

Appeals in DSS Juvenile Cases

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This section is **not** about jurisdiction (thank you, Janet Mason), or evidence (thank you, John Rubin) or the perpetrator “appeals” process (thank you, General Assembly).

This section is about the rules that apply when a respondent appeals one of your cases, and (for those of you who don’t have enough work on your desks), how to bring an appeal when the court rules against your client.

Article 10.

Modification and Enforcement of Dispositional Orders; Appeals.

§ 7B-1000. Authority to modify or vacate. . . .

§ 7B-1001. Right to appeal.

(a) In a juvenile matter under this Subchapter, appeal of a final order of the court in a juvenile matter shall be made directly to the Court of Appeals. Only the following juvenile matters may be appealed:

- (1) Any order finding absence of jurisdiction.
- (2) Any order, including the involuntary dismissal of a petition, which in effect determines the action and prevents a judgment from which appeal might be taken.
- (3) Any initial order of disposition and the adjudication order upon which it is based.
- (4) Any order, other than a nonsecure custody order, that changes legal custody of a juvenile.
- (5) An order entered under G.S. 7B-507(c) with rights to appeal properly preserved as provided in that subsection, as follows:
 - a. The Court of Appeals shall review the order to cease reunification together with an appeal of the termination of parental rights order if all of the following apply:
 1. A motion or petition to terminate the parent's rights is heard and granted.
 2. The order terminating parental rights is appealed in a proper and timely manner.

3. The order to cease reunification is assigned as an error in the record on appeal of the termination of parental rights.
- b. A party who is a parent shall have the right to appeal the order if no termination of parental rights petition or motion is filed within 180 days of the order.
- c. A party who is a custodian or guardian shall have the right to immediately appeal the order.
- (6) Any order that terminates parental rights or denies a petition or motion to terminate parental rights.
- (b) Except for orders covered in subdivision (a)(5) of this section, notice of appeal shall be given in writing by a proper party as defined in G.S. 7B-1002 and shall be made within 30 days after entry and service of the order in accordance with G.S. 1A-1, Rule 58. Notice of appeal for orders covered in subdivision (a)(5) of this section shall be given in writing by a proper party as defined in G.S. 7B-1002.
- (c) Notice of appeal shall be signed by counsel for the appealing party, if any, and shall be taken only by following direct instruction of the appealing party after the conclusion of the proceeding. In the case of an appeal by a juvenile, notice of appeal shall be signed by the guardian ad litem attorney advocate. (1979, c. 815, s. 1; 1998-202, s. 6; 1999-456, s. 60; 2001-208, s. 25; 2001-487, s. 101; 2005-398, s. 10.)

§ 7B-1002. Proper parties for appeal.

Appeal from an order permitted under G.S. 7B-1001 may be taken by:

- (1) A juvenile acting through the juvenile's guardian ad litem previously appointed under G.S. 7B-601.
- (2) A juvenile for whom no guardian ad litem has been appointed under G.S. 7B-601. If such an appeal is made, the court shall appoint a guardian ad litem pursuant to G.S. 1A-1, Rule 17 for the juvenile for the purposes of that appeal.
- (3) A county department of social services.
- (4) A parent, a guardian appointed under G.S. 7B-600 or Chapter 35A of the General Statutes, or a custodian as defined in G.S. 7B-101 who is a nonprevailing party.
- (5) Any party that sought but failed to obtain termination of parental rights. (1979, c. 815, s. 1; 1998-202, s. 6; 1999-456, s. 60; 2005-398, s. 11.)

§ 7B-1003. Disposition pending appeal.

- (a) During an appeal of an order entered under this Subchapter, the trial court may enforce the order unless the trial court or an appellate court orders a stay.

(b) Pending disposition of an appeal, unless directed otherwise by an appellate court or subsection (c) of this section applies, the trial court shall:

- (1) Continue to exercise jurisdiction and conduct hearings under this Subchapter with the exception of Article 11 of the General Statutes; and
- (2) Enter orders affecting the custody or placement of the juvenile as the court finds to be in the best interests of the juvenile.

(c) Pending disposition of an appeal of an order entered under Article 11 of this Chapter where the petition for termination of parental rights was not filed as a motion in a juvenile matter initiated under Article 4 of this Chapter, the court may enter a temporary order affecting the custody or placement of the juvenile as the court finds to be in the best interests of the juvenile. Upon the affirmation of the order of adjudication or disposition of the court in a juvenile case by the Court of Appeals, or by the Supreme Court in the event of an appeal, the court shall have authority to modify or alter its original order of adjudication or disposition as the court finds to be in the best interests of the juvenile to reflect any adjustment made by the juvenile or change in circumstances during the period of time the case on appeal was pending, provided that if the modifying order be entered ex parte, the court shall give notice to interested parties to show cause, if there be any, within 10 days thereafter, as to why the modifying order should be vacated or altered.

(d) When the court has found that a juvenile has suffered physical abuse and that the individual responsible for the abuse has a history of violent behavior, the court shall consider the opinion of the mental health professional who performed the evaluation under G.S. 7B-503(b) before returning the juvenile to the custody of that individual pending resolution of an appeal.

(e) The provisions of subsections (b), (c), and (d) of G.S. 7B-905 shall apply to any order entered during an appeal that provides for the placement or continued placement of a juvenile in foster care. (1979, c. 815, s. 1; 1987 (Reg. Sess., 1988), c. 1090, s. 12; 1998-202, s. 6; 1999-318, s. 8; 1999-456, s. 60; 2001-208, s. 27; 2001-487, s. 101; 2003-140, s. 8; 2005-398, s. 12.)

§ 7B-1004. Disposition after appeal.

When an order of the court is affirmed by the Court of Appeals or by the Supreme Court, the trial court may modify or alter the original order as the court finds to be in the best interests of the juvenile to reflect any change in circumstances during the period of time the appeal was pending. If the modifying order is entered ex parte, the court shall give notice to interested parties to show cause within 10 days thereafter as to why the modifying order should be vacated or altered. (1979, c. 815, s. 1; 1998-202, s. 6; 1999-456, s. 60; 2005-398, s. 13.)

NORTH CAROLINA RULES OF APPELLATE PROCEDURE

(Cited as N.C. App. P. x)

Full text for purchase from Thompson*West Publishers. Also available on the web in .pdf format (therefore can't be copied) at

<http://www.aoc.state.nc.us/www/public/html/pdf/therules.pdf>)

The most important rules for you are:

Rule 3A. Appeal taken in Qualifying Juvenile Cases – How and When Taken, Special Rules.

Rule 7. Preparation of the Transcript; Court Reporter's Duties.

Rule. 9. The Record on Appeal.

Rule 10. Assigning Error on Appeal. {These may be going away!}

Rule 11. Settling the Record on Appeal.

Rule 12. Filing the Record; Docketing the Appeal; Copies of the Record.

Rule 26. Filing and Service.

Rule 28. Briefs: Function and Content.

Rule 30. Oral Argument and Unpublished Opinions.

“Bluebooking” and citation formats