BEST LEGAL PRACTICES IN CHILD ABUSE AND NEGLECT CASES

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Statement of Purpose

South Carolina recognizes the importance of timely permanency for children. To achieve permanency, children must have the appropriate permanency plan that is specific to their needs. The permanency plan specific to an individual child's needs must be acted upon expeditiously to promote the utmost stability and well-being for a child. Support for timely legal processes is critical for expediting permanency.

This document provides guidelines for handling child abuse and neglect cases. These guidelines were established to help reduce delays, expedite permanency for children, and provide overall efficiency for these cases. The Family Court Bench Bar Committee, upon recommendation of the S.C. Governor's Task Force on Children in Foster Care and Adoption Services, developed these guidelines. This document is not recommended for tactical or trial practice. This is a guideline for procedural best practices. To review a complete list of requirements of each child abuse and neglect hearing, please visit http://childlaw.sc.edu/benchbook.

Citations to South Carolina statutes used throughout this document are formatted as concisely as possible and are not necessarily appropriate for formal citations in pleadings and papers filed with the family court. South Carolina statutes are cited as § __-__-__ (e.g., § 63-3-651 instead of S.C. Code Ann. § 63-3-651 (2010)).

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I. GENERAL PRACTICE

A. Uniformity

It is helpful to the efficiency of these cases to have statewide uniformity regarding documents drafted and disseminated to the parties. The documents to include pleadings and orders should be clear, concise, and brief.

1. Pleadings

Use of the DSS Legal Case Management System (LCMS) for standard pleadings for each hearing can be accessed by the DSS attorney.

2. Orders

Use of the DSS LCMS for standard orders with specific IV-E language for probable cause, merits, and permanency planning orders should be accessed by the DSS attorney and should be utilized for consistency. These standard orders should come with specific DSS instructions regarding incorporating child specific findings that support the legal conclusions in said orders. These orders should detail the reasonable efforts which have been completed by DSS and for which the court has made a finding.

3. Placement Plans

Placement plans should be easily comprehensible for the defendants. Placement plans should be specific to the defendant and the behavioral changes needed for reunification of the child. These plans should maintain a similar format statewide.

4. Court Information Sheets

A standard statewide form should be used in each county to be disseminated to all of the parties.

5. Guardian ad Litem (GAL) report

In child protection proceedings, the written GAL report with recommendations must be submitted to the court pursuant to statute. The court must make a specific statement on the record that the written GAL report will be a part of the official court file or may elect to make the written report an exhibit.

B. Training

Regular training for DSS caseworkers, supervisors, and attorneys; GAL staff, volunteers, and the attorneys who represent the volunteer GALs; the attorneys who represent the defendants; clerks of court and family court judges; and members of the Foster Care Review Board is needed to ensure uniformity in case practice, case documentation, and adherence to best legal practice standards.

1. Caseworkers and Supervisors

a. Preparation of reports for court use

b. Providing testimony

c. Use of case notes/files in court

d. DSS attorneys will provide training to their local caseworker staff regarding court preparation and testimony on a regular basis

2. DSS Attorneys

a. Best Legal Practices (BLP) document

b. Use of standardized forms for pleadings and orders

c. Witness preparation

d. Qualification of expert witnesses

e. Preparing and training DSS caseworkers for necessary court procedures and testimony

3. GAL Staff, Volunteers, and Attorneys

BLP training will be coordinated by the SC Cass Elias Guardian ad Litem Program, Richland County CASA, and the Children's Law Center.

4. Clerks of Court

BLP training will be coordinated by SC Court Administration.

5. Family Court Judges

BLP training will be coordinated by SC Court Administration to include a section on how to utilize the DSS and court liaisons reports they receive, especially report information regarding the number of times a merits hearing has been continued and the timeliness of all hearings.

6. Foster Care Review Board

BLP training will be coordinated by SC Foster Care Review Board (FCRB) Program

7. Attorneys representing defendants

BLP training and training on child welfare related issues will be provided by Children's Law Center on a semiannual basis, based upon available funding. The primary training group is attorneys under civil contract with the Office of Indigent Defense who are appointed to represent defendants in child abuse and neglect proceedings.

C. Notice and rights of other participants

DSS shall provide notice of a hearing held in connection with an action filed or pursued under Sub article 3 or §§ 63-7-1650, 63-7-1660, 63-7-1670, 63-7-1680, 63-7-1700, or 63-7-2550 to the foster parent, the pre-adoptive parent, relative or third party who is providing care for a child. The notice must be in writing and may be delivered in person or by regular mail. The

notice shall inform the foster parent, pre-adoptive parent, or relative of the date, place, and time of the hearing and of the right to attend the hearing and to address the court concerning the child. Notice provided pursuant to this section does not confer on the foster parent, pre-adoptive parent, or relative the status of a party to the action. § 63-7-1630.

1. Child

The caseworker should inform the child of the legal process and briefly explain the purpose of each hearing. The child may participate in court activities in any of the following ways:

a. Court appearance: The foster child should be informed of court hearings by the child's caseworker and GAL. DSS should inform the foster parent of their conversation with the child and advise the foster parent that if the child desires to provide information to the court that he/she must contact the caseworker. The child, (when age appropriate) should be offered, in writing, the opportunity to attend every court hearing. The child should be advised to tell the foster parents/caretaker, the GAL, and the caseworker if he/she wishes to attend court. The GAL and the caseworker should prepare the child for court and arrange transportation as appropriate. Should the child prefer to provide written communication to the court, such communication must be provided to the court by the caseworker and the GAL. The court shall make the decision to hear from the child. However, youth who are 16 years of age or older with a plan of APPLA must be heard. § 63-7-1700(C)(2).

b. GAL report: The Guardian ad Litem report to the court that clearly identifies the child's views regarding the proposed permanency for the child could meet the requirement. The GAL report to the court should always set forth the child's wishes, per § 63-11-510(5). The GAL's recommendations as to what is in the child's best interests are not sufficient to meet the requirement. The GAL report should include how many times the GAL has contacted/visited the child and the date of the last visit/contact made with the child. Additionally, the court should make a specific statement on the record that the written GAL report will be a part of the official court file or may elect to make the written report an exhibit.

c. Child's report to the court: The child's wishes can also be expressed through the caseworker or the child's Guardian ad Litem or attorney for the Guardian ad Litem via an oral or written report directly from the child that is presented to the family court judge.

d. Child witness: If child is to testify at the merits hearing, make all efforts to make the child comfortable in a courtroom setting. This can include a more comfortable configuration of the hearing room; a parent or other support person being present; permitting the child to hold a stuffed animal, doll, blanket or other comfort item when testifying; allowing leading questions during direct examination to the extent necessary to develop the child's testimony; or frequent breaks. Particular attention should be paid to the witness chair to ensure that it is amenable to a child witness. It is also appropriate to ensure that a defendant, for whom a finding is being sought, is not in the child's direct line of sight. The child should also be able to visit the courtroom prior to the day of the hearing.

2. Foster Parent/Pre-Adoptive Parent

The DSS attorney is responsible for acknowledging the foster parent or pre-adoptive parent in the courtroom. The department shall provide notice of a hearing held in connection with an action filed or pursued under Sub article 3 or §§ 63-7-1650, 63-7-1660, 63-7-1670, 63-7-1680, 63-7-1700, or 63-7-2550 to the foster parent, the pre-adoptive parent, or the relative who is providing care for the child. The notice must be in writing and may be delivered in person or by regular mail. The notice shall inform the foster parent, pre-adoptive parent, or relative of the date, place, and time of the hearing and of the right to attend the hearing and to address the court concerning the child. Notice provided pursuant to this section does not confer on the foster parent, pre-adoptive parent, or relative the status of a party to the action. § 63-7-1630. Should they wish to be made a party to the action, it is their responsibility to timely file said motion to intervene, and serve all parties. Upon scheduling of the motion hearing, it is at the court's discretion to determine the appropriateness of intervention.

3. Relative placement

a. The DSS attorney is responsible for acknowledging any relatives in the courtroom. The relatives should have an opportunity to be heard if they so desire.

b. Relatives who have placement of the children must be made a party to the action, served and noticed of all hearings and screened for an attorney as appropriate.

c. DSS must advise relatives of their rights and benefits to become licensed foster parents. When a relative desires licensure, the court must leave legal custody with the agency but may allow placement with the relative in the interim of licensure.

Related statutes

§ 63-7-2320. Kinship Foster Care Program.
§ 63-7-2330. Placement with relatives.

4. Foster Care Review Board (FCRB)

FCRB may participate, through counsel, in child abuse and neglect proceedings pursuant to §§ 63-7-1660, 63-7-1700, 63-7-2520, and in any hearing held pursuant to a motion filed by a named party or party of interest. Participation includes the opportunity to cross-examine witnesses and to present its recommendation to the court.

a. This section does not require notice of any hearing to be served upon FCRB unless it is a party to the case.

b. If the FCRB intends to participate in any hearing pursuant to this section, it shall inform DSS, the court, the GAL or its counsel of its intention of appearing at least 24 hours in advance of the hearing.

c. If the FCRB intends to become a party to the action, it shall file a motion to intervene. There is a rebuttable presumption that the motion to intervene shall be granted absent a showing that intervention would be unjust or inappropriate in a particular case.

d. The FCRB member or attorney has the right to advise foster parents of their right to petition the family court for termination of parent rights and for adoption.

Related statutes

§ 63-11-750. Foster Care Review Board, participation in child abuse and neglect proceedings.

D. Early Assessment

DSS should explore, in all cases, family reunification and potential relative placement.

1. Request to forgo reasonable efforts

When the agency has determined that it is appropriate to forgo reasonable efforts for the family, the agency should file a Merits complaint with the request to forgo reasonable efforts. A petition for Termination of Parental Rights (TPR) must be filed within sixty (60) days of the court granting DSS the right to forgo reasonable efforts. § 63-7-1640(G). The South Carolina Foster Care Review Board has a right to file a motion requesting forgoing reasonable efforts.

2. Termination of Parental Rights petition

DSS may petition for TPR when the grounds exist in its removal petition without first asking for the court's permission to forgo reasonable efforts.

II. PROBABLE CAUSE HEARING

Probable cause hearings must not be continued without exceptional circumstances. Should the defendant request a continuance, the court should advise the defendant of the right to request a de novo hearing at a later date. The court must make a finding that probable cause does/does not exist and if so must make a finding as to where the child is to be placed pending a later hearing. § 63-7-710.

At the probable cause hearing, the defendants may submit affidavits as to the facts alleged that formed the basis of the removal and may cross-examine the department's witnesses as to whether probable cause existed for emergency removal. § 63-7-710(D). If the defendants are not present at the probable cause hearing or are present without counsel, then the court shall take testimony at the probable cause hearing without prejudice to the defendants pending service or appointment of an attorney. Once the attorney is appointed or the defendant is served, the defendant may request a de novo hearing to be held within five days.

The first order giving DSS custody requires language stating that continuation of the child in the home is contrary to child's welfare and that reasonable efforts were made to prevent child's removal. § 63-7-720(A). This language is necessary for IV-E eligibility regarding federal funding during the entirety of the case.

A. Identify necessary parties, including anyone acting in loco parentis

It is critical that all appropriate persons be made a party to the case as soon as possible, including all parents. The court should add individuals acting in loco parentis as parties to the action only when they face allegations of abuse or neglect or when custody is recommended to them. Timely resolution of paternity issues is in the best interest of the child and essential to furthering case processing. Proper and timely service allows the case to proceed without delay, leading to earlier permanence for the child. A record of service needs to be in the court's file from the start of the case and must be a separate document contained in the case file. Further, knowledge of all biological parents provides additional information on potential relative placements. A primary goal of the court should be to make the probable cause hearing as thorough and meaningful as possible. If the court determines the child needs to be placed, the court must evaluate appropriate placement options and seek the least disruptive alternative placement that can meet the child's needs.

Paternity must be resolved in the following circumstances:

- mother is unmarried;
- paternity has been questioned by the parties; or
- putative father denies paternity.

The following steps should be taken to resolve paternity issues and identify all necessary parties:

1. Place mother under oath to testify

Questions to ask mother include:

- Who is the child's father?
- Is there anyone else who potentially could be the child's father?
- Who is listed as the child's father on the birth certificate? DSS should ask the court to ask the mother to provide the long form birth certificate prior to the merits hearing for DSS to place in the court file.
- Have you been married or divorced? Include dates and duration of marriages.
- What is the child's birth date?
- Was the child born prematurely?
- What is the city, county, state, and hospital of the child's birth?

2. Responsible Father Registry and/or named fathers

a. DSS should check the Responsible Father Registry and file within 10 days an amended complaint to include any defendant registered.

b. If the mother names potential fathers of the child, they should be added as parties to the case and noticed of the hearing.

c. Order paternity testing on putative fathers.

d. Serve putative fathers with the order if they are present in the courtroom. If putative fathers are not in the courtroom, add their names to the case. Serve the original summons and complaint for the probable cause hearing along with the probable cause order on putative fathers.

3. Place putative father under oath to confirm paternity and explain rights

a. If a putative father is in the courtroom, place him under oath.

b. Explain rights and responsibilities:

c. Inform him of the right to an attorney;

d. Inform him of his right to request a paternity test; and

e. Inform him that if he acknowledges paternity, an adjudication of that fact will take place today and will bar him from revoking that acknowledgement in the future.

f. Ask whether he acknowledges or denies paternity.

g. If the putative father acknowledges paternity, issues should be adjudicated at the hearing. If there is a dispute as to paternity or if the court has reason to question paternity, the court should order paternity testing regardless of putative father's acknowledgement.

h. If the putative father denies paternity, proceed with paternity testing.

4. Order paternity testing

a. Explain to the parties steps they are to take to cooperate with testing.

b. Place in the order which party will be responsible for payment of paternity testing and when such payment is due.

c. The court should inform the volunteer GAL that if DNA testing is done and the legal father is not the biological father that this may have negative consequences on the child.

5. Determine whether additional parties are necessary

a. Necessary parties should always include:

- Biological parents, including custodial and non-custodial parents. If the non-custodial parent is not named as a party, DSS must exercise every reasonable effort to promptly notify the non-custodial parent of the date and time of any scheduled hearing. § 63-7-700(B)(1);
- Parent whose name appears on the birth certificate;
- Other custodians or guardians. If the court orders expedited placement with a relative at the probable cause hearing, that relative should be added as a party for the duration of the case or until further order. § 63-7-730; and
- Alleged perpetrator.

b. Additional parties that may be included:

- The husband of mother at the time of conception;
- Spouses of defendant parties, including by common law marriage;
- Adult siblings and parents of other minor children related to the children in care should be notified of a case to ascertain whether they can take custody or placement of children in care; or
- Other parties as the court deems necessary. Obtain school records, DSS records (including public benefits), birth records and medical records to ascertain whether there have been other custodians of the child.

6. Identify possible placement resources

a. The court should question non-custodial parents, if present, to determine whether the parent is suitable, fit, and willing to serve as a placement for the child.

b. DSS should present in writing to the court safety checks to include DSS Central Registry, Sex Abuse Registry, records for proceeding five years of law enforcement agencies in the jurisdiction in which the person resides, and results of the walk-through of the home.

c. If, after consideration, the non-custodial parent is not selected for placement, the court should question any other relatives who are present and are proposed as placement resources.

d. The court should inquire whether a meeting with the child's parents or guardian, extended family, and other relevant persons has occurred pursuant to § 63-7-640. The purpose of this meeting is to discuss the family's problems that led to intervention and possible corrective actions, including placement of the child. This meeting is not a family group conference, which is not statutory and takes place before the merits hearing.

If no placement resource is present or selected at the hearing, the court should question both parents as to whether there are other relatives or nonrelatives in or out of the state with whom the child could be placed.

See Appendix A: Interstate Compact on the Placement of Children for ICPC issues, if the relative is out of state and the home study is to be expedited.

7. The Long Form Birth Certificate

a. The judge should order the parent or legal guardian to provide the long form birth certificate to DSS prior to the merits hearings. DSS should request this form from DHEC prior to the merits hearing if it is not provided by the parent.

b. DSS should attempt to locate the named parent on the birth certificate to advise him/her of his/her child's entry into foster care. The named parent must be made a party to the action to allow the court the opportunity to establish biological or legal parentage.

B. Due Diligence Efforts

It is critical to locate and serve all parties. Proper and timely service allows the case to proceed without delay, leading to earlier permanence for the child. A record of service needs to be in the file from the start of the case.

1. Location and service of necessary parties

a. DSS should obtain an affidavit of service for the summons and complaint and notice of hearing from the process server or the green card returned from certified mail, restricted delivery, as applicable.

b. DSS should have extra copies of the summons and complaint and be prepared to request service by court deputies if the defendant appears but has not been previously served. DSS should have an affidavit of service for the deputy's signature to become part of the clerk's file. DSS should place on the record if the parties were served in the courtroom and include in the order.

Related statutes

§ 15-9-710. When service by publication may be had.
§ 15-9-740. Publication and mailing of summons.

2. Initial efforts made to locate and serve necessary parties

If service was not made on a defendant, provide the following to the court:

a. Affidavit of non-service;

b. Affidavit of due diligence documenting efforts made to locate and serve defendant; and

c. Motion for publication – request an order for publication with the attached affidavit of due diligence.

3. Sworn testimony from parties regarding location of necessary parties

If all parties could not be located prior to the probable cause hearing, place those parties who are present at the hearing under oath to question as to the location of other parties.

Questions may include:

a. Home or work address and directions;

b. Former home or work address and directions;

c. Home or work address of other parties' relatives or friends;

d. Regular "hang out" spots of other parties, e.g., clubs, restaurants, specific neighborhoods, barber shop, etc.; and

e. Whether the defendant is a member of a federally recognized tribe. See § E: Indian Child Welfare Act (ICWA) below.

Related Court Rule

Rule 4(g) SCRCP. Process; Proof and Return.

C. Appointment of counsel and Guardians ad Litem

A defendant has a right to counsel for any DSS child protection hearing. § 63-7-1620(3). A defendant may be entitled to a court-appointed attorney for any hearing if certain financial guidelines are met. Defendants must complete the Application for Counsel form to determine if they qualify for appointed counsel. The Affidavit of Indigency and Application for Counsel form is located here: http://www.sccourts.org/forms/pdf/SCACRVIFORM02DR.pdf.

An attorney from the contract list of the SC Commission on Indigent Defense should be appointed if at all possible. The appointment and determination of application fee waiver should be addressed at the probable cause hearing. Should the defendant be eligible for an appointment of an attorney, the waiver fee will be addressed at the next merits hearing. The merits hearing should not be continued for a defendant to obtain an attorney.

A defendant may need a Guardian ad Litem for cases where the defendant is considered incompetent or incarcerated out of state or cannot be transported to court. The court shall make a finding as to the specific need of a GAL appointment as to each defendant as requested.

In all cases, the court must appoint a Guardian ad Litem for the child. § 63-7-1620(1). The timely appointment of these can avoid delays in the proceedings, in particular the merits hearing.

1. Clear notice of right to counsel – explanation on record

a. Ask defendants if they want an attorney for the case.

b. Explain that neither DSS nor the Guardian ad Litem represents the defendant.

c. Explain to the defendants they may lose rights to their child if grounds for termination are alleged and proved.

d. Explain to the defendants their right of self-representation.

2. Financial declaration/sworn testimony regarding income

a. If the defendant requests appointment of an attorney, ask the judge to screen the defendant for eligibility of a court-appointed attorney during the hearing. The judge can place the defendant under oath and question the defendant regarding the following:

- Defendant's gross income;
- Gross income of persons living in defendant's home for whom defendant is legally responsible; and
- Assets of the defendant, e.g., bank accounts, stocks, bonds, real property other than primary residence, cars, etc. See Appendix G: 2017 Poverty Guidelines for federal poverty guidelines.

b. If the defendant waives the right to an attorney, proceed with the following:

- Place defendant's waiver on the record and in the probable cause order.
- If an attorney is not appointed, the court should advise the defendant as to the application process at the clerk of court's office.
- Explain the alternatives to a court-appointed attorney: hire an attorney or represent self.
- Explain that no continuance of the hearing will be granted based solely on lack of defendant's appointment of counsel. The defendant should be advised he/she may ask for a second probable cause hearing once an attorney is appointed or retained, if so advised by said counsel.

3. Appoint attorney at probable cause hearing

a. If the defendant qualified for a court-appointed attorney, place the following information in the order:

- The defendant financially qualifies for a court-appointed attorney;
- Name, address, and phone number of the defendant;
- Name, address, and phone number of the appointed attorney;
- Language that the defendant received this order in the courtroom; and,
- Language that the order was faxed and/or emailed and will be mailed to the appointed attorney before the end of the business day of the probable cause hearing.

b. Appointment of Counsel order may be included in the probable cause order or handled in a separate order if it is more practical and efficient for the appointment attorney's information to be in a separate order.

c. The defendant should be informed of the name of the appointed attorney and the attorney's contact information within two business days.

4. Notify the court of need for a Guardian ad Litem for defendant

a. Notify the court if there are questions about the defendant's competence, e.g., age, incarceration, or mental or physical disability

b. If the court needs additional evidence to find incompetence, provide in the probable cause order required evidence and date of submission to the court and parties.

c. Appointment of Guardian ad Litem for the defendant may be included in the probable cause order or in a separate order.

5. Appoint a Guardian ad Litem for child

a. Inquire if the GAL Program or Richland County CASA staff is present to determine if the case will be assigned to a volunteer; appoint a volunteer if a name is available.

b. If the name of the volunteer is not available, the GAL Program should submit the name of a volunteer to the court per consent order within 48 business hours.

c. Utilize the standard GAL Program appointment form or standard Richland County CASA appointment form. The forms include language for appointment of the volunteer GAL and the GAL's attorney.

Related statute

§ 63-7-1620. Legal representation of children.

D. Procedural Issues

1. Statutorily required safety checks

a. DSS shall provide results of all safety checks to the court prior to placement with relatives or caregivers. § 63-7-730. The following are standards for a placement at a probable cause hearing or for a short-term placement:

- SLED criminal check has been conducted for each adult in home;
- The sex offender registry has been checked (See § 63-7-990);
- DSS CAPSS system for child protection and Central Registry have been checked for every adult living in the home (See § 63-7-2350);
- A walk-through of the alternate caregiver's residence and an assessment of whether the caregiver can meet the child's needs and protect child has been completed; and
- A family meeting with the alternate caregiver occurred within 24 hours to discuss the safety and protection plan with the caregivers and parents.

b. The above required safety check results should be submitted to the court in a written summary.

c. Any party may make a request to the court for a home study for child placement.

d. The court should ask parents to prioritize persons to check for a home study.

e. The court should specify the findings for the need for a home study.

f. If the placement is out-of-state, include the ICPC compliance and determine whether the ICPC Regulation 7 order for expedited home study is applicable. If so, include necessary language in the court order and follow ICPC Regulation 7 procedures or border agreement. See Section A.6: Identify possible placement resources above.

Practice Note: If the court orders expedited relative placement, consider the need for provisions concerning the parent's contact with the child and any restrictions needed to protect the child and ensure the stability of the placement. Consider authorizing DSS to move the child from the placement without the need for an additional court order if the need arises.

The DSS attorney should request that the court inquire of each parent of Indian heritage as related to ICWA. If the defendant identifies a federally recognized tribe, then the court must order DSS to contact identified Tribe.

2. Transport issues

a. Notify the court if the defendant is incarcerated or housed at a state or private facility or institution, whereby the defendant is prohibited to leave the facility voluntarily.

b. Provide specific instructions in the order on the date and time to have defendant arrive at family court.

c. Provide specific contact information, e.g., name, address, and phone number, of contact persons at DSS for facility to facilitate arrangements.

d. Provide instructions in the order as to who is responsible for any payment associated with the transport of defendant.

3. Assessments/screenings

a. DSS should advise the parties what services are available to them that they may undertake voluntarily.

b. If the parties agree, the court may order psychological evaluations, assessments, testing, and screenings when appropriate.

4. Best practices for infants to two year olds

Such practices should include expedited home studies and compliance with ICPC Regulation 7 when applicable.

5. Determine Indian heritage at the probable cause hearing

a. The DSS attorney should request the court to inquire of each parent of Indian heritage as related to ICWA.

b. State courts must ask each participant in an emergency or voluntary or involuntary child-custody proceeding whether the participant knows or has reason to know that the child is an Indian child. The inquiry is made at the commencement of the proceeding and all responses should be on the record. State courts must instruct the parties to inform the court if they subsequently receive information that provides reason to know the child is an Indian child.

c. If the defendant identifies a federally recognized tribe, then the court must order DSS to contact the identified Tribe.

E. Indian Child Welfare Act (ICWA)

The federal law for ICWA is found at 25 U.S.C. §§ 1901 et seq.

IWCA involves Native American children who are members of a federally recognized Indian tribe or are the children of a tribal member and thus would be eligible for membership in a federally recognized Indian tribe.

1. Notification

a. DSS must notify the Indian child's parents (including adoptive parents), the Indian custodian (in any), and the Indian Tribe that DSS has initiated a child protection proceeding and of their right to intervene. This should also include notification of any Tribe with potential jurisdiction over the Indian child or for which the child may be a member or eligible for membership. Notice shall be done according to the requirements of the ICWA and shall be sent by registered mail, return receipt requested. A list of designated agents for service of ICWA notice on Tribes is published. If the identity or location of the Indian child's parent or Indian custodian and child's Indian Tribe cannot be determined, the ICWA notice shall be served upon the Secretary of the Interior, who shall have 15 days after receipt to provide the requisite notice to the parent or Indian custodian and the Tribe.

b. The ICWA notice and proof of service must be filed with the court.

2. Hearings

a. DSS shall not schedule any family court hearing until at least ten days have elapsed following service of notice. The matter must be continued for 20 days if requested by the parent, Indian custodian, or the Tribe.

b. An indigent Indian parent or custodian is entitled to an appointed attorney. Indian parents are entitled to examine all reports or other documents filed with the court upon which any decision with respect to the action may be based.

c. The burden of proof in removal actions (merits hearings) is clear and convincing evidence. The parties must make active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

d. The burden of proof in a TPR action is proof beyond a reasonable doubt. The parties must make active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

e. The ICWA prohibits foster care placement or TPR unless the court determines by clear and convincing evidence in removal actions and by evidence beyond a reasonable doubt in TPRs, after hearing testimony of a qualified expert witness, that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

3. Placement

a. Placement of Indian children, in the absence of good cause shown, shall be made according to the applicable Tribe's placement preferences. If the Tribe has not adopted its own preferences, the children shall be placed consistent with 25 U.S.C § 1915.

b. Catawba Indian Nation, the only federally recognized Indian tribe in the State of South Carolina, has passed a Tribal resolution for a different order of preference, which can be obtained from the Tribe.

c. Voluntary relinquishment of rights in an ICWA case, to be valid, must be done before a judge of a court of competent jurisdiction and accompanied by the judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given prior to or within ten days after birth of the Indian child shall not be valid.

d. Any parent or Indian custodian may withdraw consent to foster care placement at any time.

e. Adoptions may be vacated upon a finding that consent was obtained through fraud or duress for a period of two years.

Related statutes

25 U.S.C.A. § 1911. Indian tribe jurisdiction over Indian child custody proceedings.
25 U.S.C.A. § 1912. Pending court proceedings.
25 U.S.C.A. § 1913. Parental rights; voluntary termination.
25 U.S.C.A. § 1915. Placement of Indian children.
25 U.S.C.A. § 1916. Return of custody.
25 U.S.C.A. § 1917. Tribal affiliation information and other information for protection of rights from tribal relationship; application of subject of adoptive placement; disclosure by court.
25 U.S.C.A. § 1918. Reassumption of jurisdiction over child custody proceedings.
25 U.S.C.A. § 1919. Agreements between States and Indian tribes.
25 U.S.C.A. § 1920. Improper removal of child from custody; declination of jurisdiction; forthwith return of child: danger exception.
25 U.S.C.A. § 1921. Higher State or Federal standard applicable to protect rights of parent or Indian custodian of Indian child.
25 U.S.C.A. § 1922. Emergency removal or placement of child; termination; appropriate action.

F. Prepare the probable cause order in court

1. Findings

a. Findings must be made and included in the order regarding whether DSS made reasonable efforts to prevent removal of the child from the parents. § 63-7-720(A).

b. A judicial determination must be made regarding whether return of the child to the parents would be contrary to the child's welfare. § 63-7-720(A).

2. Include the merits hearing notice in the probable cause order

To help avoid delays, the hearing date for the merits hearing must be placed in the probable cause order. § 63-7-710(E). Therefore, when the defendant is served with this order, he or she will have written notice of the merits hearing.

a. In large counties, a first call merits system may be expeditious. Under this method, parties are notified of the initial date scheduled for the merits hearing. At that time, agreements can be proposed. If the parties are not in agreement, a pre-trial conference is held and a trial scheduled for a date certain. The pre-trial conference is utilized to stipulate to areas of agreement and to determine how much time is necessary for trial.

b. If the county or circuit utilizes the first call merits hearing where hearings are scheduled for agreements only, place this date in the order.

c. Some counties utilize mediation, whereby, if there is no agreement at the first call merits hearing, the case is scheduled for mediation with a date and time given at the first call merits hearing plus the next date for a trial if needed. The court should inquire as to the scheduling of the mediation and the length of time to determine if statutory timelines will be met.

3. Orders

a. Computer forms (preferable):

- Using computerized forms, the order and findings can be filled in quickly at the conclusion of the hearing.
- Utilize laptops and printers in courthouse to draft orders.

b. Handwritten forms:

- Alternatively, utilize form orders on DSS LCMS (possibly complete by handwritten drafting).

4. Serve order on parties at conclusion of hearing

Serving the order at the conclusion of the hearing provides the parties with an immediate written record of what has been decided, what they are expected to do prior to the next hearing, and the date and time of the merits hearing.

- Instruct parties not to leave the courthouse until they receive a copy of the order.
- The order must be signed and clocked in at the Clerk's office.
- Provide a copy of the order to the parties before they leave the building.

- Parties shall sign an acknowledgement of receipt of the order.

It may be timely, efficient, and orderly to have separate orders for certain issues. This would allow the record to be clear as to what was ordered. In addition, it would allow the order to be comprehensive in its findings. For example, if the name of an attorney to be appointed is not available at the time of the hearing, the probable cause order could be issued, with the separate appointment order issued at a later time.

III. MERITS HEARINGS

A. Service and notice to necessary parties

A primary characteristic of a merits hearing is that a formal legal process is used to notify necessary parties and witnesses for the hearing and secure their attendance. There should be a clear demonstration that the defendants have been served with the summons and complaint and the hearing notice for the merits hearing. Service issues need to be resolved initially at this hearing on the record to avoid delays in the future processing of the case. If notice of the merits hearing was contained in the probable cause order, proof of service of the probable cause order is sufficient notice for the merits hearing. Otherwise, an affidavit of service for all parties should be provided to the court. Case outcomes are improved when all necessary parties receive timely notice of the merits hearing and timely service of the pleadings.

Related statutes

§ 15-9-710. When service by publication may be had.
§ 15 9 740. Publication and mailing of summons.

1. Clear demonstration of service of pleadings/orders/notices

a. DSS shall provide to the court the following:

- The method of service: personal service, certified mail (restricted delivery), or publication, as applicable; and
- A statement that the summons and complaint, notice of merits hearing and/or probable cause order was served; or a statement that such documents were served on the defendant at the probable cause hearing.

b. DSS should obtain an affidavit of service from the processor or newspaper as applicable.

c. If the probable cause order was served on the defendant with the scheduled merits hearing included, service of the probable cause order is sufficient.

2. Clear demonstration of due diligence and preparation of affidavits

For defendants upon whom proper service could not be perfected, DSS should provide to the court the following:

a. Affidavit of non-service, and

b. Affidavit of due diligence stating the following: the method of attempted service, persons contacted to obtain information on defendant, information obtained from other persons contacted, and how the information was utilized to attempt to locate the defendant.

3. Motion/request (on record) to publish notice of merits order

a. Draft motion and serve on all parties.

b. Motion should state the following:

- Reasons service was not perfected;
- Due diligence efforts (attach affidavit);
- Request date and specific publication source (newspaper name) in which notice will be placed; and
- Request permission to publish the notice of merits order to provide notice to the absent defendant of their right to request a merits hearing.

c. Request to publish the date of the second or additional merits or judicial review hearing, which can serve as a merits hearing, to this absent defendant.

d. If the written motion is not prepared, make an oral motion to the court to request an order of publication.

e. The order for publication may be included in the merits order for convenience.

Practice Note: Move forward on all served parties. If all defendants are properly served, the case should move forward regardless of whether all defendants are present in the courtroom. If DSS is unable to serve the defendants, move forward without prejudice on those defendants, in the judge's discretion.

4. Notice to attorneys

Due to delays in appointments of attorneys and US Mail, DSS should notify attorneys of record by phone, e-mail, and/or fax of a hearing, in addition to notice by US Mail.

5. Continuances

a. Limited reasons

- Before continuances are granted, refer to Rule 601, SCACR, regarding priority of DSS hearing.

b. Document the reasons for continuance on the record

- The court must make a specific finding of exceptional circumstances on the record and in the court order if the hearing is continued. If the first merits hearing is continued it must be rescheduled within thirty days, and the order should state the exceptional circumstances. If the second merits hearing must be continued, the court must detail the specific circumstances that allow the merits to be heard beyond sixty-five (65) days of receipt of the removal petition. § 63-7-710(E).

6. Findings for Order of Continuance

The court should ask DSS to address what services can be given to the parents prior to the merits hearing and/or agreement to the placement/treatment plan. The parents should be offered services, although they would not be required to engage in services while awaiting the next hearing. The court order should reflect DSS' offer of services and the parents' right to refuse engagement of services until after the next hearing without prejudice to defendants. The court order must make findings regarding the extraordinary circumstances that allowed the continuance.

7. HIPAA and any other necessary releases

Obtain HIPAA and any other necessary releases from the parents if not previously obtained.

B. Findings

The court should make findings of abuse or neglect regarding the children at the merits hearing. § 63-7-20. In rare circumstances, the court may hold in abeyance the determination of the perpetrator of the abuse or neglect but not the findings. If there is no agreement on the findings, the parties should set the matter for trial.

1. Findings made

a. Findings should be made regardless of whether the finding will be included or excluded from the central registry.

b. Findings should be clear and accurately reflect the reason for intervention, as supported by the facts of the case.

c. Findings should reflect the harm done to a child.

2. Findings made and determination of perpetrator held in abeyance

In rare circumstances, after the findings of abuse or neglect have been made, there may be a need to hold in abeyance the determination of the perpetrator. Examples of rare circumstances are as follows:

a. The court coordination protocol, which details procedures for handling abuse and neglect cases in family court in coordination with simultaneous related general sessions cases, makes it necessary;

b. Perpetrator is unknown; and/or

c. Perpetrator has not been served.

Practice Note: Please review South Carolina Department of Social Services v. Massey regarding SC Appellate Court ruling on holding findings in abeyance and SCDSS v. Michelle Walter (Ct. App.2006 Opinion #4125) regarding a criminal defendant's options when also involved with DSS.

3. Agreements: Findings by agreement of parties

a. Should there be an agreement as to the findings, the following should be verbalized by the DSS attorney on the record while avoiding the use of acronyms:

- Cause of the removal clearly stated;
- Specific finding clearly stated as to each defendant as it relates to specific child and where that finding may be recorded;
- Custody as to each child;
- Placement plan;
- Visitation plan; and

- Specific efforts made by the agency to:
  - prevent the removal (if not possible due to the lack of knowledge prior to the EPC and what has occurred since the EPC);
  - remedy the conditions that caused the removal; and
  - assist the defendant with the plan of reunification.

b. Once the agreement is recited on the record, the judge must question all parties as to their understanding of the agreement. Additionally, the judge must make specific findings as to the appropriateness of the agreement and the agency's efforts to prevent removal.

c. GAL report: The court must make a specific statement on the record that the written GAL report will be a part of the official court file or may elect to make the written report an exhibit.

Related statute

§ 63-7-720. Reasonable efforts to prevent removal.

4. Central Registry

a. If there is a finding against a defendant of sexual abuse, physical abuse, or willful or reckless neglect, the defendant's name must be placed in the DSS Central Registry of Child Abuse and Neglect. This requirement cannot be waived by the court or by the parties. § 63-7-1940(A)(1).

b. If the only form of physical abuse that is found by the court is excessive corporal punishment, the court may order that the person's name be entered in the DSS Central Registry only if the person would present a significant risk of committing physical or sexual abuse or willful or reckless neglect or if the person were in a position or setting outside of the person's home that involves care of or substantial contact with children. § 63-7-1940(A)(1)(a).

c. Entry into the Central Registry is also required when a mother gives birth to an infant who has tested positive for the presence of any amount of controlled substance, prescription drugs not prescribed to the mother, metabolite of a controlled substance, or the infant has a medical diagnosis of neonatal abstinence syndrome, unless the presence of the substance or metabolite is the result of a medical treatment administered to the mother of the infant during birth or to the infant. § 63-7-1940(A)(1)(d).

5. Motion to file forgoing of reasonable efforts

a. When DSS files a motion to forgo reasonable efforts, the matter should be resolved by the court by a preponderance of the evidence as to § 63-7-1660(A) and completed before the agency offers any treatment or placement plans for the parents.

b. DSS should report to the court any history of abuse or neglect by the defendants if necessary. This should be completed by filing an amended complaint at the time such knowledge is available to DSS.

c. Bifurcate the merits and TPR: DSS should try the merits first, including whether to forgo reasonable efforts. The burden of proof is a preponderance of the evidence regarding all findings in the merits hearing.

6. Custody/Placement with relatives or alternative caregivers

The following should be considered by the court when ordering a home study at the merits hearing or for a long term placement:

a. Composition of all household members;

b. Physical description of the home;

c. Financial situation of alternative caregiver to include access to any public assistance;

d. Medical information of alternative caregiver;

e. Motivation to care for the child and their understanding of the length of time involved;

f. Ability to protect the child from the perpetrator;

g. Assessment of the caregiver's parenting skills;

h. References/recommendations for placement;

i. Financial ability to meet the immediate needs of the child; and/or

j. The willingness of the proposed placement to accept the child.

C. Placement Plans

Placement plans should be specific and narrowly tailored to the needs of the family. The placement plan should include the specific reasons for the child's removal from the custody of the parent or guardian and the changes that must be made before the child may be returned home and other conditions in the home that warrant state intervention but would not alone have been sufficient to warrant removal.

Related statute

§ 63-7-1680. Approval of amendment of plan.

1. Uniformity – same statewide model

a. DSS should use the uniform placement plan template found in LCMS.

b. While using this template, the content of the placement plan should be narrowly tailored to each case by adding the specific facts, findings, and services for the family. The plan should be written in plain, easily understood language.

2. Signed by participants (including relatives for placement)

a. DSS should submit a proposed placement plan prior to the merits hearing. These persons should be afforded an opportunity to participate in the creation of the placement plan: parents, the child, extended family members, and any other agency representative or individual required to provide services including the Guardian ad Litem for the child and relatives who will provide placement. DSS should be prepared to advise the court whether the parents participated in the development of the plan and if not, why not.

b. The plan should be signed by all participants.

3. Clear time frames and expectations for all participants, including DSS

a. The placement plan should set forth specific time frames for all parties to schedule appointments, for DSS to schedule referrals, and for parties to begin and/or complete services or activities.

b. The placement plan should include specific objectives that must be completed within clear time frames by the parties. The following are examples of evidence of successful completion of a plan's objectives: certificate of successful completion from drug and alcohol counseling, random drug screens, certificate of successful completion from parenting classes, etc.

c. The placement plan should state which party is financially responsible for any services required and what method of assistance DSS will provide.

d. Parents should provide HIPAA release to DSS and the child's GAL.

e. DSS may be allowed 10 days to submit the plan to the court.

4. Child Support Services Division (CSSD)

a. If paternity or child support was not resolved at the probable cause hearing, it should be addressed at this hearing.

b. The defendant's attorney or DSS, if the defendant is self-represented, should present to the family court at the merits hearing the defendant's financial declaration, along with a proposed child support amount according to the child support guidelines. The family court will either order the proposed child support amount or recalculate support based on additional or new information and order that amount of child support. The Financial Declaration form is available here: http://www.sccourts.org/forms/pdf/SCCA430S.pdf.

c. The court shall set a minimum amount of child support if the declaration has not been completed. The court shall include in the order that the amount may be recalculated based on additional or new information provided to the court.

d. The Support Information Sheet (SCCA 446) should be attached to any court order that addresses child support. This information sheet must be completed to include the names and addresses of the defendants and the amount of child support each defendant is ordered to pay, as well as the name and address of the person who is to receive said support. Any redirection of previously ordered child support should be clearly addressed in the order and on the support information sheet. The Support Information Sheet is available online: http://www.sccourts.org/forms/pdf/SCCA446.pdf.

Practice Note: When calculating child support according to the guidelines, the court should consider the child support orders for other children and the other children of the parent in the parent's home.

5. Set visitation schedule

The placement plan should address the following:

a. visitation with parents, guardians, siblings, and/or other relatives;

b. the specific start date, frequency, and location of visitation;

c. who is responsible for transportation to and from visitation;

d. the level of supervision, and, if not DSS, the name of the individual(s) authorized to supervise visitation; and,

e. whether DSS has discretion to change visitation without further order of the court.

6. Incorporate into the order

a. The approved placement plan should be incorporated into the court order for that hearing.

b. The plan can be incorporated by reference or by attaching a copy of it to the order.

c. The court must include in its order and advise defendants on the record that failure to remedy the conditions that caused the removal within six months may result in termination of parental rights, subject to notice and a hearing.

7. Provide list of treatment providers

DSS should provide a list of approved treatment providers for classes, assessments, etc., with the placement plan.

8. Well-being issues of the child

See Appendix C: Child Well-being and Independent Living Issues.

9. Best practices for infants to two year olds

Such practices should include expedited home studies, ICPC, urgency of hearings, and bonding issues.

IV. PETITION FOR PLACEMENT IN CENTRAL REGISTRY HEARING

Actions filed pursuant to § 63-7-1930 which seek only to have a person placed in the Central Registry do not need to have a Guardian ad Litem appointed as any hearing held pursuant to this statute, if necessary, must be held within five (5) working days of the request. The only issue to be addressed by the court in any such hearing is whether the individual, for the safety of the children in the community, should be placed in the Central Registry. No other issues shall be addressed.

V. INTERVENTION HEARING

In intervention cases, DSS files a petition with the court seeking the authority to intervene and provide protective services to the family as part of a treatment plan, which will include treatment goals that the defendants must achieve. In this type of case, the child has not been removed from the home. DSS believes that the child is safe to remain in the home or in the home of a relative, with custody remaining with the parent. DSS may or may not have been working with the family pursuant to a non-court-ordered treatment plan.

The order includes a date by which the defendants are required to achieve treatment goals and court jurisdiction ends, unless the court requires that the matter be brought back to court for review before closing the case, which shall not exceed 18 months. However, any party may file a motion to extend jurisdiction if the party proves there is clear and convincing evidence that the child is threatened with harm absent continuation of services. § 63-7-1670.

See § III. Merits Hearings for additional best practices with the following exceptions:

- No child support; and
- No visitation issues.

VI. NON-EMERGENCY REMOVAL

Under § 63-7-1660, "Services with Removal," the court may remove custody of a child from the parents. Section 63-7-1660 applies to the hearing on the merits of removal of custody after emergency action under § 63-7-620 (emergency removal by law enforcement), or § 63-7-740 (emergency removal by ex parte order). Section 63-7-1660 is also available for non-emergency removal. A complaint for non-emergency removal would be appropriate when the child is not in imminent and substantial danger but is unable to be safely maintained in the custody of the parents. Section 63-7-1660 states that "at any time during the delivery of services by the department, the department may petition the family court to remove the child from custody of the parent, guardian, or other person legally responsible for the child's welfare if the department determines by a preponderance of evidence that the child is an abused or neglected child and that the child cannot be safely maintained in the home in that he/she cannot be protected from unreasonable risk of harm affecting the child's life, physical health, safety, or mental well-being without removal.

When the non-emergency removal complaint prays for removal of custody from the parents with placement in foster care, the Best Practices Outline and Commentary for the Merits Hearings apply. When the request is for removal of custody with an award of custody to a relative or other adult, the child does not enter the custody of DSS and does not enter foster care. Therefore, neither the placement plan provisions of §§ 63-7-1680 and 63-7-1690 nor the permanency planning provisions of § 63-7-1700 are triggered. The Merits Hearings section of this document, including scheduling hearings within 35 days, applies to non-emergency removal hearings except those items that deal with the placement plan.

When § 63-7-1660 is used to transfer custody from the parents to a relative or other adult, DSS and the court have several responsibilities.

A. DSS responsibilities

1. Present home study

Present a home study to the court to support the plan.

2. Advise on custodian benefits

Advise the proposed custodian of any benefits that they may apply for and any benefits that they are not eligible for if they accept a custody award.

B. Court's responsibilities

1. Advise on custodial responsibilities

Ensure the parents and the new custodian are aware of the responsibilities that accompany the custody award.

2. Advise on permanence of custody

Ensure all understand the permanence of the award of custody.

3. Address child support

Address payment of child support to the new custodian.

- If custody is awarded to a relative or other adult, but the plan is for DSS to provide services to the parents with a goal of reunification, the order should incorporate the treatment plan, make provisions for review of progress by the court, and ensure that the conditions for case closure are clear in the plan. Depending on the needs of the case, when the case remains open for treatment, the order might specify that the relative or other adult has temporary custody pending further review by the court of the parent's progress towards reunification.
- An order that closes the DSS and family court cases, with custody remaining with the relative or other adult, should state that any future legal action by the parents to regain custody or establish or change visitation is the responsibility of the parents, not DSS.

VII. JUDICIAL REVIEW HEARINGS

Judicial review hearings, although not statutorily required, can be helpful and is encouraged in monitoring the compliance or non-compliance of parties in the case and to modify case plans as necessary. In addition, this hearing case be used to correct, adjust, and update the placement plan and return the child home, if appropriate.

Prior to the initial permanency planning hearing, judicial reviews shall be scheduled in each case at 90 day intervals. Judicial reviews may be automatically scheduled at the merits or permanency planning hearings when the case is highly contested and/or when the permanent plan is TPR/adoption. The parties may file a motion to schedule a judicial review hearing to request a modification of the placement plan based upon a change in circumstances (e.g., unavailable services or referrals; parent/child needs additional services, etc.) or when new information is obtained. While judicial reviews may be used to assess whether the parties are compliant with previous court orders or reasonable efforts, they are also used to reiterate the consequences of failure to comply with court orders.

VIII. PERMANENCY PLANNING HEARING

Permanency planning hearings are a special type of post-dispositional proceeding designed to reach a decision concerning the permanent placement of a child. The PPH is an opportunity for DSS to present the agency's reasonable efforts as well as their timely efforts to achieve an appropriate plan for the child's future. DSS and the parents (defendants) are responsible for a thorough explanation of services offered and the permanency planning goals accomplished, or lack thereof, which have resulted in the desired behavioral changes to safely parent the child. DSS should present evidence detailing reasonable efforts to remedy the conditions which caused the removal, and to verify the caregiver's compliance with the reasonable and prudent parent standard (See § 63-7-1700(B)(6)). In addition, the court should also assess diligent efforts to locate any absent parents. In an uncontested permanent planning hearing, a supplemental report may be accepted as evidence in lieu of testimony.

The initial permanency planning hearing must be held within one year of the date the child enters foster care, although this hearing may occur earlier. These hearings must occur annually as long as the child remains in foster care. This may not be accomplished by consent order but an agreement must be approved by the court and placed on the record. Additionally, the court should make a specific statement on the record that the written GAL report will be a part of the official court file or may elect to make the written report an exhibit. If the court orders an extension of services, the judge must advise the defendants that failure to remedy the condition(s) that caused removal within six months may result in termination of parental rights, subject to notice and a hearing.

The court shall approve at least one of five permanent plans for each child. South Carolina statute provides five possible permanent plans. Each sibling may have a different permanent plan. The five plans are: reunification, extension/modification of the placement plan for the purpose of reunification, adoption, relative or non-relative custody or guardianship, and another permanent arrangement. The court must find compelling reasons exist whenever another planned permanent living arrangement (APPLA) is selected as the child's permanency plan.

Best practice requires that the child's views be known, preferably by appearance in court when appropriate. Courts can do so by a variety of means, which should be tailored to the particular facts of the case and should always take into account the age of the child.

APPLA shall be ordered as a plan only for a child who has reached the age of 16 years of age and only after the court is convinced that all other options for a permanent plan have been exhausted by the agency. § 63-7-1700(C)(2).

1. Within ninety (90) days prior to the youth's 17th birthdate, a transition hearing must be held which may also serve as the permanency planning hearing.

2. The purpose of this hearing is to ensure the youth's preparation for successful transition into adulthood by documentation of intensive, ongoing and unsuccessful efforts to return the child home or to identify a family environment for the youth. The youth shall attend the hearing if over 16 years of age; however, if unable to attend the hearing, the court may utilize resources such as Skype or telephone conferencing.

3. The plan developed at the transition meeting shall be provided to the court at the transition hearing.

4. Should the youth have a disability, such as intellectual impairment, Autism or head and spinal cord injuries, the transition meeting must include a representative from DDSN. DDSN should be notified of the hearing and have the opportunity to be heard as to the viability of the plan. In addition, the local department of mental health or a private mental health practitioner who provided services to the youth should be notified of the hearing and have the opportunity to be heard as to the plan as well.

A. Merits and Permanency Planning Hearing

If the defendant was not served for the merits hearing but is subsequently served, including by publication, the upcoming permanency planning hearing may serve as the defendant's merits and permanency planning hearing with appropriate notice.

B. Concurrent Plan

- When the court orders a concurrent plan, both plans should work simultaneously providing services to parents as ordered in their placement plans.
- When any part of the plan is TPR, DSS shall be ordered to file the TPR complaint within sixty (60) days upon receipt of the court order as required by § 63-7-1700(E).
- All court ordered concurrent plans should follow all procedural protections while allowing work toward both plans.
- Regardless of court-ordered plan, DSS may file a TPR complaint when grounds for termination exist, without the court's permission. § 63-7-2530(B).

C. Well-being Issues

During each permanency planning hearing, the agency's Court Information Sheet/Supplemental Report should address all well-being issues as outlined in Appendix C below.

The judge should inquire about the placement and stability of the child, educational level and stability, medical and emotional issues, and contact with the siblings and parents. The judge should inquire about services the child is receiving to address any of these issues.

D. Reasonable and Prudent Parent standard

During each permanency planning hearing, the agency's Court Information Sheet/Supplemental Report should describe the steps the agency is taking to ensure that the child's foster family home or childcare institution is following the reasonable and prudent parent standard. The agency should describe the steps the agency is taking to ensure that the child has regular, ongoing opportunities to engage in age or developmentally appropriate activities (including by consulting with the child in an age-appropriate manner about the opportunities of the child to participate in the activities).

The judge should review the caregiver's compliance with the reasonable and prudent parent standard pursuant to §§ 63-7-20(24) and 63-7-25 and the efforts of SCDSS to determine whether the child has regular, ongoing opportunities to engage in age or developmentally appropriate activities. The judge should make findings whether the child has had the opportunity to engage in such activities. If the judge determines that the child does not have reasonable opportunities and the foster care placement is not complying with the standard, then the judge should direct the parties to take whatever corrective action the judge deems appropriate.

IX. TERMINATION OF PARENTAL RIGHTS HEARING

The best interest of the child is served by achieving permanency for the child. Termination of parental rights cases arising from child abuse and neglect are the most difficult and challenging that parties can face in child protection proceedings. When a determination has been made that the home is not and cannot be made safe for the return of the children within a reasonable amount of time, the court should seek a permanent and secure new home. TPR hearings are a new and separate action from the prior abuse and neglect case. It is critical that the TPR process is completed without delay.

A volunteer Guardian ad Litem for the child must be appointed to advocate for the child(ren) throughout a TPR case. It is best practice to appoint the Guardian ad Litem from the underlying abuse and neglect case. A new appointment order is required. See § II.C.5: Appoint a Guardian ad Litem for child for appointment protocol.

A defendant has a right to counsel, and possibly a Guardian ad Litem, throughout the TPR case. It is best practice to appoint the defense counsel and GAL from the underlying abuse and neglect case, if appropriate. See § II.C.1-4: Appointment of counsel and Guardians ad Litem. A new appointment order is required.

In every abuse and neglect case, preparations should be made in anticipation of a possible TPR case (e.g., ensuring the GAL report is a part of the record, etc.). Such preparations include identification of all necessary parties and service of these parties, paternity determinations, and consulate contact and resolution of Indian Child Welfare Act (ICWA) issues, etc., to avoid delays at the TPR stage.

A. Personally serve summons and complaint on parties

1. Serve summons and complaint

Personally serve the summons and complaint on named parties to include notice of pre-trial and final hearing dates.

2. Serve children 14 years of age and older or the Guardian ad Litem

Personally serve the child if 14 or older; service to the Guardian ad Litem is sufficient for children younger than 14.

3. Service to biological fathers

For unmarried biological fathers:

a. Serve the biological father if he meets one or more of the following exceptions:

- Has been adjudicated by a court in this State to be the father of the child;
- Is recorded on the child's birth certificate as the father;
- Is openly living with the child or the child's mother, or both, at the time the proceeding is initiated and is holding himself out to be the child's father; or

- Has been identified as the child's father by the mother in a sworn, written statement or under oath.

b. If the father is unknown, conduct a search of the Responsible Father Registry by providing a written request including the following information, if known: mother's name, address, and date of birth; child's date and place of birth; and the date, county, and state of conception.

c. If claim is found, serve registrant within 10 days of receipt of the name and address.

d. If no claim is found, file a certificate of diligent search which is issued by DSS within 10 days of receipt. No further efforts to locate father are necessary.

e. For children born in South Carolina, the Responsible Father Registry eliminates DSS's obligations to name John Doe as a party in TPR proceedings. Additionally, DSS is not required to name or serve any biological father for whom DSS has a name if that father does not meet one of the above exceptions for a child born in South Carolina.

f. For children born outside of South Carolina, the complaint must state that DSS checked the birth state of the child for a registry to see if any father is registered. The issue should be brought to court at the pre-trial conference for the court to determine if the other state's registry law is comparable to South Carolina.

B. Personally serve pendent lite motion notice and/or pre-trial hearing notice on parties

After the parties are served the summons and complaint for TPR, a separate document should be filed and served on parties to notify them of a brief hearing to allow for resolution of certain issues prior to the TPR trial, such as the following:

1. Appoint an attorney for defendant and appoint a Guardian ad Litem for the child;
2. Make a declaration of paternity; remove from named parties certain John Does;
3. Determine whether the parent needs a Guardian ad Litem;
4. Determine if any attorneys have a conflict with their clients;
5. Obtain HIPAA releases from the parents, if not previously provided;
6. Share witness lists;
7. Determine the need for interpreters; and/or
8. Resolve whether the child is under the jurisdiction of the ICWA so those procedures can be followed when necessary.

This list of possible issues is not exhaustive. The parties should utilize this hearing to try to resolve as many issues by agreement as possible.

The long form birth certificate should be attached to the complaint or be available at the call of the hearing.

C. Schedule TPR Hearing

The TPR Hearing shall be scheduled within 120 days filing.

D. Reasonable and Prudent Parent standard

Since the TPR hearing is often serves as the permanency planning hearing, the agency should describe the steps it is taking to ensure that the child has regular, ongoing opportunities to engage in age or developmentally appropriate activities (including by consulting with the child in an age-appropriate manner about the opportunities of the child to participate in the activities).

The judge should review the caregiver's compliance with the reasonable and prudent parent standard pursuant to §§ 63-7-20 and 63-7-25 and the efforts of SCDSS to determine whether the child has regular, ongoing opportunities to engage in age or developmentally appropriate activities. The judge should make findings whether the child has had the opportunity to engage in such activities. If the judge determines that the child does not have reasonable opportunities and the foster care placement is not complying with the standard, then the judge should direct the parties to take whatever corrective action the judge deems appropriate.

ACRONYMS

APPLA-Another Planned Permanent Living Arrangement

BLP-Best Legal Practices

CAPPS-Child and Adult Protective Service System

CASA-Court Appointed Special Advocates (Richland County only)

CPS-Child Protective Service

CSSD-Child Support Services Division

DDSN-Department of Disabilities and Special Needs

DJJ-Department of Juvenile Justice

DSS-Department of Social Services

FCRB-Foster Care Review Board

GAL-Guardian ad Litem

HIPPA-Health Insurance Probability and Accountability Act

ICPC-Interstate Compact on the Placement of Children

ICWA-Indian Child Welfare Act

IV-E-Title IV-E of the Social Security Act provides federal funds for states child welfare services

LCMS-Legal Case Management System

OID-Office of Indigent Defense

PC-Probable Cause

SCARC-South Carolina Appellate Court Rule

SCCA – South Carolina Court Administration

TPR-Termination of Parental Rights

APPENDIX A: INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

If placement is being sought out of state, review the Interstate Compact to determine whether ICPC Regulation 7 order for expedited home study is applicable. If so, include necessary language in court order and follow ICPC Regulation 7 procedures.

Practice Note: Regardless of regulation 7 or ICPC placement, DSS may not close the legal case and must maintain monitoring and supervision of children and placement through ICPC for six (6) months.

A. Criteria for an expedited home study of out-of-state relatives

1. If there is an unexpected dependency due to a sudden or recent incarceration, incapacitation or death of a parent or guardian. Incapacitation means a parent or guardian is unable to care for a child due to a medical, mental or physical condition of a parent or guardian;

2. The child sought to be placed is four years of age or younger, including older siblings sought to be placed with the same proposed placement resource;

3. The court finds that any child in the sibling group sought to be placed has a substantial relationship with the proposed placement resource; Substantial relationship means the proposed placement has a familial or mentoring role with the child, has spent more than cursory time with the child and has established more than a minimal bond with the child; or

4. The child is currently in an emergency placement; and, the degree of relationship must be parent, stepparent, grandparent, adult brother/sister or adult aunt/uncle.

Plus, the following:

5. A statement of interest has been sought from the placement resource and provided to the court;

6. A statement of readiness from the caseworker that based upon current information known to the sending county agency, it is unaware of any fact that would prohibit the child being placed with the placement resource; and

7. That it has completed and is prepared to send all required paperwork to the sending state ICPC office, including the ICPC Form 100A and ICPC Form 101.

B. Statement of Interest

The Statement of Interest must include the following regarding the potential placement resource:

1. He/she is interested in being a placement resource for the child and is willing to cooperate with the ICPC process;

2. He/she fits the definition of parent, stepparent, grandparent, adult brother or sister, adult aunt or uncle, or his or her guardian under Article VIII(a) of the ICPC;

3. The name and correct address of the placement resource, all available telephone numbers and other contact information for the potential placement resource;

4. The date of birth and social security number of all adults in the home;

5. A detail of the number and type of rooms in the residence of the placement resource to accommodate the child under consideration and the number of people, including children, who will be residing in the home;

6. He/she has financial resources or will access financial resources to feed, clothe and care for the child;

7. If required due to age and/or needs of the child, the plan for child care, and how it will be paid for;

8. He/she acknowledges that a criminal record and child abuse history check will be completed on any persons residing in the home required to be screened under the law of the receiving state and that, to the best knowledge of the placement resource, no one residing in the home has a criminal history or child abuse history that would prohibit the placement; and

9. Whether the placement resource (parent) would like the request to be made for concurrence to relinquish jurisdiction if placement is sought with a parent from whom the child was not removed.

Practice Note: In order to obtain a Priority Regulation 7 court order, the caseworker must also submit to the court a Statement of Interest and a Statement of Readiness (above). Within one working day of the receipt of a Priority Regulation 7 request, the Agency must obtain a signed court order that documents that the case meets the above conditions by listing the criteria and by naming the parent or relative and the degree of relationship. The order must be submitted to the local agency within two (2) business days of the court hearing. The packet must be clearly marked "Regulation 7 Request" on the cover letter and forwarded immediately to the State Office ICPC unit.

Practice Note: The court should ask the staff or volunteer GAL or CASA for suggestions for the placement of the children.

APPENDIX B: INTERPRETERS AND CITIZENSHIP

A. Qualified interpreter

The court may appoint a qualified interpreter "whenever a party or witness to a civil legal proceeding does not sufficiently speak the English language to testify." § 15-27-155(A).

B. Waiver

The court may waive the use of a qualified interpreter only after making a finding on the record that:

- It is "not necessary for the fulfillment of justice";
- It is "in the best interest of the party or witness"; and
- It is "in the best interest of justice." § 15-7-155(A).

C. Child's Citizenship

It is critical to determine citizenship of the child as soon as possible as citizenship can impact rights of child. To do so, DSS should:

1. Confirm child's citizenship, e.g., birth certificate, social security card, US or foreign passport;

2. If the child is not a US citizen, determine the public benefits to which the child is entitled; and

3. If the child is not a US citizen and court has determined that reunification is not a viable option, seek order to establish eligibility for Special Immigrant Juvenile Status or other status adjustment. (The child must obtain Special Juvenile Immigrant status before age 16.) This status can impact many rights of the child, e.g., ability to attend public post-secondary schools.

D. Translate Pleadings

If an interpreter is deemed required by the court, all pleadings and orders must be translated into a party's native language.

APPENDIX C: CHILD WELL-BEING AND INDEPENDENT LIVING ISSUES

The court should receive from DSS a summary of a child's well-being to include the following information:

A. Placement

1. The type of placement for the child and whether the placement is the most family-like setting possible to meet the needs of the child
2. Evaluation of relatives and friends of the family identified as possible caregivers
3. Whether siblings were placed in the same out-of-home placement and, if not, what steps are being taken to locate one placement for all siblings

B. Medical/emotional well-being

1. The completed initial assessments, including mental health and physicals for the child, and information on follow-up referrals and whether referrals have been made by DSS
2. Description of the therapy needed to address the trauma to the child
3. Information on whether the child has special needs and how such needs are being addressed by DSS
4. List of medications the child is prescribed with a particular emphasis on psychotropic medications and any polypharmacy

C. Education

1. Whether the child is in the same school he/she was prior to entering care and, if not, whether school records have been transferred timely
2. Whether the child is placed on grade level for chronological age and if not, whether an IEP is in place or planned
3. Whether the child requires a 504 plan and, if so, a description of the behavioral issues that are to be addressed in the 504 plan

D. Youth Independent Living

1. If youth is 17 years of age or older, has he/she been involved in transitional meetings and planning for their future?
2. Who are the supportive adults in the child's life?
3. Has youth been advised of funding for college or housing expenses after their 18th birth date should the youth not remain in the foster care system?
4. Does the youth have his/ her birth certificate, social security card, school records, and medical records?

APPENDIX D: CRIMINAL CHARGES AGAINST DEFENDANT

Allegations of abuse and neglect may meet the criminal standard for criminal prosecution of a defendant. Sometimes there is a civil family court action against a defendant simultaneously.

If there is a criminal action pending against the defendant during the DSS action, the defendant should be advised to obtain a criminal defense attorney. The defendant should be made aware of his/her 5th Amendment right against self-incrimination and be cautioned against saying anything that can be used against them in another proceeding. The defendant needs to know that the two actions are completely separate, with separate consequences. The defendant needs to know that the civil attorney (perhaps court-appointed) for the DSS case does not represent them in the criminal case.

A. Defendant should be advised to obtain criminal defense counsel

If the defendant does not obtain a private criminal defense attorney, the defendant should be advised to either retain one or apply for a public defender in person. The defendant should further be advised that failure to obtain a criminal defense attorney will not prevent the DSS action from going forward.

B. Court Coordination Protocol

The SC Supreme Court issued an order on April 29, 2009, for the court coordination protocol to be followed statewide by the court of general sessions and the family court. Efforts should be made by the court system, DSS, and the local solicitor to implement this protocol.

See http://www.sccourts.org/courtOrders/CourtCoordinationProtocolOrder.pdf.

Practice Note: The case of SCDSS vs. Michelle Walter states that DSS cases should not be continued because of a defendant's criminal case related to the DSS case.

APPENDIX E: CPS CROSSOVER WITH DJJ

Child protection cases sometimes have a crossover with juvenile justice matters. A child who is involved in delinquency matters may also have significant problems at home. These problems may even be the reason for the child's delinquent behavior.

DSS and DJJ both are explicitly involved with children. However, their statutory mission is different. In addition, the age of the child for DSS and DJJ purposes can be different depending on the situation. DSS is the agency charged with protecting children who have been abused and neglected. DJJ is the agency charged with supervising children who have been charged with a criminal or status offense.

When a child is in a situation where both DSS and DJJ are involved, there are some steps that either or both agencies should follow for a more efficient, safe, and helpful outcome for the child.

A. A child makes allegations of abuse and neglect while under DJJ supervision

1. While under DJJ supervision, if a child makes allegations that a parent or guardian has abused or neglected them, DJJ staff should immediately contact DSS to report the allegation, as DJJ staff are mandated reporters.

2. DSS should follow its regular procedure for intake of an abuse allegation made by DJJ staff. For example, if allegations of abuse and neglect are initially raised during a DJJ hearing, the court will assess whether the child should be placed into emergency protective custody or whether a report should be made to DSS with instructions to investigate the same. If the court determines that it would be contrary to the welfare of the child to remain in the parent(s) home and that it might be necessary for the child to be placed into emergency protective custody, DSS shall immediately be notified of the same and appropriate staff members shall immediately respond to the courtroom. If a determination is made that a child should be removed from the home, any order which places the child into DSS custody shall contain the IV-E language of "continuation of the child in the home is contrary to the child's welfare." That order shall also determine whether it shall be necessary for DSS to schedule a 72-hour hearing in the removal action or whether the DJJ hearing shall suffice for the same. DSS, Judges, Solicitors and Public Defenders shall communicate regularly and have healthy lines of communication to coordinate planning for treatment and placement of children both agencies are serving.

3. DSS should not decline an investigation because a child is in a "safe" place. DJJ supervision/placement is temporary. The child should not have to return to a dangerous environment before DSS investigates allegations.

B. A child is in DSS custody when sent to a DJJ long-term facility

If a child is in DSS legal custody when sent to a long-term DJJ facility because of a juvenile justice violation, in order for DSS to close its case, a hearing must be scheduled in the DSS action and DJJ must be notified of the same. The purpose of the hearing is for the court to make a determination as to whether custody of the child should be returned to a parent/guardian and the DSS case closed.

C. A child is in DSS custody when exiting the DJJ system

When a child who is in DSS custody is placed in a juvenile justice detention or another Juvenile Justice Placement, DSS shall not recommend to the family court or Department of Juvenile Justice that a youth remain in a Juvenile Justice Placement without a juvenile justice charge pending or beyond the term of their plea or adjudicated sentence for the reason that DSS does not have a foster care placement for the Class Member. DSS shall take immediate legal and physical custody of the foster child upon the completion of their sentence or plea and provide for their appropriate placement.

APPENDIX F: IV-E LANGUAGE

Title IV-E of the Social Security Act provides federal funds to each of the fifty states, the District of Columbia, and Puerto Rico for the care and supervision of children in foster care. Known as foster care maintenance payments, these funds are monthly reimbursement payments to states to help cover the costs of providing food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to the child, reasonable travel to the child's home for visitation, and reasonable travel for the child to remain in the school in which the child was enrolled at the time of placement in foster care. In association with the child, states can also claim IV-E reimbursement funds for administrative and training costs of DSS staff and the costs of recruiting and training foster parents.

The Title IV-E Foster Care Maintenance Payments Program is an entitlement program for foster children who meet the federal IV-E eligibility requirements. Eligibility determinations are child specific and made on a case-by-case basis. A state may claim maintenance payments on behalf of a foster child only if specific eligibility criteria are met.

Although IV-E eligibility is child specific, the eligibility criteria are not based on the actions of the child. Eligibility is established by application of the 1996 South Carolina Aid to Families with Dependent Children (AFDC) income guidelines, the actions of the DSS, and case-specific determinations made by family court judges.

The Guide to Title IV-E Requirements is available online:
http://childlaw.sc.edu/frmPublications/Title%20IV-E%20Guide%20Final.pdf.

APPENDIX G: 2017 POVERTY GUIDELINES

The following guideline figures represent annual income:

Persons in family/household*	Poverty guideline
1	$12,060
2	$16,240
3	$20,420
4	$24,600
5	$28,780
6	$32,960
7	$37,140
8	$41,320

** For families/households with more than 8 persons, add $4,180 for each additional person.*

Source: Department of Health and Human Services; Annual Update of the HHS Poverty Guidelines, 82 Fed. Reg. 8831 (January 31, 2017), https://www.federalregister.gov/documents/2017/01/31/2017-02076/annual-update-of-the-hhs-poverty-guidelines.

These figures represent the poverty guidelines for the 48 contiguous States and the District of Columbia. Separate poverty guideline figures for Alaska and Hawaii reflect Office of Economic Opportunity administrative practice beginning in the 1966-1970 period. (Note that the Census Bureau poverty thresholds—the version of the poverty measure used for statistical purposes—have never had separate figures for Alaska and Hawaii.) The poverty guidelines are not defined for Puerto Rico or other outlying jurisdictions. In cases in which a Federal program using the poverty guidelines serves any of those jurisdictions, the Federal office that administers the program is generally responsible for deciding whether to use the contiguous-states-and-DC guidelines for those jurisdictions or to follow some other procedure.

APPENDIX H: GUIDELINES FOR IMPLEMENTING THE INDIAN CHILD WELFARE ACT

The December 2016 Guidelines for Implementing the Indian Child Welfare Act published by the U.S. Department of the Interior, Office of the Assistant Secretary for Indian Affairs in the Bureau of Indian Affairs may be accessed here: https://www.bia.gov/cs/groups/public/documents/text/idc2-056831.pdf.

ACKNOWLEDGMENTS

Contributing Members of South Carolina Family Court Bench Bar Subcommittee

The Honorable Ronald R. Norton, Chair

Susan Alford, Vice Chair (Ex-Officio)

The Honorable Jan B. Bromell Holmes

The Honorable William R. Byars, Jr.

Michelle Dhunjishah

The Honorable Tarita A. Dunbar

Susan Dunn

Rosalyn W. Frierson

Dennis Gmerek

Brenda Gorski

The Honorable Michelle Hurley

Ernest J. Jarrett

The Honorable Deborah Neese

The Honorable Harry L. (Don) Phillips, Jr. (deceased)

Hugh Ryan

Leslie Allen-Taaffe

Tana G. Vanderbilt

The Honorable Jerry D. Vinson, Jr.

Amanda Whittle

A special thanks to the following former Bench Bar Committee members who participated in Best Legal Practices meetings:

The Honorable George M. McFaddin, Jr.

Dr. Kathleen Hayes

Denise Barker

Louise B. Cooper

Harry W. Davis, Jr.

The Honorable Paul W. Garfinkel

The Honorable Robert E. Guess

Mary C. Williams

Virginia Williamson

University of South Carolina Children's Law Center Staff for the South Carolina Family Court Bench Bar Committee:

Mary Jo Burgess

Judy Caldwell

Christopher Church

Treneice Flowers

Cody Lidge

Carolyn Morris

FAMILY COURT BENCH-BAR COMMITTEE 2017 MEMBER DIRECTORY

The Honorable Ronald R. Norton (Chair)
PO Box 1147
Conway, SC 29528
(843) 915-8997
Email: RNortonJ@sccourts.org
Admin. Assistant: Darena Edge
Email: rnortonsc@sccourts.org

Susan Alford, (Vice-Chair) Ex-Officio
Director, SC Department of Social Services
PO Box 1520
Columbia, SC 29202
(803) 898-1390
Email: Susan.Alford@dss.sc.gov
Assistant: Carol.Smoak@dss.sc.gov

Bruce W. Bannister, Esquire
Bannister & Wyatt, LLC
PO Box 10007
Greenville, SC 29603
(864) 298-0084
Email: bbannister@bannisterwyatt.com
Assistant: kcox@bannisterwyatt.com

The Honorable Jan B. Bromell Holmes
PO Box 479
Georgetown, SC 29442
(843) 545-3035
Email: jholmesj@sccourts.org
Admin. Assistant: Sharon S. Anderson
Email: jholmessc@sccourts.org

Dione C. Carroll, Esquire (Ex-Officio)
Catawba Indian Nation
107 Pendleton Street N.W.
Aiken, South Carolina 29801
(803) 514-2557/Fax:(866) 954-0184
Email: dione@carroll-law-offices.com
Website: www.carroll-law-office.com

Tony Catone, Esquire (Ex-Officio)
Acting General Counsel
South Carolina Department of Social Services
PO Box 1520
Columbia, SC 29202
(803) 898-7617
Email: Tony.Catone@dss.sc.gov

Michelle Dhunjishah, Esquire (Ex-Officio)
Director, Children's Law Center
1600 Hampton Street, Suite 502
Columbia, SC 29208
(803) 929-3172
Email: Michelle.Dhunjishah@sc.edu

Lisa Vosburgh, Esquire (Ex-Officio)
Director, SC Foster Care Review Board
1205 Pendleton Street, Room 436
Columbia, SC 29201
(803)734-4562/Fax: (803) 734-1223
Email: Lisa.Vosburgh@admin.sc.gov

Susan K. Dunn, Esquire
Legal Director
American Civil Liberties Union of SC
P.O. Box 20998
Charleston, SC 29413
(843) 720-1423
Email: Sdunn@aclusouthcarolina.org

The Honorable Tarita A. Dunbar
P.O. Box 757
301 University Ridge
Greenville, SC 29602-0757
(864) 467-5854/Fax: (864) 467-5966
Email: tdunbarj@sccourts.org
Admin. Assistant: Kristine Braswell-Amin
Email: tdunbarsc@sccourts.org

Rosalyn W. Frierson, Esquire (Ex-Officio)
South Carolina Court Administration
1015 Sumter Street
Suite 200
Columbia, SC 29201
(803) 734-1800
Email: rfrierson@sccourts.org

Blondean Funderburk, Director (Ex-Officio)
South Carolina Guardian ad Litem Program
1205 Pendleton Street
Columbia, SC 29201
(803) 734-1308
Email: bfunderburk@eopp.sc.gov

Dennis M. Gmerek
Assistant General Counsel
South Carolina Department of Social Services
PO Box 1520
Columbia, SC 29202-1520
(803) 898-7138 (Direct)/(803) 898-7245 (fax)
(803) 642-3681 (Aiken)/(803) 260-7649 (cell)
Email: Dennis.Gmerek@dss.sc.gov

The Honorable Michelle M. Hurley
P.O. Box 192
1701 Main Street, Suite 314
Columbia, SC 29202
(803) 576-1756/Fax: (803) 576-1759
Email: mhurleyj@sccourts.org
Admin. Assistant: Amie Stevens
Email: mhurleysc@sccourts.org

Ernest J. Jarrett, Esquire
Jenkinson, Jarrett & Kellahan, P.A.
120 West Main Street
P.O. Drawer 669
Kingstree, SC 29556
(843) 355-2000/Fax: (843) 355-2010
Email: ernie@jenkinsonlaw.com
Admin. Assistant: Dana Lewis
Email: dana@jenkinsonlaw.com

Richard T. Jones, Esquire
Jones, Seth, Shuler & Killen, LLP
PO Box 1268
Sumter, SC 29151-1268
(803) 773-8676
Email: rjones@jssjlaw.com

John O. McDougall, Esquire
McDougall & Self, LLP
PO Box 90860
Columbia, SC 29290
(803) 776-3130
Email: jom@mcdougallandself.com

Freddie Pough, Interim Director (Ex-Officio)
South Carolina Department of Juvenile Justice
PO Box 21069
Columbia, SC 29221
(803) 896-5940
Email: FBPoug@scdjj.net
Assistant: Sarah Jane Odiorne
Email: sjodio@scdjj.net

The Honorable Deborah Neese
100 East Church Street
Saluda, SC 29138
(864) 445-9586 Ext. 2223
Email: dneesej@sccourts.org
Admin. Assistant: Jackie Jumper
Email: dnessesc@sccourts.org

Hugh Ryan, Esquire (Ex-Officio)
General Counsel and Deputy Director
SC Commission on Indigent Defense
1330 Lady Street, Suite 401
Columbia, SC 29201
(803)734-1338
Email: hryan@scccid.sc.gov

Kali Campbell Turner, Esquire
South Carolina Bar
PO Box 608
Columbia, SC 29202
(803) 799-6653, Ext. 170
Email: kturner@scbar.org

Tana G. Vanderbilt, Esquire
South Carolina Department of Disabilities
and Special Needs
PO Box 4706
Columbia, SC 29240
(803) 898-9683
Email: tvanderbilt@ddsn.sc.gov

The Honorable Jerry D. Vinson, Jr.
Box V, City-County Complex
Florence, SC 29501
(843) 665-3079
Email: jvinsonj@sccourts.org
Admin. Assistant: Barbara Stevenson
Email: jvinsonsc@sccourts.org