

# **Family Court Rules**

## **Judicial District 19B**

**Juvenile**

**Effective February 5, 2010**

**For Randolph County Only**

**Rules for Moore and Montgomery Counties will be adopted at a  
later date**

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

1. These rules apply to all cases in which a juvenile petition is filed alleging that a juvenile is abused, neglected, and/or dependent and petitions/motion to terminate parental rights. These rules are intended to be a supplement and complement the statutory requirements of the North Carolina Juvenile Code. These Rules shall not be applied or construed to restrict or modify the statutory procedures for Juvenile Court in the North Carolina Juvenile Code.

2. These rules should be liberally construed to accomplish the purposes set forth in Rule 2 below. The Court may impose sanctions against a party or an attorney who willfully violates these rules. No Rule shall be construed, applied or enforced in a manner that will endanger or cause possible harm to a child or prejudice the rights of any party.

## **RULE 2: PURPOSE.**

These Rules are intended to help insure protection of children and the rights of juveniles and parents who come under the jurisdiction of the Juvenile Court, to facilitate services that will promote the re-unification of families at the earliest possible time and to serve the best interest of the juveniles. These Rules shall serve the following purposes:

1. To provide judicial oversight of case management and planning;
2. To insure a coordinated decision making process;
3. To eliminate unnecessary delays in juvenile court proceedings;
4. To promote and assist in the re-unification of families and to encourage the involvement of families, parents and children in the planning and decision making process;
5. To make Family Court accessible to the community; and
6. To promote the integration of services for families and children and to increase their access to community services.

## **RULE 3: DEFINITIONS.**

The following definitions shall apply to these Rules:

1. CHILD PLANNING CONFERENCE (CPC): A conference, conducted as set forth in Rule 10 below, scheduled by the Family Court Administrator or Juvenile Court Case Manager to address issues related to placement, visitation, paternity, child support and family services. The purpose of the Child Planning Conference is to facilitate, as early as possible, the provision of services to allow for the re-unification of families. Representatives of the Department of Social Services, the Guardian Ad Litem's Office,

the Respondent parents/caretakers, attorneys for the parties, and other appropriate persons, such as mental health representatives, representatives of the schools, the Health Department, law enforcement, etc. may be involved in the Child Planning Conference if involved with the family, or if invited by the Family Court Administrator or the Juvenile Court Case Manager.

2. **CLERK:** The Clerk of Superior Court or an Assistant/Deputy Clerk of the Superior Court.

3. **COURT:** A District Court or District Court Judge of the 19B Judicial District.

4. **DEPARTMENT OF SOCIAL SERVICES:** A Department of Social Services located and operating within Judicial District 19B.

5. **FAMILY COURT ADMINISTRATOR:** The duly appointed Family Court Administrator for Judicial District 19B.

6. **FIRST APPEARANCE:** The initial appearance in court by a named Respondent in a Juvenile Petition.

7. **GUARDIAN AD LITEM:** The Guardian Ad Litem Staff, volunteer Guardian Ad Litem, and/or the attorney advocates appointed by the Court on behalf of a child alleged to be abused, neglected, or if applicable, dependent.

8. **JUDGE:** A District Court Judge conducting, or assigned to, Juvenile Court proceedings in Judicial District 19B.

9. **JUVENILE COURT CASE MANAGER:** The Case Manger from the Family Court office of Judicial District 19B that is assigned to manage the juvenile court cases that come within the purview of these Rules.

10. **PETITION:** A Petition filed in Juvenile Court alleging that a child is abused, neglected or dependent.

11. **TERMINATION OF PARENTAL RIGHTS (TPR):** A Petition or Motion in the Cause filed seeking to terminate the parental rights of a parent to a child.

12. **UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT:** The Uniform Child Custody Jurisdiction and Enforcement Act found in Chapter 50A of the North Carolina General Statutes.

## **RULE 4: SERVICE OF SUMMONS AND PETITION.**

1. Duty to Locate: From the date the Petition is filed until the adjudication hearing, the Petitioner shall have a continuing duty to identify and locate any parent who has not been served with a copy of the summons and petition and to have a copy of the same served on any such parent.

2. Dates on Summons: The dates and times for the first non-secure custody hearing, the child planning conference and the adjudication shall be reflected on the Summons to be served on a parent in a juvenile proceeding. The line on the Summons for Notice of Pre-hearing Conference shall state the date of the Child Planning Conference to be scheduled as provided for in Rule 10 of these Rules. The line labeled "Notice of Hearing on Need for Non-Secure Custody shall reflect the hearing date for the initial non-secure custody hearing. The line labeled "Summons and Notice of Hearing" on the Petition shall reflect the date of the Adjudication.

## **RULE 5: HEARING TIMELINES.**

1. Non-Secure Custody: If a child is placed in non-secure custody, a hearing to determine the need for continued non-secure custody shall be held within seven (7) days, unless an earlier hearing is required by NCGS 7B-506. Subsequent non-secure custody review hearings shall be scheduled as required by NCGS 7B-506.

2. Adjudication: The adjudication hearing shall be scheduled for the earliest possible date, but in no event more than sixty (60) days after the filing of the Petition, unless extended for good cause shown as allowed by the General Statutes.

3. Disposition: Whenever possible, the disposition shall take place immediately following the adjudication and in no event more than thirty (30) days from the adjudication.

## **RULE 6: APPOINTMENT OF COUNSEL.**

1. To be eligible to be on the list of court appointed attorneys to represent indigent Respondents in Juvenile Court, the attorneys must:

- a. Possess sufficient experience and skill to provide competent legal representation consistent with the Standards of Representation that have been promulgated by Indigent Defense Services (IDS) for attorneys representing Respondent Parents in Juvenile matters;
- b. Possess reasonable knowledge of juvenile law and local juvenile court proceedings; and
- c. Be diligent in the performance of their duties.

2. The Juvenile Clerk shall maintain a list of attorneys who meet the qualifications for appointment of counsel and shall appoint attorneys from that list on a generally equal basis.

3. Attorneys on the appointed list shall provide the Clerk with their contact information, including their mailing address, phone number, fax number and e-mail address if applicable. Any changes with regard to the attorneys' contact information shall be promptly reported to the Clerk.

## **RULE 7: RESPONSIBILITY OF ATTORNEYS.**

1. Continuing Duty of Representation: An attorney who accepts an appointment in a case, or enters an appearance in a case, shall represent the client through all stages of the trial level proceedings unless relieved of the duty to represent the client by the Court.

2. Withdrawal from Representation: If an attorney appointed to represent a Respondent has been unable to establish contact with the client prior to the adjudication hearing and the client does not appear at the adjudication hearing, the appointed attorney shall be permitted to withdraw as the attorney of record from the case prior to the commencement of the hearing. After adjudication, if an attorney has been unable to maintain contact with a client, the attorney shall be permitted to withdraw as attorney of record in the case prior to the commencement of any review or permanency planning hearing if the client does not appear for the hearing. Motion to withdraw for reasons other than those set forth above shall be filed with the Clerk and served on the Client and all other parties. The Clerk shall schedule a hearing and the attorney shall serve a Notice of Hearing on the client and all other parties. Such Motions to Withdraw shall be granted for good cause shown in the discretion of the Court.

3. Orders to Withdraw: An attorney allowed to withdraw from a case shall prepare a written order to withdraw and submit the same to the Court. The Order shall contain the last known address and telephone number of the client. After entry and filing of the Order, the attorney shall mail a copy of the Order to the client's last known address and file a Certificate of Service of said Order with the Clerk showing that the client and all other parties have been served with the Order to Withdraw.

## **RULE 8: APPOINTMENT OF GUARDIAN AD LITEM (GAL).**

1. If a Juvenile is alleged to be abused or neglected, the Court shall appoint a GAL on behalf of the juvenile. If the Juvenile is alleged to be dependent, the Court may appoint a GAL for the juvenile, if the Court determines such appointment is in the juvenile's best interest.

2. The Guardian Ad Litem Program shall be responsible for presenting Orders to the Court appointing the GAL in each case. If the GAL Program cannot accept an appointment for whatever reason, on cases that arise after July 1, 2009, the GAL Program shall appoint a qualified attorney as GAL, and the Clerk shall notify the attorney of the appointment.

3. Pursuant to NCGS 7B-602 (c), a GAL may be appointed for a Respondent parent. Any party may make a motion, either written or oral, for the appointment of a GAL for a Respondent parent whenever it is deemed appropriate. After advising the Court that a conflict exists and the Court finds a conflict exists between the GAL and the attorney representing a Respondent Parent, an attorney appointed as GAL for a Respondent Parent is entitled to participate fully in the hearings conducted in the case, including the right to present evidence, question witnesses, and make arguments provided that counsel for the Parent and the GAL not present cumulative evidence or otherwise unnecessarily delay the proceedings.

## **RULE 9: JUDICIAL ASSIGNMENT.**

1. Family Court Judges shall preside over sessions of Juvenile Court on a schedule determined by the Chief District Court Judge.

2. Whenever possible, all matters in a juvenile case are to be heard by the Judge that presided over the adjudication and disposition hearing in the case. It is the goal of Family Court to have a “one Judge one Family” approach to conducting hearings in juvenile cases prior to proceedings related to termination of parental rights. A different Judge should hear TPR matters and not the Judge that had conducted the previous hearings in the case.

## **RULE 10: CHILD PLANNING CONFERENCES (CPC).**

1. After a Petition is filed, a Child Planning Conference shall be scheduled by the Juvenile Court Case Manager for the projected court date of the second seven (7) day non-secure custody hearing in the case. In the event that there is not a non-secure custody order issued in a particular case, a CPC will be scheduled by the Juvenile Court Case Manager after consultation with the parties and their counsel. DSS shall be responsible for notifying the Respondents of the scheduled CPC by attaching a copy of a Notice of Child Planning Conference to the Petition and Summons and by furnishing a copy of the Notice to the Family Court Office. The Juvenile Court Case Manager, or his/her designee, shall conduct the Child Planning Conference. The Child Planning Conferences shall convene immediately after the call of the calendar for that session of Juvenile Court in an order to be determined by the Juvenile Court Case Manager and the Presiding Judge of that session of Court.

2. The following persons shall attend the CPC:
  - a. the DSS Social Worker(s) and at least one DSS Supervisor;
  - b. the DSS Attorney;
  - c. a representative of the GAL Office;
  - d. Respondent Parent or Guardian/Caretaker;
  - e. Respondents' Attorneys; and
  - f. such other persons as may be determined by the Juvenile Court Case Manager to be necessary to address the issues to be discussed in the CPC, including but not limited to: school counselors; mental health counselors; other family members; the juvenile, if age appropriate; foster parents; or any relative placement providers.

If a person is properly notified of the CPC and does not attend at the scheduled time, the CPC will be conducted without the participation of that person.

3. At the CPC, the Juvenile Court Case Manager, or his/her designee, shall:
  - a. Introduce the persons present at the CPC and explain that the CPC is confidential, and that, if necessary, a non-secure custody hearing will be held after the CPC;
  - b. Explain that the CPC is non-prejudicial to the parties in terms of the Adjudication and that no documents generated at the CPC will be presented to the Court except a Memorandum of Understanding and/or Consent Order (see subparagraphs 4 and 5 below);
  - c. Explain that the CPC is intended to facilitate a discussion by the parties of the following issues:
    - Paternity/child support issues;
    - Placement options for the juvenile;
    - Any relative placement sources for the juvenile and identification of what DSS needs to do to approve such placement and the timelines for that occurring;
    - Discuss the services needed for both the juvenile and the parents and a plan to deliver those services to the family;
    - Discuss parental and sibling visitation with the juvenile; and
    - Determine the parties position on the need for continued non-secure custody;
  - d. Inquire as to service of the Summons and Petition on the Respondents and if appropriate on the Juvenile;
  - e. Attempt to learn the identity and whereabouts of any parent, guardian or custodian who is not present at the CPC and determine whether that person has been served, and if not, what further steps need to be taken to complete service of process;

- f. Facilitate discussions by the parties as to the services that might be helpful to the families based upon the allegations in the Petition and a plan on delivering those services, if appropriate;

4. In the event the parties reach an agreement on any of the issues concerning custody, placement, visitation, or services for the family, the Juvenile Court Case Manager shall prepare a Memorandum of Understanding that summarizes the agreement in writing; shall give the parties an opportunity to review the Memorandum of Understanding; and, if executed by all parties, provide copies of the Memorandum of Understanding to all parties at the CPC.

5. If the parties reach an agreement related to continued non-secure custody, a Consent Order will be presented to the Court. If the parties cannot reach an agreement related to the continuation of non-secure custody, the Court will conduct a non-secure custody hearing as provided by statute.

6. The Court, either by Motion of one of the Parties or by its own Motion, may order that a second or successive CPC be conducted to address the issues and review the service plan; identify additional services that may be helpful to the family; and to discuss any other issues related to the best interest of the juvenile.

7. In order to accommodate conducting the CPC on the date scheduled for the hearing of the second seven day review hearing of the non-secure custody order, such hearings will not be conducted on that date until after the CPC has been conducted in that case. In the event the CPC is continued, the second seven day non-secure custody hearing will be conducted as required by statute. Further, the Court and counsel will consider the attorneys' involvement in the CPC at calendar call and in the scheduling of cases for that days session of Juvenile Court.

## **RULE 11: DISCOVERY.**

1. Attorneys are encouraged to provide all other attorneys with discoverable materials at any time upon request, and without court involvement. Otherwise, the parties shall be entitled to pursue discovery in accordance with the North Carolina Rules of Civil Procedure.

## **RULE 12: CALENDARS.**

1. The Juvenile Clerk of Court shall maintain the juvenile calendar. On the Friday that is nineteen (19) days prior to a scheduled Juvenile Court session, the Juvenile Clerk shall distribute the calendar to the following persons:

- a. the DSS Attorneys;
- b. the Attorneys for the Respondents;
- c. the GAL Attorney Advocate;

- d. any Conflict GAL Attorney Advocate or GAL for a Respondent Parent;
- e. The GAL District Administrator;
- f. The DSS Social Workers.

2. In the event that the Friday for the distribution of the calendar is a Holiday, then the calendar shall be distributed on Thursday, prior to the Holiday. All parties that receive a calendar are responsible for notifying the Clerk if there are corrections to be made in the calendar.

3. With the exception of Non-Secure Custody Hearings, Emergency Situations, Motions for Review, Motions to Publish on Unknown Parents or corrections to the calendar, no cases will be added to or removed from the calendar without permission of the presiding Judge assigned to that session.

4. An attorney who has a scheduling conflict in another Court shall comply with Rule 3.1 of the General Rules of Practice relating to scheduling priority. It is the attorneys' responsibility to keep the Clerk and other counsel informed of his location when the attorney is unable to be in Juvenile Court when the attorney has a case on the calendar. Judges should confer to resolve any scheduling disputes of cases that have equal priority under Rule 3.1.

### **RULE 13: CONTINUANCES.**

1. The best interest of the juvenile shall be considered in ruling upon all Motions for Continuance made in Juvenile Court. Juvenile cases need to be resolved at the earliest possible time, and Motions to Continue shall be granted only for good cause shown.

2. Motions to Continue shall be in writing when possible and filed with the Clerk and served on all other parties in the case. The Clerk shall notify the Court of all Motions to Continue and shall schedule hearings on the Motions to Continue at the earliest possible date. Oral Motions to Continue may be made when written Motions are not possible.

3. Orders granting Motions to Continue shall be entered in writing and shall include the name of the moving party, any objections to the Motions, the reasons the Court granted the continuance and the new court date for the matter. The written Orders shall be prepared by the party filing the Motion to Continue and shall be submitted to the Court by the end of the session of Juvenile Court if possible, and if not possible by that date as soon as practicable.

## **RULE 14: EARLY SUBMISSION OF COURT REPORTS.**

1. **ADJUDICATION/DISPOSITION; REVIEW HEARINGS AND TERMINATION OF PARENTAL RIGHTS COURT REPORTS:** These reports shall be delivered to all parties and the Juvenile Clerk of Court's Office no earlier than the Friday morning preceding the session at 9:00 am and no later than Monday at 12:00 noon of the week of the scheduled Court hearing. Late Reports and any Addendum Reports must be delivered to the parties as soon as completed. The intent of this Rule is that the Report be provided to the parties at the initial calendar call on the date of the scheduled hearing, if not earlier. These Reports will not be submitted to the presiding Judge prior to the Adjudication hearing or the Termination of Parental Rights hearing without the consent of all parties. For the Volunteer GAL Reports, the time periods set forth herein are target guidelines for the submission of the GAL Reports.

2. **TYPE OF REPORTS TO BE SUBMITTED EARLY:** The early submission of Court Reports Rule shall include, but not be limited to the following Reports, DSS Court Summary Reports, the GAL Report or the Report of the Conflict GAL Attorney Advocate; the Respondent Attorney Report, and any mental health, psychological, substance abuse, or other evaluations or records that had previously been ordered by the Court.

3. **UNREPRESENTED PARTIES:** In the event a parent is not represented by counsel in the case, the DSS Social Worker or other parties submitting Reports shall deliver the parents copy of the Reports to the Clerk's Office and, if possible, notify the un-represented parent that the Report can be reviewed by the parent at the Clerk's Office. If the parent does not get a copy of the Report prior to the court hearing date, a copy shall be provided to the parent prior to the case being called for hearing.

4. **REVIEW OF REPORTS:** All individuals receiving the copy of the Court Reports pursuant to this Rule, shall read and review the Reports prior to the hearing to insure efficient use of court time. An attorney for a Respondent Parent shall also make efforts to review the report with the parent prior to the hearing date if possible. It is the intent of this Rule to encourage the early filing of Reports and the review of the same prior to the Court hearing to efficiently utilize the Court's time.

## **RULE 15: HEARING DAY PROCEDURES.**

1. This Rule will describe the process for the handling of the calendar for sessions of the Juvenile Court. Failure to comply with the provisions of this Rule will subject the party violating the Rules to sanctions, up to and including the removal of attorneys from the Court appointed attorney list for Juvenile Court.

2. At 8:45 am on a scheduled session of Juvenile Court, the attorneys for Respondents, the DSS attorneys, a representative of the GAL office, the Social Workers involved in a case and the DSS Supervisors shall meet in the Courtroom to discuss the

calendar of cases to be heard at that session. The participants shall determine what matters can be resolved by Stipulation; what matters are for contested hearing; what issues are contested in each case; and the projected time for the hearings. Respondent Parents/Guardians are to be at the Courthouse no later than 9:00 am.

3. At 9:15 a.m. the presiding Judge shall meet with the attorneys that have cases on the calendar, call the calendar and order the cases for hearing based upon the information provided by the parties or their counsel. The presiding Judge will set and control the Order in which cases are called for hearing. It is the intent of this Rule to attempt to reduce the amount of time that parties and attorneys have to wait in court for their cases to be heard and to attempt to schedule matters such that an attorney can attend to other business when not scheduled to be involved in a Juvenile Court hearing.

4. Hearings will begin in the scheduled cases immediately after the calendar call and the scheduling of cases by the presiding Judge except that second seven (7) day non-secure custody review hearings shall be scheduled for hearing after the completion of the CPC for the case. Attorneys who will be involved in CPCs at a particular session shall advise the trial court of those conferences at the 9:15 a.m. calendar call so that matters can be scheduled that involve other attorneys at the beginning of the court session. Also, if an attorney reasonably believes that the Court will need to conduct a second seven (7) day non-secure custody review hearing during that session of court, the attorney shall notify the Court of that possibility at the 9:15 a.m. calendar call.

## **RULE 16: STIPULATED ADJUDICATIONS.**

1. All Stipulated adjudications shall be reduced to writing and shall be signed by the DSS attorney, the Respondent's Attorney, the Respondent, the GAL Attorney Advocate and the Social Worker involved in the case.

2. If the parties submit a written stipulation to the Court containing certain findings and/or conclusions and/or provisions of the Court's decree, the Court shall determine before accepting the Stipulation in open Court that the parties understand the content and the consequences of the Stipulation, that entering the Stipulation was the parties voluntary act and that the party has had adequate opportunity to discuss the proposed Stipulation with their legal counsel. The Court's findings concerning Stipulations shall be made part of the record.

## **RULE 17: REVIEW AND PERMANENCY PLANNING HEARINGS.**

1. The Court shall conduct a review and permanency planning hearing of each case as provided by statute. The Court may set a review or permanency planning hearing for any case at any time, on its own Motion, or upon written Motion filed by any party. A Notice of Hearing shall be prepared by the Clerk and signed, issued and served by the

Clerk at least fifteen (15) days prior to the date set for the hearing to all parties involved in the hearing and any other person or agency specified in a Court Order, if possible unless a shorter notice period is ordered by the Judge.

2. If a Motion is filed by a party requesting some relief, the moving party shall prepare and file a written Motion and Notice of Hearing at least five (5) days prior to the hearing date. The Motion and Notice of Hearing in said Motion shall be filed with the Clerk. The moving party shall consult with the Clerk concerning the scheduling of the hearing date on the Motion before the filing of the Notice of Hearing. When service is by facsimile, the sending attorney shall confirm receipt of the same by the receiving attorney. Emergency Motions may be filed with less than five (5) day Notice for good cause shown.

3. Periodic review Hearings shall be conducted by the Court as provided by statute, if DSS is not relieved of court ordered responsibility, and such reviews shall be noticed for hearing as provided in section one (1) above.

4. NCGS 7B-202 shall govern permanency mediation in all Abuse, Neglect and Dependency cases and the terms of that statute are incorporated herein by reference.

## **RULE 18: PREPARATION AND ENTRY OF ORDERS.**

1. In cases involving DSS, the DSS attorney shall prepare all proposed orders, unless otherwise provided for in these Rules or instructed by the Court. The proposed Order shall be submitted to all attorneys for their comment and approval at least seven (7) days prior to its scheduled entry by the Court, and in the event the parties cannot resolve any issues concerning a proposed Order, the party preparing the Order shall notify the Judge in writing of the conflict, shall submit the proposed Order and the written objections to the proposed Order to the Judge and the Judge shall resolve the conflict as soon as possible. The intent of this Rule is to resolve any conflicts in written orders as soon as possible and if possible prior to the next scheduled session of Juvenile Court by the Judge.

2. Concerning Motions for Review, the attorney or party filing the Motion shall prepare the proposed Order unless otherwise directed by the Court. The same rules apply as it relates to circulating the proposed Order as set forth in paragraph 1 above.

3. If further hearings are calendared in the case, then the Order shall state the date and purpose of such further hearings.

4. If a proposed Order has not been circulated as provided for herein, then the submitting party shall advise the Court of that fact at the time the Order is submitted to the Court and explain the reason justifying non-circulation of the Order.

5. All Orders should be filed within thirty (30) days of the date of the hearing. If an Order is not entered within thirty (30) days of the date of the hearing, the Clerk

shall schedule a subsequent hearing at the first session of Juvenile Court following the 30 day period to determine why the Order has not been entered, to explain the reasons for the delay in the entry of the Order and to obtain any needed clarification as to the contents of the Order.

**RULE 19: PRE-HEARING CONFERENCES IN  
TERMINATION OF PARENTAL RIGHTS  
(TPR) PROCEEDINGS.**

1. The Court shall schedule and conduct a Pre-Hearing Conference to address the issues as provided in NCGS 7B-1108.1. Additionally, counsel should be prepared to address the following matters at the Pre-Hearing Conference: 1. scheduling of the TPR Hearing; 2. addressing any discovery issues related to the TPR; 3. determining the availability of records; and 4. discussing counsel's best estimate of any anticipated pre-trial Motions and the time needed for the TPR hearing.

2. An Order on Pre-Hearing Conference shall be entered addressing the issues heard at the conference and a copy of the Pre-Hearing Order shall be circulated to the parties within 10 days of the Conference.