

# **PERMANENCY PLANNING HEARINGS**



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Permanency planning hearings differ from regular review hearings in that they do not consider routine oversight of the case. Permanency planning hearings actually represent a deadline for all parties and are used to determine the final direction of the case. N.C.G.S. § 7B-907 requires that “where custody is removed from a parent, guardian, custodian, or caretaker, the judge shall conduct a review hearing designated as a permanency planning hearing within 12 months after the date of the initial order removing custody.” The statute allows for a review hearing and a permanency planning hearing to be combined if appropriate. The stated purpose of the permanency planning hearing is to develop a plan wherein the child achieves a safe, stable and permanent home within a reasonable period. The statute further requires that permanency planning hearings be held at least every six months thereafter, but allows the court to set them earlier as needed. As in review hearings, the Department of Social Services requests the clerk to calendar the hearing and provides notice to all parties. The same parties entitled to notice in a review hearing, including a child over 12, are entitled to notice of the permanency planning hearing. The court is required to consider information from the agency and any other parties that may have input that will assist the court in formulating a permanent plan. The court, as in review hearings, may consider hearsay evidence at the hearing if the court finds the information to be relevant, reliable and necessary.

One way to consider the difference between a review hearing and a permanency planning hearing is to look at the review hearing as a way to fine tune the case plan while a permanency planning hearing is to decide on permanent placement of the child. If the court does not treat the permanency planning hearing with greater deference than the regular reviews, the child may remain in foster care longer than necessary. The permanency planning hearing is the opportunity for the court to decide if the child is likely to return home or, if the parents have not and likely will not make sufficient progress in a reasonable time, the plan should change to one of guardianship or adoption.

The court should carefully consider all options when it comes to permanency and reasonably should consider adoption first over other long term arrangements. In some cases, as with review hearings, the facts are so egregious that the court may move to a permanency planning hearing immediately. Under these circumstances, the matter will continue to be reviewed but the court will enter a permanent plan to reflect the best interest of the child much sooner than normal.

### **I. WHO SHOULD BE PRESENT**

The same parties that are important and necessary for review hearings should be part of the permanency planning hearing for the same reasons.

### **II. KEY DECISIONS FOR THE COURT**

Decisions made at a permanency planning hearing need to be more specific and final than a regular review hearing. The court should examine each child’s options as related to permanent placement and deal with each option in turn as follows:

#### WHEN CHILD WILL BE RETURNING HOME BY A CERTAIN DATE.

If the parent is successful in completing the requirements of the case plan and the court decides the child should return home, a specific date should be set. This provides all parties with a specific goal to aid in preparing for the move back to the home of the parent.

#### CHILD WILL BE LEGALLY FREE FOR ADOPTION.

If it becomes clear that the child will not be able to return home the court should consider a formal termination of parental rights in order to free the child for adoption. At the permanency planning hearing the court can determine if a termination proceeding should be filed or has previously been filed. If the court makes this determination, the director of the department of social services shall file a petition to terminate parental rights within 60 days of the permanency planning hearing unless the court makes written findings why the petition can not be filed within 60 days. If the court does consider adoption, members of the child's extended family should be considered. If there are no such family members, the court should consider foster parents where the child is placed.

#### CUSTODY TO OTHERS ON A PERMANENT BASIS (GUARDIANSHIP)

If it is determined that a child cannot be safely returned home, another option is placement with a relative or other responsible adult. The court should state clearly in the record why the child cannot return home and provide clear findings as to why the child will not be adopted. A transitional plan should be ordered if the placement is not immediately available or if the child needs further treatment or services before being placed. When the court uses this option, it accomplishes two things without terminating the rights of the parents: (a) it ends the supervisory role of the agency and the juvenile court; and (b) it grants permanent care and control to someone other than a parent. One positive aspect of this option is that the parent may be ordered to continue paying child support and may be allowed visitation and communication with the child. This also leaves the door open for a parent to seek relief from the court in the future by way of a motion to modify custody if the behaviors and shortcomings that brought them into the system are alleviated.

#### FOSTER CARE ON A PERMANENT OR LONG-TERM BASIS.

This should be an absolute last resort when it comes to permanency. If the court considers the option of extended foster care with a short-term goal of reunification, the following determinations should be addressed: (a) the parent has

made significant progress on the case plan; (b) a close and positive relationship between the child and parent has been maintained; (c) it may be likely the child will return home in the short-term, but no specific date can be set. As stated this should be a last resort for the court and the court should do a thorough inquiry into the reasons for it in order to prevent repeated decisions that delay permanency.

### **III. SUBMISSION OF REPORTS**

The intention to set a permanency planning hearing in the future should be announced by the court at a regular review hearing in order to put all parties on notice. The agency should petition the court to hold the hearing when appropriate and provide adequate notice to all parties of the date of the hearing. The report prepared by the agency in anticipation of the permanency planning hearing should encompass the following: (a) the relief being sought and; (b) point out the specific issues the court will need to address and rule on. The reports should help the court make decisions and allow the parties to know what issues need to be resolved. If one of the options other than reunification is being requested, the reason for not recommending the higher priority options should be included in the report. Reports should also offer a plan to assist in carrying out the placement decision to be decided by the court. The following paragraphs reflect what information should be included in the permanency planning reports when the plan is:

#### **RETURN OF THE CHILD ON A CERTAIN DATE**

Reports should determine how the things that brought the child into care have been corrected. There should also be information on how visitation has progressed to include observations of visits between the parent and child, frequency of the visits and the observed effect on the child. Finally, if the plan is to return the child to the parents, there should be a detailed plan for follow-up after the return home and what level of supervision is contemplated to insure the safety of the child after reunification.

#### **TERMINATION OF PARENTAL RIGHTS.**

Reports must set out the facts and circumstances that support termination and should include the plan related to accomplishing adoption.

#### **PROPOSAL FOR CUSTODY TO BE AWARDED TO AN INDIVIDUAL OR COUPLE. (GUARDIANSHIP)**

Reports should set forth reasons for the belief that termination is not in the best interest of the child as well as why the child cannot be safely placed with the parents. The report should also provide information to the court on the

appropriateness of the proposed permanent caretakers along with a plan to ensure stability of the placement.

#### PERMANENT FOSTER CARE

Reports should inform the court of the facts and circumstances showing the lack of grounds for termination and point out that, although placement with the parents is not possible, termination of parental rights is not in the child's best interest. The report should also include why custody is not appropriate and the foster parent's willingness to provide permanent care for the child to ensure stability of the placement.

#### LONG-TERM FOSTER CARE WHERE CHILD CANNOT FUNCTION IN A FAMILY SETTING

Reports should set out the facts and circumstances of why the child is unable to function in a family setting. This should include reports from medical providers and therapists where appropriate and available. The report should also set out what plan is in place to prepare the child to live in a family setting and include a plan for visitation with the child's siblings and parents.

#### LONG-TERM FOSTER CARE ENDING IN INDEPENDENT LIVING FOR THE CHILD

The report should provide the court with the reasons for not terminating parental rights as well as why the child cannot be placed with the parents. With this in mind, the report should further explain why termination is not in the best interest of the child. The court must also be informed as to why continued foster care is appropriate while independent living services are being provided. Finally, in this option, there should be a definite plan to prepare the child for independent living while still maintaining a schedule of visitation with siblings and the parents.

#### EXTENSION OF FOSTER CARE WHILE THE GOAL IS REUNIFICATION WITHIN A TIME CERTAIN

The report should contain specific information about the relationship between the child and parent and whether the relationship is a strong and positive one. It should also address whether the parents have made substantial progress toward reunification and the child is likely to return home within six months.

#### **IV. WRITTEN FINDINGS OF FACT BY THE COURT ALONG WITH CONCLUSIONS OF LAW**

Just as the agency must provide information to the court for the permanency planning hearing, the court must make specific findings of fact and conclusions of law in the order. Having specific and detailed findings of fact and conclusions of law ensure that the court's intentions are implemented in a timely way. The findings and conclusions also provide documentation for further hearings.

A recent decision of note by the North Carolina Court of Appeals, *In the Matter of D.Y., B.M.T., J.A.T., Minor Children*, \_\_\_\_\_ N.C. App. \_\_\_\_\_ (2010), makes it clear that a court must take testimony in a permanency planning hearing. The court can no longer simply take judicial notice of the reports of the agency and the guardian, and must take testimony related to the issues described above.

#### **V. CONCLUSION**

If a child remains in foster care or under agency supervision for a substantial period, regularly scheduled review hearings and permanency planning hearings are essential. Reviews should continue until the child is back home and out of the agency's purview, custody is awarded to an individual or couple, the child is adopted or the child reaches 18.

### **PRIMARY RESOURCES**

**RESOURCE GUIDELINES: Improving Court Practice in Child Abuse & Neglect Cases**, published by the National Council of Juvenile and Family Court Judges, Reno, Nevada, 1995.

North Carolina General Statutes § 7B-907.

Chapter X: The Juvenile Court and Child Welfare, North Carolina Department of Health and Human Services <http://info.dhhs.state.nc.us/olm/manuals/dss/csm-67/man/>

## PERMANENCY PLANNING HEARING CHECKLIST

### Persons who should always be present at the permanency planning hearing:

- Judge
- Age-appropriate children
- Parents whose rights have not been terminated, including putative fathers
- Relatives with legal standing or other custodial adults
- Assigned caseworker
- Agency attorney
- Attorneys for parents (separate attorneys if conflict warrants)
- Legal advocate for the child and or Guardian ad Litem
- Court reporter or suitable technology
- Bailiff

### Persons whose presence may also be needed at the permanency planning hearing:

- Extended family members
- Foster parents
- Prospective adoptive parents
- Judicial case management staff
- Service providers
- Adult or juvenile probation if involved
- Other witnesses

### Key decisions the court should make at the permanency planning hearing:

- The child is to be returned home on a specific date
- The child will be legally freed for adoption
- The custody of the child will be transferred to an individual or couple

on a permanent basis.

- The child will remain in foster care on a permanent or long-term basis
- Foster care will be extended for a specific time, with a continued goal of family reunification.

### Submission of reports to the court (report should:

- Specify the relief being sought and address the same issues that the judge needs to determine.
- Examine the reasons for excluding higher priority options.
- Set forth a plan to carry out the placement decision.

### When the report or petition requests that a child be returned home on a date certain, it should set forth:

- How the conditions or circumstances leading to the removal of the child have been corrected
- The frequency of recent visitation and its impact on the child; and
- A plan for the child's safe return home and follow-up supervision after family reunification.

### When the report or petition requests termination of parental rights, it should set forth:

- Facts and circumstances supporting the grounds for termination; and
- A plan to place the child for adoption

**When a custody award to an individual or couple is proposed, the report should set forth:**

- Facts and circumstances refuting the grounds for termination of parental rights (demonstrating the fitness of the parents) or showing that although the child cannot be placed with parents, termination is not in the best interest of the child;
- Facts and circumstances demonstrating the appropriateness of the individual or couple to serve as permanent caretakers of the child; and
- A plan to ensure the stability of the placement.

**When permanent foster care with a specific family is proposed, the report should set forth:**

- Facts and circumstances refuting the grounds for termination of parental rights (demonstrating the fitness of the parents) or showing that although the child cannot be placed with the parents, termination is not in the best interests of the child;
- Facts and circumstances explaining why custody is not practical or appropriate;
- Facts and circumstances demonstrating the appropriateness of the foster parents and the foster parent's commitment to permanently caring for the child; and;
- A plan to ensure the stability fo the placement.

**When long-term foster care is proposed because the child cannot function in a family setting, the report should set forth:**

- Facts and circumstances leading to that conclusion; and
- A plan to prepare the child to live in a family setting at the earliest possible time and for visitation with parents and siblings.

**When long-term foster care in connection with independent living arrangements is proposed, the report should set forth:**

- Facts and circumstances refuting the grounds for termination of parental rights (demonstrating the fitness of the parents) or showing that although the child cannot be placed with parents, termination is not in th ebest interests of the child;
- Facts and circumstances explaining why continued custody or permanent foster care is not appropriate at the same time that independent living services are being provided; and
- A plan to prepare the child for independent living and for visitation between the child, parents and siblings.

**When an extension of foster care for a time certain is proposed with a goal of reunification, the report should set forth:**

- Facts and circumstances that the parents and child have a strong and positive relationships, parents have made substantial progress toward the child's return home, and return home

is likely within the next six months;

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Facts and circumstances showing why it is too early to specify a time certain for reunification; and

- A plan to achieve reunification within six months.

**The court's written findings of facts and conclusions of law at the permanency planning hearing should:**

- Be prepared within a reasonable time after the permanency planning hearing;
- Be written in easily understandable language so that parents and all parties fully understand the court's order;
- Provide documentation for further proceedings;
- Address the same issues as those to be addressed in the report discussed above; and
- Set date and time of next hearing, if needed