

# REVIEW HEARINGS



## INTRODUCTION

Review hearings are the court proceedings which take place after disposition is decided in juvenile cases. This is the opportunity for the court to review the status of the case which is vital to cases involving each child within the court's jurisdiction, whether the child remains with the parent or is in foster care or in some other form of placement. Once an adjudication has occurred and the court decides the long-term goal for each child, review hearings are the method by which the court monitors the progress of the case. The disposition hearing determines changes that will be required of the parents, services to be provided, and a long-term plan for each child is provided to the parents. Review hearings provide an opportunity to re-examine the case plan provided to the parents and make changes or revisions as necessary. The most important purpose of review hearings is to ensure that cases move forward and that children spend the least amount of time necessary in foster care or other temporary placement. It is the nature of our system that no matter how carefully plans are made in the beginning of a case, regular review hearings are necessary to keep cases moving toward completion.

Review hearings make it possible to re-examine long-term goals for the parents and children and change any that are no longer effective. The hearing also functions to make a record of items that have been completed by the agency and the parents. Just as regular reviews should speed up reunifying families, they will also identify cases where reunification is clearly not going to be accomplished because the children will not be able to safely return home within a reasonable time.

Review hearings are vitally necessary because a child remaining in foster care for an extended period of time potentially creates a negative effect on the child and family. It has been proven that a child in foster care for an extended period of time will likely form strong relationships with foster families. The byproduct of this relationship is that it will also likely weaken the emotional ties to the child's biological family. Another consideration is stability of the temporary or long term placement. When a child is regularly moved from foster home to foster home he may also lose the ability to form strong emotional bonds with a permanent family. Review hearings are one means to ensure that decisions regarding a child's future are made regularly and can be implemented rapidly.

Review hearings allow the court to identify inadequacies in the case plan entered into between the agency and the parents. An inadequate case plan can prolong the time a child must remain in foster care if it fails to clearly specify what the parents, as well as the agency, must do to reach the goal of reunification. One major concern is template type forms used by some social service agencies that preclude properly documenting progress or failures in a case. Most case plans are developed solely by the agency without input from the parents and may fail to specify services available or what is expected of the parents regarding modification of behaviors. Most social workers carry large caseloads which may cause cases to be neglected. In fact, if cases are going smoothly in the child's foster home, follow up with the biological parents and the activities they need to accomplish to effect reunification may be ignored. This will inhibit progress toward reunification and, without regular review hearings, this shortcoming would not come to the attention of the court.

Another positive aspect of regular review hearings is related to visitation. Often, visitation is severely restricted based on a lack of personnel to supervise the visit, excessive caseloads and, quite frequently, the logistics of transporting children to visitation with their parents. These problems often lead to limiting visitation to no more than one hour per week, or less. This restriction on visitation can understandably create a rapid breakdown of the parent-child relationship. Additionally, parents may not be aware that they have a right to challenge these limits on contact with their children and quickly become discouraged. A regular review hearing where the issue of increased visitation may be discussed is essential. Further, regular review hearings allow parents to provide input and, either personally or through counsel, have direct contact with the court. This contact provides a direct dialog with the court which may result in positive feedback in the form of praise for requirements accomplished or, conversely, admonishment for failure to cooperate with the case plan.

Effective review hearings require all parties involved be present, adequate court time to review all pertinent information, and properly paid and trained attorneys to determine what issues come before the court. Respondent parent attorneys must be prepared to come to court with a clear position on the case and have the ability to present their client's position. All too often review hearings can feel like an exercise in futility to the parents where the agency and guardian ad litem present reports and the court simply attempts to figure out how those recommendations can be consolidated. It is incumbent on the respondent parent attorney to provide the court with the positives of their client's efforts, if any exist, and to make a proper record of all issues.

### **TIMING OF REVIEW**

**N.C.G.S. §7B-906** requires that if custody is removed from a parent, guardian, custodian or caretaker after an adjudication and dispositional hearing, a review hearing is required to be held within 90 days from the date of the dispositional hearing. Thereafter, the court is required to hold a review hearing within six months. The attorney for social services requests the clerk to provide notice to all parties of the review and its purpose. Parties entitled to notice include the parent, the juvenile if he is over 12 years of age, the guardian, any foster parent, relative, pre-adoptive parents, the custodian or agency with custody, the guardian ad litem, and any other person or agency the court specifies. This notice does not make any foster parent, relative, or pre-adoptive parent a party to the action, even if they receive notice and have a right to be heard.

The court may decide to call for earlier hearings if necessary to specifically monitor the parent's progress or for the needs of the child in care. Additionally, any party may motion the matter on for hearing where the interests of the parties require, simply by notifying the clerk and all interested parties. At review hearings counsel should strongly consider the timing of the next scheduled hearing. If a child is out of his parent's home and the parent is making progress, a hearing set 6 months in the future would be patently unfair and would have a negative effect on the bond between the parent and child. Counsel should bring these concerns to the attention of the court and seek an earlier review.

## **AGREEMENTS BY THE PARTIES**

Many times the parties to a review hearing are able to stipulate to the progress of the parents since the last review or since the original disposition. It is incumbent upon the court to thoroughly review the reports of the agency and the guardian and to review them with the respondent parents in open court. All too often the court will only read the recommendations of the agency and the guardian ad litem into the record and other information that might be beneficial to the parents is not discussed. Any agreement should contain the recent history of the case and include statements showing what services have been provided to the child and the respondent parents since the last hearing. The report should also include what actions the parents have taken to correct the behaviors and problems that brought the child into care. Having a comprehensive report will be invaluable down the road when it becomes necessary to decide whether to reunify or to terminate parental rights.

## **WHO SHOULD BE PRESENT**

All matters in juvenile court in North Carolina are held before a district court judge. The one judge/one family concept followed in most jurisdictions creates consistency in the expectations on the parents and the services to be provided for the child. This system also precludes rehashing the same issues that brought the matter to the court. Individuals and groups that are essential to a productive review hearing and the reasons for their presence are as follows:

### **PARENTS**

Parents, whose rights have not been terminated, including putative fathers and potential adoptive parents should attend the review hearings. If the plan is to reunify with a parent, even if the child did not live with that parent prior to coming into care, the parents are vital to the review. They will be able to provide the court with information related to their ability to complete the requirements of their case plan. The parents can also inform the court of problems they are having accessing services or working with the agency and the guardian ad litem. This information is essential to making the parents a part of the process and gives them a stake in the planning of the next steps of the case plan. As mentioned above, if the parents attend and participate, the court can praise parents for successful progress or, conversely, chastise the parents for failing to accomplish the requirements of their case plan.

### **AGE-APPROPRIATE CHILDREN**

The court should be given an opportunity at some point in the case to actually meet and observe the minor child. Age-appropriate children can provide the court with information as to what they feel their needs are and what their concerns are related to their placement or care. The court can answer the questions of the minor child and also question the minor child regarding their educational, home and

personal needs. The court may also meet with the minor child in chambers if the child is not comfortable stating their concerns or wishes in open court. The guardian ad litem will notify the court through counsel if the minor child wishes to address the court and if they desire it to be in chambers.

#### RELATIVES WITH LEGAL STANDING OR OTHER CUSTODIANS

Relatives or other custodians as well as foster parents where the minor child may be placed are excellent sources of information for the court and may be called upon to relay observations and recommendations to the court. This also gives the parties and the court an opportunity to observe the custodians and inquire if there are concerns or needs that are not being met.

#### ASSIGNED CASEWORKER

The caseworker that has primary responsibility for the case should attend all review hearings. Many problems arise when a worker comes to court without a personal knowledge of the case and attempts to rely solely on a report written by the primary worker. Often there are significant developments related to the parents progress, or lack thereof, between the time the report was prepared and the court date. Without a worker with personal knowledge and up-to-date information, the court may not be able to make a fully informed decision. In jurisdictions where the judge has only one court date per month, this causes unreasonable delays in providing vital information to the court.

#### OTHERS NECESSARY FOR A PRODUCTIVE HEARING (But whose role is self-explanatory)

ATTORNEY FOR THE DEPARTMENT OF SOCIAL SERVICES

RESPONDENT PARENT ATTORNEY

GUARDIAN AD LITEM FOR THE CHILD

GUARDIAN AD LITEM FOR THE PARENTS (If appointed)

SERVICE PROVIDERS (If information from the providers would assist the court)

SUITABLE TECHNOLOGY FOR RECORDING THE PROCEEDINGS

CLERK OF COURT REPRESENTATIVE

BAILIFF OR OTHER SECURITY PERSONNEL

## **KEY DECISIONS THE COURT SHOULD MAKE AT REVIEW HEARINGS**

### **IS THERE A NEED FOR CONTINUED PLACEMENT OF THE CHILD**

When a child has been removed from the parent's home and placed with a relative or in a foster home, the court must use review hearings to determine if there is still a need for placement. The court should consider whether the parents have timely completed requirements of their case plan as well as determine if the agency has provided services as ordered. Other considerations are whether the parents are able and willing to care for the child, whether the parents behavior lends itself to providing a safe placement for the child or still presents a danger, whether visitation has gone smoothly and been productive for parent and child, and recommendations of service providers if available to the court. If the court decides that there has not been sufficient progress to send the child home, then it should lay out a definite plan for the parents and explain all requirements to achieve that plan.

### **IS THE LONG-TERM PERMANENT PLAN STILL THE BEST PLAN FOR THE CHILD**

Not all cases follow the normal plan of adjudication, disposition and a plan which the parent can follow to regain custody of their children. Some particularly egregious cases result in the court moving directly from petition to termination of parental rights. Sometimes it becomes clear at the regular review hearings that the original plan is no longer feasible. Issues that might move a case to termination more rapidly include, but are not limited to, long-term incarceration, a parent who is unable to be located for a long period of time or a parent that fails to make adequate progress on the ordered case plan. If the court concludes that there is little likelihood the original permanent plan is still feasible, regardless of how little time has elapsed on the original plan, the court should direct the agency to propose a new permanent plan. As stated, in some cases wherein severe physical abuse of the child has occurred or long-term incarceration is in the offing, the plan of reunification may be set aside quite rapidly and the permanent plan changed to one of guardianship or adoption.

### **IS THE AGENCY MAKING REASONABLE EFFORTS TO REHABILITATE THE FAMILY AND ELIMINATE THE NEED FOR PLACEMENT OF THE CHILD**

The agency should always be held accountable for its actions related to attempting to reunify the family. Typically, efforts by the agency toward reunification include such things as contact between the agency and the parents, monitoring of visitation to include providing recommendations and assistance with parenting at the visits, providing referrals and follow-up with service providers. All of these efforts are geared to eliminate the need for placement and a review hearing allows the court to see if the plan is indeed working or needs to be modified. If it is determined that the agency is not making reasonable efforts, a review hearing gives the court an opportunity to provide guidance to the agency to correct any inadequacies in the agency's efforts.

## DO THE SERVICES RECOMMENDED IN THE ORIGINAL PLAN NEED TO BE CLARIFIED OR MODIFIED BASED ON NEW INFORMATION

In many cases, it becomes obvious relatively quickly that the requirements placed on the parents and the services recommended are practically impossible to accomplish, and are having little positive effect on reunification efforts. When this is determined, the review hearing provides the court an opportunity to change the focus of the plan to better address issues that will benefit the reunification effort. It may be determined that services which were ordered are unavailable due to a lack of providers or, as often happens with parenting classes, intermittent starting dates may not fit the court schedule. Parents may be ordered to perform a virtual laundry list of evaluations, treatments, therapies and classes. This can create a logistical nightmare when there aren't enough hours in the day or days in the week to accomplish all of the requirements of the plan. It is incumbent upon respondent parent counsel to bring these issues to the court and make every attempt to have the court prioritize the requirements of the plan. An obvious drawback to this plan of prioritizing requirements may mean that one program needs be completed prior to starting the next. This which usually results in prolonging the time that the children are in care. One means that is sometimes effective to alleviate the logistics problem is to inquire into alternative providers that may provide classes or therapy at times other than those of the original providers. The review hearing also provides an opportunity for the court to inform the parents of the risk of termination of parental rights or other permanent loss of custody if they fail to meet the requirements of the plan.

## IS PLACEMENT APPROPRIATE AND MEETING ALL THE NEEDS OF THE CHILD.

One of the most important considerations for the court in a review hearing is whether the child's needs are being met. Reports supplied to the court at the hearing should relate up-to-date information related to the child's behavior, overall adjustment to the placement and, if the child is of a certain age, the desires of the child. The court should be provided with information related to the child's progress in school as well as their psychological and emotional needs. The review hearing allows the court to follow the child's progress and to be made aware of issues that deal directly with the placement. One significant issue that often arises is the necessity of moving the child to several different foster placements based on behavioral issues. Under these circumstances the court may direct the agency to find a therapeutic or more specialized foster home to better fulfill the child's needs. It may be found that with more, or better services being provided by the agency, the need to move the child may be alleviated. A review hearing allows this intervention by the court before the problem has a negative effect on the child.

## DOES THE FREQUENCY AND AMOUNT OF VISITATION NEEDS TO BE CHANGED

One of the most important things that respondent counsel can advocate for is more visitation and contact between the parent and child. As parents complete parts of their case

plans successfully one way the court can reward them for their efforts is to expand supervised visitation, change from supervised to periods of unsupervised visits or even a trial home placement. Whether the case appears to be progressing toward reunification or to a negative conclusion, the court should address visitation at every review hearing.

#### **CHILD SUPPORT.**

The issue of child support should be addressed at all review hearings. Parents, where able, should be tasked with providing support for their child even while in custody. The court will review this issue and, even where a parent is making progress in other areas, possibly find that this is a negative factor that needs to be addressed. Where the parent has fallen behind and a lump sum payment is ordered, this could affect the parents ability to pay their bills and thus the ability to have the child returned to their home. It is far better to encourage a client to pay their obligation regularly to avoid this eventuality.

#### **TIME FRAMES TO ACHIEVE REUNIFICATION OR OTHER PERMANENT PLANS.**

Prior to concluding a review hearing the court should make all parties aware of further requirements to achieve reunification. This will assist in putting the parents on notice and set time frames for completion of remaining items on the case plan. The court should put all parties on notice of the importance of meeting the deadlines for the benefit of the children and to aid in reunification. With these deadlines being set out in the order, the court can, at future hearings, use the deadlines that have been met as reasons to continue efforts or to cease reunification for failure to meet deadlines. The court also needs to set the time and date for the next hearing in the matter.

#### **REPORTS**

Most local rules provide that reports of the various parties that intend to present them at a review hearing must be provided to all other parties prior to the hearing. Different jurisdictions have different deadlines for providing reports to counsel for respondent parents. With the advent of e-mail and the ability to provide reports prior to pre-trials or actual hearings, respondent counsel should have access to information and, more importantly, be able to address issues with the client in order to better prepare for the hearing. Some local rules provide that if the reports were not timely provided, upon objection, the report will not be accepted by the court. Typically the agency and the guardian ad litem will have formal reports for the hearing laying out the successes and failures of the parent. Counsel for the respondent parent is encouraged to prepare a written report for the court as well. In the report counsel can detail the parent's accomplishments or, perhaps, insure that the parent's reason for not accomplishing requirements of the case plan are in the court file for future reference. The report prepared by counsel must be provided to all other parties in the case in a timely fashion.

## CONCLUSION

Review hearings give the court an opportunity to create a record of progress in a juvenile case. Where formal orders have been entered in the past, the court can determine if the parent has made progress and, if so, was the progress sufficient to expand visitation or perhaps move to trial placement. On the other hand, the hearing also gives the court an opportunity to “lay down the law” to parents that may not be making a dedicated effort to regain custody of their children. In this same vein, review hearings give the court the ability to see in short order whether there is a need to continue efforts with the parents or to proceed to termination. Review hearings allow the court to review the needs of the child on a regular basis and to enter orders if necessary to modify the case plan to better serve the child. Finally, regular review hearings ensure that the agency is providing services necessary to assist in reunifications and to determine if reasonable efforts are truly being made.

## 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-906.

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/>.

## REVIEW 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
- School officials

### Key decisions the court should make at the review hearing:

- Whether there is a need for continued placement of the child.
- Whether the court-approved long-term permanent plan for the child remains the best plan for the child
- Whether the agency is making reasonable efforts to rehabilitate the family and eliminate the need for placement of a child.
- Whether the services set forth in the case plan and the responsibilities of the parties need to be clarified or modified due to the availability of additional information or changed circumstances.
- Whether the child is in an appropriate placement which adequately meets all physical, emotional and educational needs.
- Whether the terms of visitation need to be modified.
- Whether terms of child support need to be set or adjusted.
- Whether any additional court orders need to be made to move the case toward successful completion.
- What time frame should be followed to achieve reunification or other permanent plan for each child.

**Submission of reports to the court:**

**Pre-review Report**

**Pre-review reports by the child welfare agency and the GAL can serve the same purpose as predisposition reports. Pre-review reports should include:**

- **A statement of family changes needed to correct the problems necessitating a state intervention, with timetables for accomplishing them;**
- **A description of services to be provided to assist the family; and**
- **A description of actions to be taken by parents to correct the identified problems.**

**Affidavit of Reasonable Efforts**

**When the agency recommends continued foster placement, an affidavit of reasonable efforts should be submitted. The following are some key elements of the affidavit:**

- **A description of the efforts made by the agency to reunify the family since the last disposition or review hearing and an explanation why those efforts were not successful;**
- **An explanation why the child cannot presently be protected from the identified problems in the home even if services are provided to the child and family.**

**The court's written findings of fact and conclusions of law at the review hearing should:**

- **Set forth findings as to why the children are in need of continued placement outside the parents' home or continued court supervision, including the specific risks to the child;**
- **Set forth findings as to whether and why family reunification and an end to court supervision continues to be the long-term case goal;**
- **Set forth findings as to whether the agency has made reasonable efforts to eliminate the need for placement, with specific findings as to what actions the agency is taking;**
- **Set forth detailed findings of fact and conclusions of law as to whether the parents are in compliance with the case plan and identify specifically what further actions the parents need to complete;**
- **Set forth orders for the agency to make additional efforts necessary to meet the needs of the family and move the case toward completion;**
- **Be written in easily understandable language which allows the parents and all parties to fully understand what action they must take to have their**

**children returned to their care;**

- **Approve proposed changes in the case plan and set forth any court-ordered modifications needed as a result of information presented at the review;**
  - **Identify an expected date for final reunification or other permanent plan for the child;**
  - **Make any other orders necessary to resolve the problems that are preventing reunification or the completion of another permanent plan fo the child; and**
  - **Set date and time of next hearing, if needed.**
-

