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3.5 Parties and Other Participants

A. Overview

There are two primary parties in a delinquency case, the juvenile and the State. The juvenile is the subject of the petition and the State bears the burden of proving the allegations beyond a reasonable doubt. At some stages of the proceeding the juvenile’s parent, guardian, or custodian has statutory rights and responsibilities. The juvenile court counselor and the law enforcement officer also have statutory mandates. Other participants may have a substantial role in the proceeding.

B. State

The State is a party to the proceedings through the authority and responsibilities given its agents at various stages of the proceedings. The prosecutor must represent the State in all probable cause hearings and at *contested* delinquency hearings, including first appearance, detention, transfer, adjudicatory, dispositional, probation revocation, post-release supervision, and extended jurisdiction hearings. G.S. 7B-2404; 7B-2202(b)(1). Neither statute nor case law has defined “contested” for the purpose of this statute. It is commonly assumed that a contested hearing is one that is adversarial—that is, there is an issue that must be decided by the court that is not the subject of an admission or agreement between the parties. Because there is a question of who other than the prosecutor would present the State’s position in an uncontested matter, the better practice is for the prosecutor to represent the State in all delinquency hearings.

In practice, at uncontested hearings and sometimes at contested hearings, the juvenile court counselor assumes the role of representing the State’s interest because the court counselor is typically more familiar with the facts of the case and the juvenile’s background than the prosecutor. Such an expanded role by the court counselor tends to make the proceedings less formal and may pose a threat to the juvenile’s due process rights by making it easier for inadmissible evidence to be allowed and harder for the

juvenile's attorney to object and to be heard. Counsel should consider objecting if this occurs.

The State's right to appeal is limited to any order that terminates the case by: upholding the defense of double jeopardy; holding that a cause of action is not stated under a statute; granting a motion to suppress; or finding a State statute unconstitutional. G.S. 7B-2604(b); *see infra* Ch. 16, Appeals.

Interaction with the prosecutor is necessary for counsel to represent the juvenile effectively. A professional relationship may facilitate various procedures, including discovery and plea negotiations. Although a written motion for discovery should always be filed, counsel may also contact the prosecutor to make arrangements for discovery as well as to negotiate an admission, when appropriate, and to discuss proposals for disposition.

C. Juvenile

The juvenile alleged to be delinquent is the subject of the petition and, as such, is the respondent. The juvenile must be personally served with a summons directing the juvenile to appear at a hearing at a specified place and time, along with a copy of the petition setting forth the delinquent acts that the juvenile is alleged to have committed. G.S. 7B-1802, 7B-1805(a), 7B-1806. Counsel should check the juvenile court file for proper service of the petition and summons, particularly if the juvenile does not appear at the hearing and the court is considering issuing a secure custody order. *See infra* Ch. 6, Petition and Summons.

The juvenile has the right to be represented by counsel and must be present at all proceedings; there is no provision for waiver of counsel or appearance. G.S. 7B-2000, 7B-1805. The juvenile is a party at all stages of the proceeding, including pre-adjudicatory hearings, discovery, adjudication, and disposition. At adjudication, the juvenile has the right to confront and cross-examine witnesses and to decide whether or not to testify. G.S. 7B-2405. At the dispositional hearing, the juvenile may present evidence and argument for a specific disposition. G.S. 7B-2501.

D. Attorney for Juvenile

Statutory provisions. Although not a party, the juvenile's attorney is a participant in every court proceeding and has statutory rights as well as ethical obligations. The statutory definition of "juvenile" provides that "[w]herever the term 'juvenile' is used with reference to rights and privileges, that term encompasses the attorney for the juvenile as well." G.S. 7B-1501(17). Because the juvenile does not have the right to self-representation, counsel will be involved in every aspect of the delinquency proceeding. *See generally infra* Appendix 3-1, Role of Defense Counsel in Juvenile Delinquency Proceedings; *compare* 1 NORTH CAROLINA DEFENDER MANUAL § 12.8, Attorney-Client Relationship (2d ed. 2013).

Repayment of attorney’s fees. While the juvenile cannot be held liable for attorney’s fees, the court may require payment of attorney’s fees from a person other than the juvenile, such as a parent, guardian, or trustee. G.S. 7B-2002; G.S. 7A-450.1, 7A-450.2, 7A-450.3. The court determines at the dispositional hearing whether the parent, guardian, or trustee should be held responsible for attorney’s fees. G.S. 7A-450.3.

E. Parent, Guardian, or Custodian

Role of parent, guardian, or custodian. The parent, guardian, or custodian (hereinafter the parent) plays an integral role throughout the proceedings, from participation in the intake process and appearance at all scheduled hearings to involvement in dispositional and post-dispositional plans. Parental support, or lack thereof, can make a difference in the outcome of the case and may require ongoing interaction with the parent. Counsel should represent the expressed wishes of the juvenile, however, which sometimes may conflict with those of the parent. *See generally infra* Appendix 3-1, Role of Defense Counsel in Juvenile Delinquency Proceedings; *see also* 1 NORTH CAROLINA DEFENDER MANUAL § 12.8A, Control and Direction of Case (2d ed. 2013).

There is no duty for the juvenile’s attorney to talk with the parent, although doing so will generally be necessary as a part of case preparation. Generally, the parent should not be allowed to sit in on counsel’s interview with the juvenile. Because there is no parent-child privilege, the parent is subject to being called as a witness and must be excluded to maintain attorney-client confidentiality. Counsel should explain to the parent the need for a private meeting with the juvenile to prevent hurt or angry feelings.

Intake. The juvenile court counselor who conducts the intake evaluation usually sends a letter to the parent requesting that the juvenile be brought in for an appointment. If the parent brings the juvenile to the appointment and is cooperative, depending on the circumstances of the case, the complaint is more likely to be diverted. Conversely, the case is less likely to be diverted if the appointment is missed or if the parent is uncooperative.

Petition, summons, and notice. The parent’s name and last known address must be included on the petition, which must be personally served along with a summons issued to the parent. G.S. 7B-1802, 7B-1805(a), 7B-1806. A statement must be included in the summons advising that jurisdiction is obtained over the parent upon service of the summons and petition. G.S. 7B-1805(c). Notice of all scheduled hearings must be given “to all parties, including both parents of the juvenile. . . .” G.S. 7B-1807. The parent is required to appear at and bring the juvenile to scheduled hearings and to comply with orders of the court. A parent may be held in criminal contempt for failure to follow these mandates. G.S. 7B-1805, 7B-2700.

Secure custody hearing. At a secure custody hearing, the parent is allowed to examine witnesses, present evidence, and testify on the parent’s own behalf. G.S. 7B-1906(d). Counsel for the juvenile should be prepared to respond, if necessary, to the parent’s presentation to the court.

The parent's position at a secure custody hearing is crucial. A parent who is willing to have the child back home and enforce any court-imposed conditions might persuade the court to release the juvenile from secure custody. Conversely, a parent who insists that the juvenile cannot come home will harm the juvenile's chances for release.

Counsel should talk with the parent about the juvenile's release from secure custody and discuss possible options. For example, if the parent wants the juvenile to come home, counsel could help the parent formulate a plan for care at home. Possible conditions of release might include after-school supervision, a curfew, counseling, or other treatment.

If the parent is against release from secure custody, counsel should try to ascertain the parent's underlying concerns. Counsel can then discuss with the juvenile the parent's objections to release. If the juvenile is willing to make changes in behavior and to follow conditions set out by the court, counsel can relay that information to the parent. Counsel may also explain to the parent the possible consequences of continued secure custody, such as extended out-of-home placement, a referral to the department of social services, or a more restrictive disposition for the juvenile if found delinquent. If the parent remains opposed to the wishes of the juvenile, counsel should present evidence and argument to counter the parent's position at the dispositional hearing.

Discovery. The parent may be able to provide information to counsel that will assist in discovery, such as statements made by or actions of a law enforcement officer during the investigation, or the existence of prior evaluations or treatment of the juvenile. The parent may also provide names and addresses of potential witnesses. Consultation with the parent may be required for counsel to understand fully the information received through discovery.

Adjudication. Although the statute provides that the parent has the same rights that the juvenile has in an adjudication hearing (G.S. 7B-2405), the general practice is not to include the parent as a party during the adjudicatory hearing.

The juvenile may want to consult the parent regarding terms of admission or "plea negotiations," and may ask counsel to explain any offer to the parent. Counsel must make clear to the juvenile and the parent, however, that the decision whether to accept a plea offer is ultimately the juvenile's.

Disposition. The parent is allowed to offer evidence in rebuttal to the predisposition report and to present evidence and recommendations at the dispositional hearing. G.S. 7B-2413, 7B-2501(b). Usually the court will ask if the parent wishes to make a statement during the hearing. *Cf. In re M.J.G.*, 234 N.C. App. 350 (2014) (assuming arguendo that trial court erred by failing to give the juvenile's mother an opportunity to make a statement before entering a disposition, any error was harmless given that the juvenile's mother did not object to the disposition when the court ultimately permitted her to speak); *In re Powers*, 144 N.C. App. 140 (2001) (parents' rights to present evidence and make recommendations at dispositional hearing were not violated when trial court did not address parents and record did not show any attempt by parents to make statement). The

court may also explain the parent's duties while the juvenile is on probation or otherwise under the court's jurisdiction. As part of a dispositional order, the parent may be ordered to undergo psychiatric, psychological or other treatment, attend parental responsibility classes, or pay the cost of the juvenile's treatment or placement. G.S. 7B-2502(b), 7B-2701, 7B-2702(c).

The parent's presentation at the dispositional hearing may have a determinative effect in persuading the court to adopt the juvenile's proposed plan. If the parent's position is contrary to that of the juvenile, counsel should try to resolve the conflict but otherwise be prepared to argue against the parent's position at the hearing.

If the parent's position on the disposition of the case is consistent with the juvenile's, counsel may consider calling the parent as a witness at disposition. Counsel should observe the parent's demeanor when talking about the juvenile, discuss possible questions with the parent, and review the testimony that the parent would present. After this discussion, counsel must decide whether the parent's testimony will be beneficial or detrimental to the juvenile.

Post-disposition. The parent can play a key role in the success or failure of the juvenile's compliance with the dispositional order. Among other things, the parent can provide encouragement, supervision, and reminders of and transportation to appointments. Counsel should talk with the parent as well as the juvenile about the requirements of the dispositional order and the consequences of failure to follow the order. If the juvenile is placed outside the home as part of the disposition, the parent can offer support through visits, letters, and telephone calls. If the juvenile is committed to a youth development center, the parent should also participate in post-release planning and assist the juvenile in following post-release conditions. *See infra* § 15.9, Revocation of Post-Release Supervision.

Appeal. A parent has the right to appeal an order of the court. G.S. 7B-2604(a). *See infra* Ch. 16, Appeals. A parent presumably can appeal the adjudicatory or dispositional order in addition to orders directed only to the parent. *See In re Powers*, 144 N.C. App. 140 (2001) (parents appealed dispositional order committing juvenile to a residential facility). Orders directed solely to the parent include those requiring the parent to attend parental responsibility classes or undergo medical, psychiatric, or psychological treatment or counseling, contempt orders, and orders requiring the parent to pay the juvenile's attorney's fees. G.S. 7B-2002, 7B-2700 to 7B-2706.

Civil restitution. A person who has suffered physical injury or damage to real or personal property as a result of the malicious or willful actions of a minor may sue to recover monetary damages in civil court from the parent of the minor. The parent is strictly liable for monetary damages up to \$2000 under the statute. G.S. 1-538.1. However, parents are not liable if the minor was removed from their custody by court order or contract prior to the act. *Id.* Although a civil suit is a separate proceeding, the payment of damages to an alleged victim by a parent may be helpful in reaching a satisfactory resolution in the juvenile case.

A parent may also be civilly liable for losses resulting from larceny, shoplifting, theft by employee, embezzlement, or obtaining property by false pretenses by an unemancipated minor. Civil liability arises if the parent knew or should have known that the child was likely to commit such an act and failed to make reasonable efforts to control the child despite having had the opportunity to do so. Compensatory and consequential damages are limited to not less than \$150 and not more than \$1000. G.S. 1-538.2.

Educational entities are entitled to recover much more substantial sums from a parent of an unemancipated minor who commits certain offenses specified by statute. These offenses include those occurring on “educational property” involving explosives or incendiary devices, a hoax using a false bomb, a false report of a destructive device, or use of a firearm. Civil liability arises if the parent knew or should have known that the child was likely to commit such an act and failed to make reasonable efforts to control the child despite having had the opportunity to do so. G.S. 1-538.3 (Negligent supervision of minor).

Repayment of attorney’s fees. The court may require payment of attorney’s fees from a person other than the juvenile, such as a parent, guardian, or trustee. G.S. 7B-2002; G.S. 7A-450.1, 7A-450.2, 7A-450.3. The court determines at the dispositional hearing whether the parent, guardian, or trustee should be held responsible for attorney’s fees. G.S. 7A-450.3.

F. Foster Parents and Other Caretakers

Foster parents and other caregivers who have “assumed the status and obligation of a parent without being awarded legal custody of the juvenile by a court” are entitled to receive notice of juvenile hearings. G.S. 7B-1807. They are not otherwise given statutory rights as a party or participant in the proceeding because they are not a parent, custodian, or guardian. In practice, however, they play an important role. For example, although a juvenile may be in the legal custody of the department of social services, the foster parent is the person who provides day-to-day care. The foster parent may be the person who brings the juvenile to appointments with the court counselor and the juvenile’s attorney, and accompanies the juvenile to court. Likewise, the juvenile may live with a relative or friend who has no legal authority but who serves as a parental figure.

A caretaker may be called as a witness by the State or by the juvenile at the adjudicatory or dispositional hearing. The court counselor’s dispositional recommendations and the feasibility of a dispositional plan may be greatly influenced by the caretaker. A caretaker should be consulted by counsel just as a parent would be. For a discussion of whether a caretaker may be considered a guardian for purposes of interrogation, see *infra* § 11.4E, Right to Have Parent, Custodian, or Guardian Present.

G. Juvenile Court Counselor

Overview. The juvenile court counselor (hereinafter court counselor), although not a party, has important statutory duties throughout the juvenile proceeding, from receiving

and evaluating complaints during the intake process to preparing a predisposition report and risk and needs assessment to be submitted if the case progresses to disposition. Counsel for the juvenile should endeavor to establish a good working relationship with the court counselor to facilitate access to records and other information. The counselor may also be more inclined to review information provided by counsel on the juvenile's behalf.

Historically, the court counselor has played an important role in the courtroom. In some instances, counselors have acted outside statutorily defined duties and assumed the role of prosecutor, making remarks in open court that are, in effect, testimony without having been sworn as a witness. This practice may minimize the role of the juvenile's attorney by making it more difficult to cross-examine the court counselor or make objections. Counsel should be well acquainted with the statutory responsibilities of the court counselor and should object as necessary if the counselor exceeds that role.

Statutory role. The court counselor has the statutory duty to decide whether a complaint should or must be filed as a petition or whether it will be diverted. G.S. 7B-1701, 7B-1702; *see infra* § 5.3, Intake. Thus, the court counselor has the power to determine that a divertible offense will never come to court. *See infra* § 5.4, Diversion.

Secure custody. A secure custody order is often issued based on information from the court counselor. In addition, the chief district court judge may delegate authority by administrative order to the chief court counselor or the chief court counselor's counseling staff to issue a secure custody order. G.S. 7B-1902. The court may not, however, delegate the authority for the juvenile to be detained or housed in a holdover facility. *Id.* Counsel should contact the court counselor when the juvenile is in secure custody to obtain information concerning the issuance of the secure custody order.

Adjudication. Other than at a probable cause hearing, the prosecutor is *required* by statute to represent the State at contested hearings only. G.S. 7B-2202(b)(1), 7B-2404. Therefore, the court counselor may step in to present the State's evidence in an uncontested adjudication. This practice, however, may constitute the unauthorized practice of law as well as conflict with the court counselor's duty to present an unbiased report and recommendations at the dispositional hearing.

Disposition. At disposition, the court counselor has a prominent role mandated by statute. The court counselor submits a predisposition report, also called a dispositional report, with a risk and needs assessment of the juvenile. The report must include information regarding the juvenile's "social, medical, psychiatric, psychological, and educational history, as well as any factors indicating the probability of the juvenile committing further delinquent acts. . . ." G.S. 7B-2413. The report containing the risk and needs assessment is not to be undertaken before adjudication without the written consent of the juvenile, the juvenile's parent, guardian, or custodian, or the juvenile's attorney. *Id.* Counsel should obtain or provide this consent if a delay in disposition might be detrimental to the juvenile.

The dispositional hearing cannot proceed until the court receives the predisposition report containing the dispositional recommendations unless the court makes a written finding that one is not needed. Counsel for the juvenile is entitled to have and to review the report before the dispositional hearing. G.S. 7B-2413. In practice, the court may proceed on an oral presentation by the court counselor. Counsel should object if lack of a written report is detrimental to the juvenile. Because the court often gives great weight to the report of the court counselor, juvenile's counsel should work with the counselor, if possible, to arrive at recommendations acceptable to the juvenile. Otherwise counsel should be prepared to respond to the dispositional report and offer alternatives that further the juvenile's objectives. Counsel should be alert for the need to cross-examine the court counselor regarding the report and recommendations, or to move to strike portions of the report that contradict or are not supported by evidence presented at adjudication.

Counsel for the juvenile is entitled to review the court counselor's records. G.S. 7B-2413. Reviewing the records and contacting the court counselor are an important part of counsel's investigation. Counsel should request a copy of the predisposition report in advance and be prepared to counter any information contained in the predisposition report.

H. Law Enforcement Officer

A law enforcement officer is often the petitioner or a witness in a delinquency proceeding. There are statutory guidelines that a law enforcement officer must follow in interrogating, fingerprinting, and photographing a juvenile or obtaining other nontestimonial identification of a juvenile. G.S. 7B-2100 to 7B-2109; *see infra* § 2.8E, Nontestimonial Identification Records. If a law enforcement officer is involved with the juvenile's case, counsel should request all law enforcement records in order to determine whether:

- statutory and constitutional guidelines were followed in investigating the case;
- any physical evidence is in the possession of law enforcement;
- the juvenile made an in-custody statement or admission;
- the juvenile made an out-of-custody statement or admission to anyone; or
- statements were taken from potential witnesses.

Many juvenile cases are based on an admission of the juvenile, so it is important to review any admissions made by the juvenile and evaluate the circumstances surrounding the admissions. Counsel should be alert for violations of the juvenile's statutory and constitutional rights and should be prepared to move to suppress admissions that result from such violations. A careful review of law enforcement records may also reveal potential witnesses for the juvenile, as well as assist counsel in making objections during the adjudicatory hearing.

I. Guardian ad Litem

A guardian ad litem is a person who is appointed in a legal proceeding to represent the interests of a party who is under a legal disability, including minority and incompetence, often pursuant to Rule 17 of the North Carolina Rules of Civil Procedure. The guardian ad litem stands in place of the real party in interest—the person for whom the appointment was made—and makes decisions as required for the case.

Even though all juveniles are minors, appointment of a guardian ad litem for an alleged delinquent is neither required, as in cases alleging neglect or abuse, nor provided for in the court's discretion, as in cases alleging dependency. *See* G.S. 7B-601. A guardian ad litem might arguably be appointed pursuant to Rule 17 of the Rules of Civil Procedure, but there is no statutory provision authorizing payment of the guardian ad litem from State funds. A juvenile unable to make decisions and assist counsel in formulating a defense, however, would generally be considered incapable of proceeding and therefore subject to the provisions of G.S. 15A-1001 through 15A-1003 of the North Carolina Criminal Procedure Act. One who is incapable of proceeding cannot be subject to an adjudication of delinquency. *See infra* Chapter 7, Capacity to Proceed; *see also* Janet Mason, [*Minors as Parties in Civil Actions*](#), JUVENILE LAW BULLETIN No. 2007/02, at 12–13 (June 2007).

If a parent or a sibling is the alleged victim, the juvenile might benefit from appointment of a guardian ad litem to advocate for the best interests of the juvenile, which is ordinarily the role of the parent. In these cases, the parent might have divided loyalties or even hostility toward the juvenile resulting from the alleged offense.

J. Other Participants

Department of Social Services. The juvenile may be the subject of an investigation by or be in the custody of the local department of social services (hereinafter DSS) because of abuse, neglect, or dependency allegations. This could affect many aspects of the delinquency proceeding, including disposition, in that the juvenile may be unable to return home as a result of a juvenile order in a DSS proceeding. Counsel should contact the DSS social worker to determine the juvenile's status.

If the juvenile is not in DSS custody and is in need of treatment or is ordered at disposition in the juvenile delinquency case to comply with conditions, the juvenile court counselor will be responsible for supervising the juvenile's compliance with those conditions. As an alternative to the court counselor supervising the juvenile, the delinquency court can also place the juvenile in DSS custody. G.S. 7B-2503(1)c., 7B-2506(1)c. The director of DSS would then be permitted to arrange for treatment for the juvenile and assign a social worker to assist the juvenile in complying with treatment.

Mental health service providers. The juvenile may have received or may be receiving mental health services. If so, there are records that include progress notes, medication history, and evaluations of the juvenile. Counsel should obtain the standard release form

used by the provider involved and have the juvenile and the juvenile's parent sign for release of the records to counsel. This will allow counsel to receive copies of the juvenile's records and to discuss the juvenile's history and needs with the treatment providers. The counselor or therapist may be more likely than others to promote treatment and may be a potential witness and ally for the juvenile at disposition.

School personnel. Counsel should obtain a release of information and investigate the juvenile's current school status, academic and disciplinary history, and special education needs, if any. School personnel are often involved in the juvenile's case, both in and out of court, because of the allegations or other school issues. The juvenile's attorney should contact school personnel to determine the school's objectives, which may conflict with those of the juvenile. Counsel should be prepared to respond to information provided to the court by school personnel.

Counsel should ask whether the juvenile has an Individualized Education Plan (IEP). IEP is the unique plan developed for each public school child with a disability who needs special education and related services. The IEP is developed by a team of qualified professionals and the child's parents to address the specific needs of the child within the school setting. See [A Guide to the Individualized Education Program](#), U.S. Department of Education (July 2000).