

From the N.C. General Statutes (current through June 3, 2019)

7B-911. Civil child custody order.

(a) Upon placing custody with a parent or other appropriate person, the court shall determine whether or not jurisdiction in the juvenile proceeding should be terminated and custody of the juvenile awarded to a parent or other appropriate person pursuant to G.S. 50-13.1, 50-13.2, 50-13.5, and 50-13.7.

(b) When the court enters a custody order under this section, the court shall either cause the order to be filed in an existing civil action relating to the custody of the juvenile or, if there is no other civil action, instruct the clerk to treat the order as the initiation of a civil action for custody.

If the order is filed in an existing civil action and the person to whom the court is awarding custody is not a party to that action, the court shall order that the person be joined as a party and that the caption of the case be changed accordingly. The order shall resolve any pending claim for custody and shall constitute a modification of any custody order previously entered in the action.

If the court's order initiates a civil action, the court shall designate the parties to the action and determine the most appropriate caption for the case. The civil filing fee is waived unless the court orders one or more of the parties to pay the filing fee for a civil action into the office of the clerk of superior court. The order shall constitute a custody determination, and any motion to enforce or modify the custody order shall be filed in the newly created civil action in accordance with the provisions of Chapter 50 of the General Statutes. The Administrative Office of the Courts may adopt rules and shall develop and make available appropriate forms for establishing a civil file to implement this section.

- (c) When entering an order under this section, the court shall satisfy the following:
- (1) Make findings and conclusions that support the entry of a custody order in an action under Chapter 50 of the General Statutes or, if the juvenile is already the subject of a custody order entered pursuant to Chapter 50, makes findings and conclusions that support modification of that order pursuant to G.S. 50-13.7.
 - (2) Make the following findings:
 - a. There is not a need for continued State intervention on behalf of the juvenile through a juvenile court proceeding.
 - b. At least six months have passed since the court made a determination that the juvenile's placement with the person to whom the court is awarding custody is the permanent plan for the juvenile, though this finding is not required if the court is awarding custody to a parent or to a person with whom the child was living when the juvenile petition was filed.

ENTITLEMENT TO COUNSEL IN ABUSE, NEGLECT, AND DEPENDENCY PROCEEDINGS
AFTER A PERMANENT PLAN HAS BEEN IMPLEMENTED

Introduction:

G.S. 7B-602 provides that, when a juvenile petition alleges abuse, neglect, or dependency, the respondent parents have a right to appointed counsel if they are indigent. G.S. 7A-451(b) further provides that entitlement to the services of counsel continues through any critical stage of the action or proceeding. When the court has been relieved of the duty to conduct periodic reviews of a child's placement but has retained jurisdiction, the court may not waive or refuse to conduct a hearing if any party files a motion seeking review. However, there is little guidance in the General Statutes or case law about whether those hearings constitute a critical stage of the proceedings for which there is an entitlement to counsel for an indigent party.

IDS believes that, after a child's permanent plan has been implemented and no regular judicial reviews of the placement are scheduled but a motion for review has been filed, the presumption should be that the proceeding is not a critical stage and that there is no entitlement to counsel. However, there may be circumstances when the presiding judge determines that the proceeding is a critical stage and that a particular indigent party is entitled to the services of counsel. These circumstances may include, but are not limited to, motions filed by the Department of Social Services (DSS) or the Guardian ad Litem (GAL) seeking to change the child's permanent plan or motions filed by the guardian or custodian seeking to resign or be relieved of custody.

IDS Policy:

Rather than maintaining juvenile court jurisdiction, IDS recommends that, once a permanent plan is established and no further reviews are scheduled, the court should terminate jurisdiction and put the parties back where they were before DSS involvement, or convert the case to a Chapter 50 custody case pursuant to G.S. 7B-911.

If the court has been relieved of the duty to conduct regular reviews of a child's placement, but has retained jurisdiction and a motion for review has been filed, IDS will pay for the representation if the court concludes that it is a critical stage of the proceedings and that there is an entitlement to the continued services of counsel pursuant to G.S. 7A-498.3(a)(1) (stating that IDS shall be responsible for providing counsel and related services in cases in which an indigent person is subject to a deprivation of a constitutionally protected interest and is entitled by law to legal representation). If a judge makes such a determination, the judge should enter an order of reappointment or an order of entitlement to the continued services of counsel with specific findings about why those services are required.

Questions:

If you have questions about this policy or its application in a specific case, please contact:

- ✓ IDS' Parent Representation Coordinator, Wendy Sotolongo, at (919) 354-7230 or Wendy.C.Sotolongo@nccourts.org; or
- ✓ IDS' Assistant Director/General Counsel, Whitney Fairbanks, at (919) 354-7200 or Whitney.B.Fairbanks@nccourts.org.

Policy adopted August 5, 2014; amended effective August 28, 2014.

Authority:

G.S. 7A-451; 7A-498.3; 7B-602.