort should be made to include all attachments to said reports at the pretrial conference. Necessary changes and additions to said reports following the pretrial conference shall be made in the form of an addendum to the report. Failure of a party to submit their report at least seven days prior to the scheduled hearing shall be grounds for a continuance if requested by any other party.
- 25.7** Unknown or unlocated parent. If a parent's identity or whereabouts remain unknown or the paternity of the child has not been legally established, the judge shall specify in the review hearing order any steps that are to be taken to identify the parent, locate the parent, or establish paternity.
- 25.8** Each party provided a copy of the order. Following each review hearing, the party preparing the order shall circulate to attorneys for all represented parties a copy of the proposed order and shall allow at least five full business days for comments and requested revisions before submitting to the judge for signature.

## **Juv Rule 26. Maintaining Case on Court Calendar.**

- 26.1** Case calendared at all times. Each case shall be maintained on the court calendar at all times for as long as juvenile court jurisdiction in the case continues unless the Court orders that no further reviews are required.

**26.2** New hearing dates set. At or before the conclusion of each hearing, a subsequent hearing date shall be set.

**Juv Rule 27. Judicial Official Before Whom Case is Scheduled.**

**27.1** One judge, one case. Once a case has been adjudicated by a judge, subsequent hearings regarding the case shall be heard by the same judge, unless circumstances require otherwise. This includes TPR hearings involving the same children.

**27.2** Judge may perform case coordinator duties. Any function that these rules assign to a case coordinator may be carried out by a judge.

**Juv Rule 28. Extensions of Time and Continuances.**

**28.1** Good cause required. Extensions of time and continuances beyond the times specified by statute, court order, or these rules shall be granted only for good cause, regardless of whether the parties are in agreement.

**28.2** Record made. Orders for extensions or continuances shall appear on the record and state supporting reasons.

**28.3** Gen Rule 4 applies. A party requesting a continuance must otherwise comply with the general continuance policies in effect and applicable to all cases in the 25<sup>th</sup> Judicial District pursuant to **Gen Rule 4**.

**Juv Rule 29. Notice of Review Hearings.**

**29.1** Notice of review hearings. Unless a person or his/her attorney was present and was given notice at a prior hearing, written notice shall be given by the Clerk of all review hearings to persons designated in **Juv Rule 29 b)** below. The notice shall be **at least fifteen (15) days** prior to the hearing, if possible.

**29.2** Persons entitled to notice of hearings. The persons entitled to notice are:

- a) Parent(s);
- b) Juvenile, if twelve (12) years of age or older;
- c) Guardian(s) of juvenile;
- d) Foster parent(s);
- e) Relative(s) or preadoptive parent(s) providing care for the juvenile;
- f) Custodian(s) or agency with custody;
- g) GAL;
- h) Attorney(s) for any of these designated persons;
- i) Any other person or agency specified by the Court

- 29.3** No post-TPR notice to parents. Notwithstanding the other provisions of this rule, notice to biological parent(s) and their attorneys shall not be given for post TPR reviews unless the Court specifically orders such notice to be given. The notice shall designate the time, place and the purpose of the hearing.
- 29.4** Juvenile's right to be present. Juveniles entitled to notice must be given an opportunity to be present by the custodian, guardian, parent or person having the juvenile in care. Any other juvenile requesting an opportunity to be present and heard shall be given such opportunity unless the Court for good cause orders otherwise. At any hearing wherein a juvenile is present, the juvenile shall be given an opportunity to be heard. The Court may sequester the juvenile from parts of a hearing if the Court finds that this would be in the best interests of the juvenile or in the interests of justice.
- 29.5** Sequestering witnesses. The Court may sequester any person other than a party from parts of a hearing if the Court finds that this would be in the best interests of the juvenile, necessary to protect legitimate confidentiality concerns or in the interests of justice.

## **ARTICLE 2C. RULES APPLICABLE TO DELINQUENCY AND UNDISCIPLINED CASES**

### **Juv Rule 30. Appointment of Counsel.**

- 30.1** When appointed. When a petition is filed alleging that a juvenile is delinquent or in any proceeding wherein a juvenile is alleged to be in contempt of court when alleged or adjudicated to be undisciplined, the clerk shall appoint said juvenile counsel immediately unless the juvenile has retained counsel. Further, whenever custody of a juvenile adjudicated undisciplined or delinquent is a place by dispositional order with DSS or person(s) from whom such custody is taken shall be given an opportunity to apply for court-appointed counsel whether or not a petition for abuse, neglect or dependency is filed.
- 30.2** Notice. The clerk shall prepare a *Notice of Appointment of Counsel* to be served on the juvenile with the petition and summons. The notice shall include the attorney's name and business address and telephone number and shall direct the juvenile to contact the attorney.

### **Juv Rule 31. Responsibilities of Attorneys.**

- 31.1** Before being eligible for appointment to represent parents, attorneys must satisfy the court:
- a) That they have sufficient experience and skills to provide competent representation;
  - b) That they have a good working knowledge of juvenile law and juvenile court procedures; and
  - c) That they have a good understanding of Juvenile court counseling services and other divisions of the Department of Juvenile Justice and the related mandates applicable to those divisions.

### **Juv Rule 32. Filing of Petition; Commencement of Actions.**

- 32.1** How petitions commenced. Petitions shall be commenced and filed in accordance with N.C.G.S. 7B-1800 through 1804.
- 32.2** DJJ approval required. In every case, a petition shall not be issued or filed except upon the approval of an intake counselor as defined by Chapter 7B of the General Statutes. The clerk may assist the intake counselor in this process as set forth in N.C.G.S. 7B – 1803(a).

### **Juv Rule 33. Scheduling of Cases – First Appearance for Felony Cases.**

- 33.1** Juvenile not in Secure Custody. The first appearance for a juvenile who is alleged in a petition to have committed a felony shall take place at the first session of Juvenile Court scheduled for the hearing of delinquency cases in the county wherein the Petition arose.
- 33.2** Juvenile in Secure or Non-secure Custody. If the juvenile who is alleged in a Petition to have committed a felony is in secure or nonsecure custody, the first appearance shall take place at the initial hearing required by N.C.G.S. 7B-1906 and **Juv Rule 34** herein.
- 33.3** First appearance required. The first appearance in such cases shall be conducted in accordance with N.C.G.S. 7B – 1808(b).

### **Juv Rule 34. Scheduling of Cases ; Juveniles in Secure or Nonsecure Custody**

- 34.1** Initial hearing for juveniles in custody. An initial hearing pursuant to N.C.G.S. 7B – 1906 for juveniles in secure or nonsecure custody shall be scheduled by the Clerk at the next session of Juvenile Court after such juvenile has been taken into custody unless said session is greater than **five (5) days** from the time of initial custody. In that event, the Clerk shall contact the Chief District Court Judge who shall schedule such matter **within five (5) days**.
- 34.2** Juveniles in custody by delegated authority. However, if the juvenile was taken into secure or nonsecure custody pursuant to delegated authority as authorized by N.C.G.S. 7B – 1902 , the Clerk shall schedule such initial hearing on the day of the next regularly scheduled session of district court in the county where the order was entered in one of the following sessions:
- a) Burke County – 9:00 am, Monday – Friday, at any session of Court; Judge to be informed immediately upon setting;
  - b) Caldwell County – 9:00 am, Monday – Friday, at any session of Court; Judge to be informed immediately upon setting;
  - c) Catawba County – 9:00 am, Monday – Friday, in Newton at any session of Court; Judge to be informed immediately upon setting. If more than one session is scheduled, judge priority is juvenile, criminal, domestic, civil.
- 34.3** Maximum delay. In no event shall the hearing be delayed longer than the time specified in **Juv Rule 34.1)** above.
- 34.4** Waiver not allowed. This initial hearing **may not** be waived.
- 34.5** Subsequent hearings to review secure custody. If a juvenile remains in secure or nonsecure custody after the Initial hearing, the Juvenile Court must hold additional hearings within the times prescribed by Chapter 7B of the NC General Statutes.

### **Juv Rule 35. When DSS Custody Being Considered.**

- 35.1** Pretrial notification by court counselor. Whenever it appears to the court counselor that placement of a juvenile in DSS custody may be recommended, the court counselor shall immediately contact a representative of DSS and tell them of such possibility along with the facts and circumstances which indicate that such placement may be appropriate.



**35.2** DSS custody considered by Court. Whenever it appears to the judge presiding over a disposition hearing for an undisciplined or delinquent juvenile that placement of the juvenile in DSS custody may be ordered, the judge should delay the order making such placement and continue the case for sufficient time to allow DSS to take one or more of the steps outlined in **Juv Rule 35 c)** below, unless such delay would result in a serious risk of harm or endangerment to the juvenile.

**35.3** Duties of DSS upon receiving notification of possible placement. Upon receiving notification that placement of custody of a juvenile with DSS may be recommended or is being considered by the Court, DSS shall take one or more of the following steps:

- a) If DSS is already familiar with the facts and circumstances of the juvenile, examine steps already taken to avoid placement and determine whether other steps or resources may be available to make such placement unnecessary;
- b) Conduct an investigation of the facts and circumstances;
- c) Conduct an Action Meeting to consider available community resources and preventive services which may be used to avoid custody placement;
- d) Conduct a home assessment of the juvenile's current placement or alternative relative placement;
- e) Identify other possible appropriate placements; and/or
- f) Any other step which may facilitate the Court's decision whether or not to place custody with DSS.

**35.4** Disposition options if custody given to DSS. Whenever custody is placed with DSS, the Court shall consider the following dispositional orders:

- a) Direct DSS to file a dependency petition regarding the juvenile;
- b) Allow the parent(s) of the juvenile to apply for court-appointed counsel;
- c) Require the parent(s) to pay the cost of any court-ordered home study or assessment;
- d) Specify reunification goal and delineate specific steps to be taken by DSS and parents to facilitate reunification; and
- e) Schedule custody review hearing(s).

**35.5** Findings required. In every Order removing a juvenile from the custody of his/her parents pursuant to a Delinquency or Undisciplined petition and placing custody with the Department of Social Services, the Court must find the "continuation of the juvenile in his/her own home would be contrary to the juvenile's best interest" with specific findings of fact as to why such is so.