Best Legal Practices in Child Abuse and Neglect Cases

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 is to provide 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. See publications for child protection to review the hearing checklists.

Contents

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
2. Orders
3. Placement plans
4. Court information sheets

1. Pleadings

Use of the DSS intranet for standard pleadings for each hearing can be accessed by the DSS attorney.

2. Orders

Use of the DSS intranet for standard orders with specific IV-E language for permanency planning orders can be accessed by the DSS attorney.

3. Placement plans

These plans should be easily comprehensible for the defendants. 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.

B. Training

Regular training for DSS caseworkers, supervisors and attorneys; GAL staff, volunteers and attorneys; 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
2. DSS attorneys
3. GAL staff, volunteers and attorneys
4. Clerks of court
5. Family court judges
6. Foster Care Review Boards

1. Caseworkers and supervisors

a. Preparation of reports for court use

b. Providing testimony

c. Use of case notes/files in court

2. DSS attorneys

a. Use of standardized forms for pleadings and orders

b. Witness preparation

c. Qualification of expert witnesses

3. GAL staff, volunteers and attorneys

Training on best legal practices coordinated by the SC Guardian ad Litem Program, Richland CASA, and the Children's Law Center.

4. Clerks of court

Training on best legal practices coordinated by SC Court Administration.

5. Family court judges

Training on the best legal practices coordinated by SC Court Administration.

6. Foster Care Review Boards

Training on the best legal practices coordinated by SC Foster Care Review Board (FCRB).

C. Rights of other participants

A party in interest may receive notice of a child protection hearing, but they have no right to be heard (except as provided below) or to participate in a child protection hearing. It is in the discretion of the court whether a party in interest is allowed to be heard at a hearing. In addition, the court can decide whether the identity of a party in interest should be revealed during the proceedings.

1. Foster care child
2. Foster parent/pre-adoptive parent
3. Relative placement
4. Foster Care Review Board

1. Foster care child

The Child and Family Services Improvement Act of 2006 (P. L. 109-288) requires states to ensure that the child is consulted regarding any permanency or independent living transitional services at the permanency planning hearing. The federal law states specifically that "…the court or administrative body conducting the hearing consults, in an age-appropriate manner, with the child regarding the proposed permanency or transition plan for the child." (475(5)(C)(iii) of the Social Security Act). Federal law does not define "consults." Federal guidance provides the court flexibility in how to best obtain the child's views on permanency or transition plan. Best practice requires simply that the child's views be known. 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. Ways to "consult" with the child include:

a. 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. 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.

b. Child 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.

c. Court appearance: The family court judge may request the appearance of the child in order to clearly obtain the views of the child regarding permanency or independent living transitional services. **Courts should consider this approach especially in the case of older children where the youth's wishes and GAL's opinion about the child's best interests differ.** The judge may consult with a child in camera and on the record.

2. Foster parent/pre-adoptive parent

a. Right to receive notice by DSS to a probable cause hearing, merits hearing, hearing to approve a placement plan, judicial review hearing, permanency planning hearing, and termination of parental rights hearing.

b. DSS attorney is responsible for acknowledging the foster parent or pre-adoptive parent in the courtroom; the foster parent or the pre-adoptive parent may participate at the court's discretion not to be unreasonably denied, the foster parent or the pre-adoptive parent shall have the right to be heard pursuant to 42 USCA section 675(5)(G).

c. Right to file petition for termination of parental rights and adoption.

d. Right to file motion to intervene to become a party to the action.

3. Relative placement

a. Right to receive notice by DSS to a probable cause hearing, merits hearing, hearing to approve a placement plan, judicial review hearing, permanency planning hearing, and termination of parental rights hearing.

b. DSS attorney is responsible for acknowledging the foster parent or pre-adoptive parent in the courtroom; the foster parent or the pre-adoptive parent may participate at the court's discretion not to be unreasonably denied, the foster parent or the pre-adoptive parent shall have the right to be heard pursuant to 42 USCA section 675(5)(G).

c. Right to file motion to intervene to become a party to the action.

d. Right to apply to become a licensed foster parent for their relative's child.

4. Foster Care Review Board

a. Right to receive notice by DSS to a probable cause hearing, merits hearing, hearing to approve a placement plan, judicial review hearing, permanency planning hearing, and termination of parental rights hearing. DSS attorney responsible for acknowledging Foster Care Review Board member or attorney in the courtroom; member or attorney may participate at the court's discretion, not to be unreasonably denied.

b. Foster Care Review Board member or attorney has the right to advise foster parents of their right to petition the family court for termination of parental rights and for adoption.

Statutes or Rules Referenced:
SC Code Ann. §63-7-1630 (1976).
SC Code Ann. §63-11-700 et seq., (1976).
SC Code Ann. §63-7-2320 (1976).
42 U.S.C.A. § 675 (G)

D. Continuances

1. Limited reasons

Document reasons for continuance in continuance order.

2. Hearing on continuances

Schedule for date certain for the next hearing and place hearing date in continuance order.

Probable Cause Hearings

A. Identify necessary parties – as needed

It is critical that all appropriate persons be made a party to the case as soon as possible, including all parents. Timely resolution of paternity issues is in the best interest of the child and essential to further 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 file from the start of the case. Further, knowledge of all biological parents provides additional information on potential relative placements. A biological parent 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 placements and seek the least disruptive alternative that can meet the child's needs.

1. Place mother under oath to testify regarding paternity
2. Place putative father under oath to confirm paternity – explain rights, etc.
3. Order paternity testing
4. Amend to add putative fathers and /or John Doe
5. Determine whether additional parties are necessary
6. Identify possible placement resources
7. Address Indian Child Welfare Act (ICWA) issues as indicated
8. Address the need for interpreters and a determination of citizenship of the child.

Paternity must be resolved in the following circumstances:

- Mother is unmarried;
- Paternity has been questioned by parties; or
- Putative father denies paternity.

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

1. Place the mother under oath to testify regarding paternity

Questions to ask mother include:

- Who does she believe is the father of her child;
- Is there anyone else who potentially could be the father of her child;
- Who is listed as her child's father on the birth certificate (copy of birth certificate may be provided to the court);
- Has she ever been married or been divorce;
- Birth date of her child (was child born prematurely); and
- City, county and state and hospital of child's birth.

2. 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:

- Inform him of the right to an attorney;
- Inform him of his right to request a paternity test; and
- Inform him that if he acknowledges paternity then an adjudication of that fact will take place today and will bar him from revoking that acknowledgement in the future.

c. Ask whether he acknowledges or denies paternity.

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

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

3. Order paternity testing

a. Explain to parties steps they are to take to cooperate with testing, including where and when they are to appear.

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

4. Amend to add putative fathers and/or John Doe

Putative Fathers

a. If mother names potential fathers of child, they should be added as parties to the case.

b. Order paternity testing on putative fathers.

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

John Doe

a. If mother does not name father, add John Doe as putative father; and

b. Request by motion, either written or oral, an order of publication.

5. Determine whether additional parties are necessary

Necessary parties could include:

a. Biological parents, including custodial and non-custodial parents;

b. Husband of mother, including by common law marriage;

c. Other custodians or guardians;

d. Alleged perpetrator; and

e. 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 child.

6. Identify possible placement resources

a. The court to question custodial parent whether there are relatives in or out of state to place children.

b. The court to question non-custodial parent, if they are present, whether there are relatives in or out of state to place children.

c. The court to question the staff or volunteer from the SC Guardian ad Litem Program or Richland CASA if they have any suggestions for placement of the children.

d. The court should question whether placement is being sought out of state and, if so, include Interstate Compact for the Placement of Children (ICPC) compliance and 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.

7. Address Indian Child Welfare Act (ICWA) issues as indicated

a. Involving Native American children.

b. DSS must notify the Indian child's parent and the Indian tribe that DSS has initiated a child protection proceeding.

c. DSS shall not schedule any family court hearing until at least ten days have elapsed following the party's receipt of notice.

d. An indigent Indian parent is entitled to an appointed attorney.

e. Burden of proof in removal actions (merits hearings) is clear and convincing.

f. Burden of proof in a termination of parental rights action is beyond a reasonable doubt.

8. Address the need for interpreters and a determination of citizenship of the child (if necessary)

a. 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."

b. Waiver of this requirement 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."

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:

- Confirm child's citizenship, e.g., birth certificate, social security card, US or foreign passport;
- If child is not a US citizen, determine public benefits to which child is entitled; and

- If 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. (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.)

Statutes or Rules Referenced:
SC Code Ann. §15-27-155 (1976).
SC Code Ann. §17-1-50 (1976).
25 U.S.C.A. §1911-192

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
2. Initial efforts made to locate and serve necessary parties
3. Sworn testimony from parties regarding location of necessary parties
4. Be prepared to serve pleadings in courtroom

1. Location and service of necessary parties

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

Statutes or Rules Referenced:
SC Code Ann. §15-9-710 (1976).
SC Code Ann. §15-9-740 (1976).

2. Initial efforts made to locate and serve necessary parties

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

- Affidavit of non-service;
- Affidavit of due diligence documenting efforts made to locate and serve defendant; and
- Motion for Publication – request order for publication with 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 about location of other parties.

Questions to ask include:

- Home or work address and directions;
- Former home or work address and directions;
- Home or work address of other parties' relatives or friends; and
- Regular "hang out" spots of other parties, i.e. club, restaurant, specific neighborhoods, barber shop, etc.

4. Be prepared to serve pleadings in the courtroom

a. Draft and bring several copies of the summons and complaint and notice of hearing to court.

b. Be prepared to serve summons and complaint and notice of hearing on parties previously not served.

c. Request courtroom deputy to serve a party in the courtroom.

d. Be prepared with affidavit of service for deputy in courtroom to sign.

e. Place on the record if pleadings are served on a party in the courtroom and include in the order.

Statutes or Rules Referenced:
SC Rules of Civil Procedure, Rule 4(G)

Practice Note:

If all defendants have been served, the judge has discretion to move forward regardless if a defendant is present. If there are defendants who have not been served, the judge has discretion to move forward with case on served defendants, without prejudice to the non-served defendants.

C. Appointment of counsel and guardians ad litem

A defendant has a right to counsel for any DSS child protection hearing. A defendant may be entitled to a court appointed attorney for any hearing, if they meet certain financial guidelines. A defendant may need a guardian ad litem for cases where the defendant is considered incompetent. In all cases, the court must appoint a guardian ad litem for the child. These appointments can avoid delays in the proceedings, in particular regarding the merits hearing. The appointment or a waiver of counsel should be conducted at the probable cause hearing. The merits hearing should not be continued for a defendant to obtain an attorney. Options for counsel for a defendant:

- Hire an attorney;
- Apply for a court appointed attorney; or
- Defendant represents himself, i.e. pro se representation.

1. Clear notice of right to counsel – explanation on record
2. Financial declaration/sworn testimony regarding income
3. Appoint attorney at probable cause hearing
4. Notify court if need for guardian ad litem for defendant
5. Appoint guardian ad litem for child

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

a. Inquire of defendants if they want an attorney for the case.

b. Explain case may proceed for many months.

c. Explain that neither DSS nor the guardian ad litem represents the defendant.

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

2. Financial declaration/sworn testimony regarding income

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

- Defendant's gross income;
- Gross income of persons living in defendant's home for whom defendant is legally responsible; and
- Assets of defendant, i.e. bank accounts, stocks, bonds, real property other than primary residence, cars, etc. (See attachment for federal poverty guidelines.)

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

- Place defendant's waiver on the record and in probable cause order;
- Explain to defendant that the waiver is permanent and defendant will no longer be entitled to a court appointed attorney unless evidence is produced showing defendant's incompetence; and
- Explain to defendant alternatives to court appointed attorney: hiring an attorney or representing themselves, i.e. pro se representation.

3. Appoint attorney at probable cause hearing

If defendant qualified for appointment of an attorney, place the following information in the order:

- That the defendant financially qualifies for a court appointed attorney;
- Name, address and phone number of defendant;
- Name, address and phone number of appointed attorney (DSS attorney to obtain from the family clerk of court prior to hearing the list of names on the Rule 608 civil appointment list);
- Language that defendant received this order in courtroom;
- Language that order was faxed and/or e-mailed and will be mailed to appointed attorney before the end of the business day of probable cause hearing; and
- Appointment of counsel order may be included in probable cause order or handled in a separate order if it is more practical and efficient for appointed attorney's information to be in a separate order.

4. Notify court if need for guardian ad litem for defendant

a. Notify court if there are questions of defendant's incompetence, i.e. age, incarceration, mental or physical disability.

b. Appoint guardian ad litem for defendant from Rule 608 civil appointment list at hearing.

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

d. Appointment of guardian ad litem for defendant may be included in probable cause order or handled in a separate order if it is more practical and efficient for appointed attorney's information to be in a separate order.

5. Appoint guardian ad litem for child

a. Inquire if the SC Guardian ad Litem Program (GAL Program) or Richland CASA staff is present to determine if case will be assigned to a volunteer; appoint volunteer if name is available.

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

c. If there is no volunteer available, appoint an attorney off the Rule 608 civil appointment list and forward order to appointed attorney and defendant immediately.

d. Immediately forward order to all parties.

e. Utilize the standard GAL Program appointment form if a volunteer GAL is appointed. The form includes language for appointment of the volunteer GAL and the GAL's attorney.

f. If attorney GAL must be appointed on behalf of child, appoint from Rule 608 civil appointment list and include in the probable cause order or handle in a separate order if it is more practical and efficient.

Statute or Rules Referenced:
SC Code Ann. §63-7-1620 (1976).

D. Merits notice in probable cause order

To help avoid delays, the hearing date for the merits hearing must be placed in the probable cause order. Therefore, when the defendant is served with this order, they will have written notice of the merits hearing.

1. First call merits hearing in probable cause order

1. First call merits hearing in probable cause order

a. In large counties, a first call merits system may be expeditious. Under this method, parties are notified of the initial date scheduled for 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 date certain. The pre-trial conference is utilized to stipulate to areas of agreement, and determine how much time is necessary for trial.

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

E. Procedural issues

1. Home studies
2. Transport issues
3. Assessments/screenings

1. Home studies

a. Home studies are discretionary by the court.

b. Any party may request to the court for a home study for the placement of the child.

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

d. The court should specify time frame for conducting and completing home study.

e. Home studies require criminal record checks on all residents of the home.

f. The court should question whether placement is being sought out of state and, if so, include ICPC compliance and 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.

2. Transport issues

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

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

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

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

3. Assessments/screenings

a. If parties agree, the court may order psychological evaluations, when appropriate.

b. If parties agree, the court may order drug and alcohol screenings and random drug testing, when appropriate.

c. Other assessments, screenings or testing may be ordered as appropriate.

F. Prepare probable cause order in court

1. Findings – order and record
2. Orders
3. Serve order on parties at conclusion of hearing

1. Findings

a. Findings must be made and ordered whether DSS made reasonable efforts to prevent removal of the child from the parents.

b. A judicial determination must be made whether return of the child to the parents would be contrary to the child's welfare.

2. 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.
- If possible, designate a DSS staff person or intern to handle the drafting and dissemination of orders.

b. Handwritten forms:

- Alternatively, utilize form orders on DSS intranet (possibly complete by handwritten drafting).
- Serve order on parties at conclusion of hearing.

3. 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.

a. Instruct parties not to leave the courthouse.

b. Provide file copy of the order to the parties before they leave the building.

c. 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).

Merits Hearing

A. Service and notice to necessary parties

1.	Clear demonstration of service of pleadings/orders/notices
2.	Clear demonstration of due diligence and preparation of affidavits
3.	Motion/request (on record) to publish notice of merits order
4.	Notice to attorneys

A primary characteristic of a merits hearing is that formal legal process is used to notify necessary parties and witnesses for the hearing and to 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 for 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.

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

a. DSS shall provide to the court an affidavit stating the following:

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

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

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

Statutes or Rules Referenced:
SC Code Ann. §15-9-710 (1976).
SC Code Ann. §15-9-740 (1976).

2. Clear demonstration of due diligence and preparation of affidavits

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

- Affidavit of non-service.
- Affidavit of due diligence. Provide to the court an affidavit stating the following: the method of attempted service; persons contacted to obtain information on defendant; information obtained from other persons contacted; how information was utilized to attempt to locate 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 effected;
- Due diligence efforts (attach affidavit);
- Request date and specific publication source (newspaper name) in which notice will be placed; and
- Request to publish notice of merits order in publication (if proceeding without prejudice to defendants not served, therefore notice of merits order would notify defendants that order is issued and their right to request a merits hearing).

c. Request to publish this second merits hearing date or a judicial review hearing which can serve as a merits.

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

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

Statutes or Rules Referenced:
SC Code Ann. §15-9-710 (1976).
SC Code Ann. §15-9-740 (1976).

Practice Tip:

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 unable to serve defendants, move forward on the defendants without prejudice on the defendants not served, in the judge's discretion.

4. Notice to attorneys

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

B. Findings

1. Findings made
2. Findings made and determination of perpetrator held in abeyance
3. Central registry

The court should make findings of abuse or neglect regarding the children at the merits hearing. 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, then parties should set matter for trial. The DSS Central Registry of Abuse and Neglect is a database of names of perpetrators found to have abused or neglected a child. This finding is made in a family court child abuse and neglect proceeding.

1. Findings made

a. Findings should be made regardless if 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:

- The court coordination protocol for handling abuse and neglect cases in family court in coordination with simultaneous related general sessions cases;
- The unknown perpetrator; and
- Perpetrator has not been served.

3. 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 and this requirement cannot be waived by the court or by the parties.

b. However, if the only form of physical abuse that is found by the court is excessive corporal punishment, the court only may order that the person's name be entered in the DSS Central Registry 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.

Statutes or Rules Referenced:
SC Code Ann. §63-7-1940 (1976).
SC Code Ann. §63-7-20 (1976).

C. Placement plans

1. Uniformity – same statewide model
2. Signed by participant (including relatives for placement)
3. Clear time frames and expectations from all participants, including DSS
4. Child support and health insurance referred to the Child Support Enforcement Division (CSED) of DSS
5. Set visitation schedule
6. Incorporate into order
7. Provide list of treatment providers

Placement plans in removal cases should follow a similar layout throughout circuits. Placement plans should be specific and narrowly tailored to the needs of the family. The placement plan should include the specific reasons for removal of the child 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. See SC Code Ann. §63-7-1680 (1976).

1. Uniformity – same statewide model

a. DSS should follow the uniform placement plan template found on the DSS intranet.

b. While using this template, the content of the placement plan should be narrowly tailored to each case by adding the specific facts, findings, services, etc. 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 and 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 or individual that will be required to provide services to include the guardian ad litem for the child and relatives who will provide placement.

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 or for DSS to schedule referrals and for a party to begin and/or complete services or activities.

b. The placement plan should include specific objectives that must be completed by parties within time frame specified in placement plan. The following are examples of evidence of successful completion of the 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 to provide HIPPA 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 and health insurance referred to the Child Support Enforcement Division (CSED) of DSS

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

b. Determine whether the DSS county office has made a referral to DSS CSED. If this has not been done, then the order shall direct DSS to refer the issue of child support to the CSED no later than five (5) days after the merits hearing.

c. The family court judge should not set child support at the merits hearing, except in exceptional circumstances. If a judge sets child support at the merits hearing, the amount should be a minimum of $150.00 monthly. The order should require that the CSED conduct a review of the support set and modify support pursuant to the Child Support Guidelines, including health insurance.

d. Any retroactive child support ordered by the court should refer back to the probable cause hearing date – this is the policy of CSED.

5. Set visitation schedule

a. The placement plan should address visitation with parents, guardians, siblings or other relatives.

b. The plan should be specific as to date, frequency and location of visitation.

c. The plan should be specific as to the start date of visitation.

d. It should specify who is responsible for transportation to and from visitation.

e. It should specify the level of supervision and, if someone other than DSS is authorized to supervise visitation, these persons should be named.

f. The plan should address whether DSS has discretion to change visitation without further order of the court.

6. Incorporate into the order

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

b. Incorporation of the plan can be by reference or by attaching a copy of the plan to the order.

7. Provide list of treatment providers

A list of approved treatment providers should be submitted by DSS for classes, assessments, etc., along with the placement plan.

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; for example, 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 eighteen (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. See SC Code Ann. §63-7-1670 (1976).

See merits hearing for additional best practices with the following exceptions:

- No child support; and
- No visitation issues.

Non Emergency Removals

1. DSS responsibilities
2. The court's responsibilities

Under Section 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 Section 63- 7-620 (emergency removal by law enforcement), or Section 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 says: "*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 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 Hearing" 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, the placement plan provisions of Section 63-7-1680 and Section 63-7-1690 and the permanency planning provisions of Section 20-7-1700 are not triggered. The "Merits Hearing" sections of this document apply to non-emergency removal hearings except those items that deal with the placement plan.

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

1. DSS responsibilities

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

b. 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.

2. The court's responsibilities

a. The parents and the new custodian are aware of the responsibilities and ramification that accompany the custody award.

b. All understand the permanence of the award of custody.

c. The order addresses payment of child support to the new custodian.

If custody is awarded to the 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 assure 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.

Judicial Review Hearing

1. Scheduling
2. Use to determine compliance
3. Additional services needed – modify plan
4. Reiterate consequences of non-compliance at hearing and in order

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

1. Scheduling

A judicial review may be scheduled in either of the following ways:

a. Automatically scheduled at merits or permanency planning hearings.

- If this is a highly contested case; or
- If the permanent plan is termination of parental rights.

b. Scheduled at the discretion of parties. Parties may file motion to schedule a judicial review:

- If placement plan needs modification due to unavailable services or referrals;
- If additional services are needed by parent or child; or
- To reiterate consequences of non-compliance if a party is slow or not complying with placement plan.

c. Prior to the initial permanency planning hearing, best practices are to schedule reviews in each case at ninety (90) day intervals.

2. Use to determine compliance

This hearing may be used to determine whether defendants and DSS are in compliance with previous orders and reasonable efforts.

3. Additional services needed – modify plan

This hearing can serve as a request to the court for modifications to the placement plan based upon change of circumstances or new information obtained.

4. Reiterate consequences of non-compliance at hearing and in order

This hearing can serve as a court explanation to any party that is not in compliance with previously issued orders.

Permanency Planning Hearing

1. Serve as a merits and permanency planning hearing for defendants served by publication.
2. Concurrent plan in appropriate cases.
3. Compliance review – participants and DSS
4. Clear findings as to all defendants

Permanency planning hearings are a special type of post-dispositional proceeding designed to reach a decision concerning the permanent placement of a child. The permanency planning hearing represents a deadline within which the final direction of the case is to be determined. Permanency planning hearings are required by state and federal statute for children in foster care. 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 occur 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.

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, termination of parental rights (TPR), relative or non-relative custody or guardianship or another permanent arrangement. DSS must show compelling reasons for the selection of another planned permanent living arrangement (APPLA.) See SC Code Ann. § 63-7-1700(C) (1976).

1. Serve as a merits and a permanency planning hearing for defendants served by publication

If 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.

2. Concurrent plan in appropriate cases

a. It is appropriate to select one of the permanent plans plus allow for continued treatment services to the parents, including if permanent plan is termination of parental rights. DSS may begin concurrent planning with entry into foster care and court approval is not necessary for concurrent planning to begin.

b. A court ordered change in the permanent plan is not required to file a TPR complaint.

c. Any interested party may file a TPR action.

Statutes or Rules Referenced:
SC Code Ann. §63-7-2530 (A) (1976).

3. Compliance review – participants and DSS

This hearing may be used to review the compliance level of the parties with treatment services, visitation, child support, etc.

4. Clear findings as to all defendants

Clear findings should be issued regarding each defendant's level of compliance with the plan.

Termination of Parental Rights Hearing (TPR)

1. Personally serve summons and complaint on parties
2. Personally serve pendent lite motion notice and/or pre-trial hearing notice on parties
3. DSS may but is not required to prepare a TPR packet to forward to parties prior to the pendent lite trial or pre-trial hearing.
4. Trial practice

The best interest of the child is served by achieving final 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 a child protection proceeding. 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 time, then the court should seek a permanent and secure new home. Termination of parental rights hearings are a new and separate action from the prior merits case. It is critical that the TPR process can be completed without delay. An attorney for the defendant and a guardian ad litem for the child must be appointed for this case. There needs to be a new appointment order for a defense attorney and attorney for the guardian ad litem for the child. It is in the discretion of the court to reappoint the defense attorney and the guardian ad litem for the child from the merits case to serve in the TPR case.

In every merits case, preparations should be made in anticipation of a possible TPR case. Such preparations include identification of all necessary parties and service of these parties, paternity determinations and resolution of Indian Child Welfare Act issues (ICWA), etc. Therefore, at the TPR stage, the case is not delayed because of service issues.

1. Personally serve summons and complaint on parties

Name separate defendant John Does for each unknown father i.e. John Doe 1, John Doe 2, for cases where there is more than one unknown father for two or more children.

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

a. 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.

b. This hearing can be utilized for the following as needed:

- Appoint an attorney for defendant and appoint a guardian ad litem for the child;
- Declaration of paternity; remove from named parties certain John Does;
- Determine whether parent needs a guardian ad litem;
- Determine if any attorneys have a conflict with their clients;
- Obtain HIPPA releases from the parents;
- Share witness lists;
- Determine the need for translators; and
- Resolve whether the child is under the jurisdiction of the Indian Child Welfare Act (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.

3. DSS may but is not required to prepare TPR packet to serve on parties prior to the pendent lite or pre-trial hearing

a. The DSS attorney and caseworker should prepare a packet of documents related to the case to forward to all parties prior to the pendent lite motion or pre-trial hearing.

b. The DSS attorney should note for the record that all parties have received this packet; all parties should sign an acknowledgement of receipt of the packet.

c. This packet should include, but is not limited to, the following:

- Visitation chart;
- Treatment compliance log with date of referral, date of service and when party completed;
- Drug screen log;
- Psychological evaluations;
- Incident reports;
- Foster Care Review Board recommendations;
- Correspondence log with parents; and
- Reports of the child's GAL in the underlying abuse and neglect action and in the TPR action.

d. This list is not exhaustive of what DSS can place in the packet.

4. Trial practice

a. The plaintiff should present testimony on the alleged TPR ground or grounds and on best interest of the child.

b. The plaintiff should provide the burden of proof of clear and convincing evidence to the court.

c. All parties can utilize the exhibits as evidence to support their positions.

Statutes or Rules Referenced:
SC Code Ann. Title 63 (1976).
SC Code Ann. Title 15 (1976).

Federal Poverty Guidelines

The 2009 Poverty Guidelines for the 48 Contiguous States and the District of Columbia	
Persons in family	**Poverty guideline**
1	$10,830
2	14,570
3	18,310
4	22,050
5	25,790
6	29,530
7	33,270
8	37,010
For families with more than 8 persons, add $3,740 for each additional person.	

2009 Poverty Guidelines for Alaska	
Persons in family	**Poverty guideline**
1	$13,530
2	18,210
3	22,890
4	27,570
5	32,250
6	36,930
7	41,610
8	46,290
For families with more than 8 persons, add $4,680 for each additional person.	

2009 Poverty Guidelines for Hawaii	
Persons in family	**Poverty guideline**
1	$12,460
2	16,760
3	21,060
4	25,360
5	29,660
6	33,960
7	38,260
8	42,560
For families with more than 8 persons, add $4,300 for each additional person.	

SOURCE: *Federal Register*, Vol. 74, No. 14, January 23, 2009, pp. 4199

Acknowledgements

South Carolina Family Court Bench Bar Committee

The Honorable George M. McFaddin, Jr., Chair
Family Court Judge – Third Judicial Circuit

Dr. Kathleen Hayes, Co-Chair
Director, South Carolina Department of Social Services

Bruce W. Bannister, Esquire
Bannister & Wyatt, LLC

Denise Barker
Director, South Carolina Foster Care Review Board

The Honorable Jan B. Bromell Holmes
Family Court Judge – Fifteenth Judicial Circuit

Robert A. Clark, Esquire
Program Attorney, South Carolina Guardian ad Litem Program

Louise B. Cooper
Director, South Carolina Guardian ad Litem Program

Harry W. Davis, Jr., Esquire
Director, Children's Law Center

Rosalyn W. Frierson, Esquire
Director, South Carolina Court Administration

The Honorable Paul W. Garfinkel
Family Court Judge – Ninth Judicial Circuit

The Honorable Robert E. Guess
Family Court Judge – Sixteenth Judicial Circuit

Richard T. Jones, Esquire
Jones, Seth, Shuler & Killen, LLP

John O. McDougall, Esquire
McDougall & Self, LLP

The Honorable Deborah Neese
Family Court Judge – Eleventh Judicial Circuit

Phyllis Alesia Rico Flores, Esquire
P. Alesia Rico Flores, LLC

Kali Campbell Turner, Esquire
South Carolina Bar

Tana G. Vanderbilt, Esquire
General Counsel, South Carolina Department of Disabilities and Special Needs

The Honorable Jerry D. Vinson, Jr. (Chair of Best Legal Practices Subcommittee)
Family Court Judge – Twelfth Judicial Circuit

Mary C. Williams, Esquire
Director of Program Improvement, South Carolina Department of Social Services

Virginia E. Williamson, Esquire
General Counsel, South Carolina Department of Social Services

A special thanks to the following individuals who have contributed to this guideline:

Michelle Dhunjishah, Esquire
General Counsel, Foster Care Review Board

Dennis M. Gmerek, Esquire
South Carolina Department of Social Services

Dottie C. Ingram, Esquire
South Carolina Department of Social Services

Angela M. Killian, Esquire
South Carolina Department of Social Services

Dorothy J. Killian, Esquire
Assistant General Counsel, South Carolina Department of Social Services

Cody Lidge, Family Court Representative
South Carolina Court Administration

Deborah T. Nielsen, Esquire
South Carolina Department of Social Services

Virginia C. Ravenel, Esquire
General Counsel, South Carolina Guardian ad Litem Program

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

Carolyn S. Morris, MSW
Assistant Director

Treneice R. Flowers, Esquire
Resource Attorney

Mary Jo Burgess
Senior Consultant