

# **THE FIRST SEVEN DAYS**

**AS A PARENT DEFENDER**

**TIMOTHY HEINLE**



**SCHOOL OF GOVERNMENT**  
**Public Defense Education**



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# The First Seven Days as a Parent Defender

## A Typical Juvenile Abuse, Neglect, and Dependency Case

It is Monday afternoon, but it already feels like it should be Friday. You find yourself in a familiar situation—needing to be in multiple courts at the same time, while emails, voicemails, and clients wait for you in your office. You receive a new appointment to serve as a parent defender in a juvenile abuse, neglect, and dependency (hereinafter A/N/D) proceeding. There are numerous allegations. However, the county department of social services (DSS) has not obtained nonsecure custody of the child, meaning there is no hearing in the next week to worry about. You set the paperwork down, planning to look at it tomorrow. One month later, you pick the paperwork back up. You have less than a week to prepare for the adjudication hearing.

Being an attorney is difficult. Attorneys wear different hats for their clients, colleagues, and people in their personal lives. With several forces competing for your attention, it can be challenging to tackle the tasks before you on a given day, let alone a new case that is not set to be heard for weeks or months.

The goal of this guide, which is part of a series,<sup>1</sup> is to identify steps that you, an appointed attorney for a parent in an A/N/D case, can take early in the life of the case that will help you hit the ground running. With a little practice, these tools will set you up for success down the road. Being a better-prepared attorney can mean better outcomes for clients and a less stressful day at the office.

## The Timeline of a Typical A/N/D Case

A/N/D cases may involve multiple stages—lasting anywhere from several weeks to several years—as delineated by North Carolina’s Juvenile Code in Chapter 7B of the North Carolina General Statutes (hereinafter G.S.).<sup>2</sup> For an illustration depicting the stages of a typical A/N/D case, see Sara DePasquale’s book, *Stages of Abuse, Neglect, and Dependency Cases in North Carolina: From Report to Final Disposition* (UNC School of Government, 2019). An upcoming

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1. The initial guide in the series, *The First Seven Days as a Guardian ad Litem in an Incompetency Proceeding* (2021), as well as future guides, can be found here: <https://defendermanuals.sog.unc.edu/manual/indigent-defense-practice-guides>. Electronic versions of any future guides will also be available on this website.

2. In this guide, references to G.S. Chapter 7B are current for all legislation enacted as of October 1, 2021.

2021 update to that resource will include changes to A/N/D case stages as a result of Session Law 2021-132.<sup>3</sup> Among the changes it makes to the Juvenile Code, S.L. 2021-132 modifies G.S. 7B-906.1 and the timing and types of hearings required for juveniles by providing two dispositional tracks depending on whether the court has removed custody of the juvenile from the juvenile's parent, guardian, or custodian.<sup>4</sup>

Some of the most critical developments in an A/N/D case take place in the earliest stages, making early preparation and organization vital. Moreover, various factors may alter this timeline, including whether reunification efforts are successful or are ceased, different hearings are scheduled for the same court day, motions for additional hearings are granted, or hearings are continued. Depending on the particular case, the timeline of an A/N/D case could be delayed or accelerated significantly.

In some instances, a termination of parental rights proceeding pursuant to G.S. 7B, Article 11 may be initiated with the filing of a motion in a pending A/N/D matter or with the filing of a petition.

## The First Two Days

### Reviewing the Filings

#### How to Begin

To avoid putting off a new case, break the habit of flipping through the paperwork of a new case and setting the packet aside with the best intention of getting back to it the next day. Instead, read the filings entirely soon after receiving a new case. As you review the filings, take notes on a piece of paper or, if you prefer, on a second copy of the pleadings. Writing down questions or ideas that come to you as you read the filings gets you engaged as an active reader and makes it less likely you will forget something.

#### The Usual Pleadings and Forms

As a parent defender in a new case, you should receive several filings that make up the initial pleadings. The following should occur:

- You will receive a copy of the juvenile petition, typically on the North Carolina Administrative Office of the Courts (AOC) form AOC-J-130. In some jurisdictions, the county department of social services (DSS) or equivalent child-welfare agency will provide additional pages with allegations that do not fit in the space available on the form.
- You will receive a copy of the juvenile summons and notice of hearing on form AOC-J-142. This will provide you with important information, including the contact information for other parties and their attorneys as well as the dates and times of any pending hearings.
- In most cases, you will receive an affidavit about the status of the minor child, typically on form AOC-CV-609. This information may be in the verified petition rather than on a separate form. The purpose of the affidavit is to provide information about where and with whom the juvenile has lived in the past five years and to notify you of any other custody actions involving the juvenile. This information satisfies the requirements of the

3. Session Law 2021-132 can be found here: <https://www.ncleg.gov/Sessions/2021/Bills/Senate/PDF/S693v7.pdf>.

4. S.L. 2021-132 includes the term *caretaker* for situations in which custody of the child is not being removed. The term *caretaker* is not included, however, in situations in which custody is being removed. This author believes this internal discrepancy to be an oversight, with the term *caretaker* mistakenly included in non-removal situations.



Uniform Child-Custody Jurisdiction and Enforcement Act in G.S. 50A and, specifically, the requirements described in G.S. 50A-209 regarding information to be provided to the court.

- If DSS has received nonsecure custody of the child, you will receive a copy of the order for nonsecure custody, commonly on form AOC-J-150. That order will contain the scheduled return date for a hearing on the need to keep nonsecure custody in place. Because nonsecure custody may have been granted before you were appointed, the initial hearing will be held quickly after your appointment, making your prompt and thorough review of the filings essential.
- You may receive an order appointing a guardian ad litem and attorney advocate for the juvenile pursuant to G.S. 7B-601 on form AOC-J-207. In most cases, a guardian ad litem will be a volunteer from the community who is not necessarily an attorney, unlike the guardian ad litem attorney advocate. Whether you receive an order appointing a guardian ad litem and attorney advocate for the juvenile in your initial packet may depend on your jurisdiction's customary practice for including the order and how soon the order is entered after the petition is filed. If you are not provided the order, and you believe a guardian ad litem has been appointed, you should request a copy of the order from the clerk.
- As the petitioner, DSS will need to comply with the requirements of the North Carolina Servicemembers Civil Relief Act, G.S. 127B, Article 4, which helps to protect the rights of active military members. You will likely be provided the required affidavit or declaration on form AOC-G-250.

If you are appointed to a client in an existing case (e.g., to represent a parent whose child was previously adjudicated neglected but whose attorney has since withdrawn), then you may receive only a copy of the order appointing you as counsel. You will need to go to the clerk's office to review the file and make another copy of any documents.

## The Allegations

When reviewing the allegations in the petition, the first step is to note whether DSS is seeking an adjudication of abuse, neglect, dependency, or some combination of the three. The juvenile petition on form AOC-J-130 contains a checkbox for each of these three grounds. Although the boxes DSS checks on the form can be instructive, North Carolina appellate courts have held that a ground for adjudication has been properly alleged so long as the written allegations sufficiently notified the parent of the ground. *See, e.g., In re K.B.*, 253 N.C. App. 423, 801 S.E.2d 423 (2017). In other words, the checkboxes do not determine the potential grounds that may be considered at adjudication.

Pay attention to the overall premise of the allegations. Determine why the government is involved and the theme of the allegations. The petition may stem from a specific event, such as the use of inappropriate discipline, or there may be some persistent condition that underlies the allegations, such as poverty, chronic illness, or medical neglect. These themes can help form your theory of defense—the facts, evidence, and narrative you and your client will present to the court.

Take note of what is left unsaid in the petition as well. Write the issues you want to explore further in the margins of the petition or on a separate piece of paper. For example, you may want to know more about the dynamic between your client and another party. Alternatively, the allegations may suggest that another agency or provider, such as a hospital or law-enforcement office, was likely involved. Tracking your questions as you read will help you think bigger, craft a defense, and make a plan of action.

## Compliance with Procedural Requirements

Your initial review of the filings is a good time to ensure that procedural requirements have been met. When reviewing the record, ask the following questions:

- Have hearings been calendared within the time frames established in the juvenile code?
  - The initial hearing will be on the need for continued nonsecure custody, if nonsecure custody has been ordered. Most hearings to determine the need for continued nonsecure custody must take place within seven days of the original order granting nonsecure custody; however, that time frame can be extended or accelerated depending on the circumstances. The hearing may be continued for up to ten business days, with the consent of all parties. G.S. 7B-506(a). If, however, the initial nonsecure custody order was obtained after normal business hours when the clerk's office was closed and was issued by a person who is not a judge but who is delegated by an administrative order in that judicial district to issue nonsecure custody orders, then the hearing must occur on the next regularly scheduled session of district court. G.S. 7B-506(a).
  - When a new petition is filed, a pre-adjudication hearing must be held. This hearing may be combined with any other pre-trial hearing, including a hearing on the need for continued nonsecure custody. G.S. 7B-800.1.
  - The adjudication hearing, which is the hearing on the merits of the allegations, must initially be scheduled for within sixty days of the date the underlying petition was filed. G.S. 7B-801(c). You will also receive notice if DSS intends to move forward with an initial disposition hearing and, less commonly, a review and/or permanency planning hearing, on the same day as the adjudication hearing. *See In re C.P.*, 258 N.C. App. 241, 812 S.E.2d 188 (2018). Be careful not to gloss over the calendaring of multiple hearings by DSS for the same day and then be caught off guard in court.
- Have the procedural requirements for the petition been met? For example, check to see whether the petition is properly verified. If not, the court does not have subject-matter jurisdiction.<sup>5</sup> G.S. 7B-403(a)
- Is the venue proper? With some exceptions, a juvenile A/N/D case “may be commenced in the judicial district in which the juvenile resides or is present at the time the petition is filed.” G.S. 7B-400.

## Identifying the Players

As you review the filings, highlight the names of any people mentioned, including nonparties. Next, complete a conflict check on each person. Identifying conflicts of interest early on may help you avoid a messy situation later. If a conflict could result in your withdrawal and the appointment of a new attorney for your client, it is in your client's interest for those events to occur as soon as possible.

## Creating a File

### Develop a Filing System

Organization is key. Develop a filing system for inside your office and determine how you will assemble the files you take to court. An attorney who appears unprepared or unknowledgeable about the details of a case risks losing the client's confidence and frustrating the court.

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5. For a detailed discussion of the various petition requirements, including the summons and service, see sections 4.2, “Procedures Regarding the Petition”; 4.3, “Summons”; 4.4, “Service”; and 5.3, “Starting the Abuse, Neglect, Dependency Court Action” in Sara DePasquale and Jan S. Simmons, *Abuse, Neglect, Dependency, and Termination of Parental Rights Proceedings in North Carolina* (UNC School of Government, 2019). An electronic version of the manual can be found at <https://www.sog.unc.edu/resources/microsites/abuse-neglect-dependency-and-termination-parental-rights>.

## Calendar Case Dates

As part of your initial, thorough review of a new case, add all dates related to the case to your calendar. The sooner you add hearing and appointment dates to your calendar, the less likely you are to end up with a scheduling conflict. Additionally, any conflicts that already exist will be immediately apparent, giving you sufficient time to resolve the issue.

Consider adding reminders or deadlines to your calendar for you to take certain actions, such as issuing subpoenas or contacting certain people. Reminders will help ensure that you do not lose track of the case and find yourself behind schedule. Remaining diligent about your calendar will allow you to return to your other work with the confidence that you have a handle on your new case.

## Create an Inside-the-Cover Template

One way to improve organization is to create a template for an inside-the-cover insert for each file. When creating the template, think about the information that would be beneficial to have quickly available to you for reference. This information may include party names, dates of birth, addresses, and file numbers. Consider designating a portion of the template for information that is difficult to remember (e.g., service providers and prescriptions) or for client milestones (e.g., clean drug screens or graduation from an anger-management program). For cases with several players involved, include your client's family tree. Leave space in the template for you to track the time you spend working on the case, which will help you prepare a fee application or itemized bill. The appendix includes an example of a template for a file insert that a parent defender can use. (See page 13.)

# The Next Five Days

## Initial Client Contact

### Contacting Your Client for the First Time

You should initiate contact with your client within the first week of being appointed. In most appointed cases, that begins with a letter to your client. Create a letter template for your initial outreach to clients that you can easily update and reuse as needed. Developing a letter template will ensure that you convey all necessary information, reducing the risk of overlooking something important by starting a new letter from scratch in each case. A template for an initial-client-contact letter is provided in the appendix. (See page 18.)

The initial letter should explain your role to your client and how the client can schedule an appointment with you. The letter also should explain, in general terms, the possible consequences of the proceedings and the importance of the client speaking with you as soon as possible. Sending the letter does not necessarily mean that the client will understand the situation or be able to follow through. You should not wait too long before reaching out to your client through other methods. Sending a written letter first, however, helps to document the beginning of your efforts. Keep a copy of the letter in your records.

If you do not hear back from you client, you need to continue to make efforts to contact them. Remember that your client may be dealing with poverty, illiteracy, mental-health challenges, fatigue, or unstable housing. As busy as attorneys are, advocacy requires that they do more than send one letter or meet the client the morning of court. Send letters, yes, but also make phone calls, reach out to the social worker for current contact information for your client or client's relatives, and utilize social-media channels to try to contact your client. One option is to ask the social worker when your client has a visit or other appointment scheduled and see whether you can meet your client when the visit or appointment is finished. Or ask the social worker to have your client call you the next time the social worker speaks with your client. If there are concerns about your client's ability to reach you, consider asking the

social worker to initiate a call between your client and your office—not to discuss anything confidential in the social worker’s presence, but to make contact and arrange for a meeting with your client.

### Your Initial Client Meeting

**Prepare and use a template.** Create an initial-client-meeting template for use during your initial meeting that includes information you want to share with your client and questions you need answered. Being comprehensive in this meeting will help you obtain firsthand information from your client whenever possible and avoid the easy trap of putting too much emphasis on the allegations about your client made by others, particularly DSS. The template should be broken into categories and should be organized however you prefer, but in a way that will make the meeting productive.

- *Provide general information to the client.* It is easy to inadvertently overlook parts of the process of an A/N/D case that are routine to you as the attorney but new to the client. Include reminders to discuss with the client your role as attorney, hearing dates and locations, and whether the client needs assistance from the social worker with transportation. Explain who the other parties are in the proceeding and whether the client should have communication with those parties.<sup>6</sup>
- *Review the client’s rights.* Clients need to know they have a right to make decisions and identify goals for the case, contest the petition, and participate in hearings. Review the client’s right to object to placements, custodial arrangements, or medical decisions and other types of decisions. Discuss the client’s right to propose alternative caretakers for the client’s child or children with whom the client is comfortable.<sup>7</sup> Inquire about possible accommodations the client needs, including a courtroom interpreter or assistance with reading.
- *Look beyond the petition.* Learn as much about your client’s personal, professional, and familial background as you can. Next, learn about the client’s child or children. Learn about each child and your client’s relationship with each child. Ask open-ended questions that give your client a chance to talk, vent, and share, which is important both for presenting a strong case and developing a rapport with your client.
- *Get more specific.* Next, your initial-client-meeting template should focus on the petition. Make sure the client has received and reviewed a copy of the filings. If not, give the client some time to review the petition, or review the petition together. Be sensitive to the client when reviewing the allegations but also be direct. Straightforward communication is important in advocacy. Ask the client to describe the events that have brought this family to this point. Find out if your client or your client’s child needs anything. While you cannot solve every problem the client has, the client should feel comfortable telling you about issues they are facing. Reassure the client you will help to problem solve however you can. Remember that this time is often extremely stressful and tiring for your client. A little empathy can go a long way.

An example of a template to guide you during your first meeting with a new client is included in the appendix. (See page 14.)

**Provide a roadmap.** Inform your client how these cases typically unfold and when and what you generally expect will happen. Some clients have an image in their minds of court based on television or previous court experiences. For example, the client may believe that court is a one-time occurrence, which is often not what happens in A/N/D proceedings. Let the client know that the case will be over if the petition is dismissed at adjudication, but also prepare the

6. See page 9, “Communicating with nonparties and potential placements.”

7. See page 7, “Identify alternative placements.”

client with a forecast of how things will proceed in the event the petition is granted. Manage your client's expectations by explaining the purposes and limitations of each upcoming hearing.

**Sign releases.** Use your initial meeting with your client to begin the process of obtaining records. Some record holders will require a release signed by your client. Have standard releases prepared ahead of your meeting for your client to review and sign. Create a release template for you to use with clients that allows them to write in the names of any providers identified during the meeting. For some records, your client's release may need language that satisfies the Health Insurance Portability and Accountability Act (HIPAA) or confidentiality restrictions of substance-use-disorder records. *See* 45 C.F.R. §§ 160, 164; *see also* 42 C.F.R. § 2.1–.67. The appendix includes an example of a release template for clients to sign as needed. (See page 16.) The appendix also includes a HIPAA checklist, created by the North Carolina Department of Health and Human Services, Division of Public Health, which you may find useful in crafting releases or records requests for certain providers. (See page 17.) Often, facilities will have their own releases. If there is a facility in your area from which you commonly request records, such as a hospital or treatment center, consider making copies of that facility's blank release forms to have ready for future cases.

**Prepare a witness list.** Parent defenders need to be prepared for the possibility of calling witnesses at every stage of the proceeding, including any hearings on nonsecure custody. If a particular event or date is referenced in the petition allegations, find out who else was present during that event or on that date and ask your client for the contact information of those possible witnesses. Ask who the client trusts most in the world to be there and to vouch for the client. Ask about your client's boss, neighbors, or relatives. Find out who in the community knows your client best and in different ways, and which of these individuals has observed your client's parenting. Then, start vetting the list of contacts as possible witnesses.

**Identify alternative placements.** One of the trickiest conversations to have with a client is discussing alternative caretakers for the client's children. Most parents do not want to discuss putting their child in someone else's care. Possible placement should not be the very first thing you discuss with your client. In fact, it may be best to discuss placement near the end of the initial meeting. Be thoughtful in how you broach the topic, particularly when it is early in the case, possibly before you have your client's trust. Still, it is important to have this conversation with your client in most cases and to discuss it early on.

If relevant, reassure your client that you are prepared to make strong arguments for why out-of-home placement is not necessary. Then, explain the importance of preparing for every possible outcome, including the need to identify potential alternative placements with someone your client knows and trusts if that becomes an issue in the case. Help your client understand the rationale behind the steps you are taking. An honest conversation will increase the client's confidence in you, and it may help reduce the client's concerns. Explain that as a parent, the client can make a significant contribution to the conversation about where the client's child lives. Explain that an out-of-home placement does not necessarily mean a permanent placement. It is also important, however, to warn the client that the cement can feel like it begins to dry early when it comes to an out-of-home placement for a child. An attorney and a parent need to be motivated to work hard right from the beginning of the case. By being prepared to have this conversation with your client during your first meeting, you will ensure that no delay on your end will contribute to a placement alternative that your client opposes.

Some parents may be in favor of home studies. Explain to your client that home studies take time to complete. Interstate home studies can be especially time-consuming. *See* G.S. Chapter 7B, Article 38, Interstate Compact on the Placement of Children. Help your client

understand that some of the client's goals—such as receiving the results of a home study or achieving reunification with their child—are not achievable overnight. Remind the client that one purpose of the Juvenile Code is to reunify the child and parents when possible and to strengthen the family unit. G.S. 7B-900.

**Consider a parent report or other writings.** Social workers and guardians ad litem typically submit reports to the court for non-adjudicatory hearings. Parents have this option as well, though it happens less frequently. A report provides helpful information to the court and allows the client to play a more active role in the case. Think of the information you will need from the client to complete the report in time. Consider including a picture of your client and the client's child in the report. Gathering this information as part of your routine will help you incorporate parent reports into your practice.<sup>8</sup>

If a parent report is not the best option, consider alternative ways for your client to contribute to the case. One possibility is to have your client write about their child. The parent's description of the child encourages the parent's active participation in the case-preparation process and will help you show the court a fuller and more human picture of your client and their family. This child narrative differs from a parent report in that it focuses solely on the child and may allow the client to discuss the child in a less defensive way.

Another option is to encourage the client to write a letter to the foster parent or placement provider if the child is placed outside of the home. Introduce a copy of the letter in court and distribute it to the other parties. Such a letter may help the relationship between the foster parent and your client and fits within the state policy for shared parenting.<sup>9</sup> A letter from the parent also humanizes your client to the court, social worker, guardian ad litem, and placement provider. The letter can demonstrate the client's love and concern for the child. By writing this type of letter, your client has an opportunity to participate in the case outside of court, to feel productive, and to see another way that you are looking out for the clients' interests.

**Give the client additional tasks.** Use the initial meeting to establish your client's to-do list. Address any task your client needs to accomplish to give your client the maximum time possible to complete it.

For example, have your client gather photographs of happier times, such as holidays or birthdays. If there is anything about possible alternative-placement providers that could be helpful—photographs of the person's home, pictures of the potential caretaker with the child, a thank-you card from the child for a present, or other materials that may help persuade a judge to consider your client's proposal seriously—have your client begin to gather those materials. Arrange for a drug screen if it would be helpful in the case. Provide information regarding programs or services that the client may benefit from or that would help in court. For those services that DSS should assist your client in locating, put a list together and reach out to DSS, in writing ideally, to express your client's interest and request the social worker's help. Then, tell your client how to follow through and explain the importance of doing so.

During your initial meeting with the client, schedule a follow-up meeting (whether in person or by phone) so that it is calendared. Give your client a reminder of the next

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8. Examples of parent reports can be found on the Office of the Parent Defender website: <https://www.ncids.org/parent-representation/abuse-neglect-dependency-and-termination-of-parental-rights/forms-parent-representation/>.

9. Parent defenders should be familiar with North Carolina's policy on shared parenting. Familiarity with the policy may give you a basis for requesting favorable dispositional terms for your client and can be useful when conducting cross-examination of another party, particularly a social worker. The policy can be found on pages 81–85 of the "Permanency Planning Policy, Protocol, and Guidance" section of the *NC Child Welfare Manual* (2019), which can be found here: <https://policies.ncdhhs.gov/divisional/social-services/child-welfare/policy-manuals/modified-manual-1/permanency-planning-1.pdf>.

appointment in writing or, if possible, have the client put it in their phone's calendar. Scheduling this next meeting reduces the chances of too much time passing without you and your client reconnecting. Also, ask your client for the contact information of any friends or family members who may be able to help you reach the client in the event the client's address or telephone number changes.

## The Attorney's Role Beyond the First Seven Days

Not everything can or needs to be accomplished in the first week after you are appointed in a new case. Still, be thinking about the issues in this section from the outset of your representation of a client. Develop strategies for addressing these issues early in the life of a case.

### Evidence Gathering and Fact Finding

For each stage of a case, including in any nonsecure custody hearings, you and your client should consider whether to introduce evidence. You need to be prepared for the possibility of introducing evidence for all hearings. You will not be able to obtain all your evidence during the first week of your appointment. Your initial reviews of the pleadings and your first meeting with your client, however, are good opportunities to begin identifying evidence you want to review and may need for trial. Being familiar with the potential evidence in a case enables you to speak with confidence, prepare better defenses, engage in negotiations, make sound objections, examine witnesses, and better protect your client's interests.

**Communicating with nonparties and potential placements.** Begin reaching out to the people you and your client have identified as being important for you to speak with. To do that, first determine the best way to contact each person, including whether it makes sense for you or your client to reach out. For example, depending on the facts and your client, it may make sense for your client to contact an employer or landlord to let them know they will be hearing from you. How you reach out to a service provider, such as a mental-health provider or physician, may look different as well in light of any confidentiality barriers.

After determining whether you or your client will initially contact these individuals, start scheduling meetings. Recognize that some people may be willing to talk during the initial call, so be prepared to have that conversation. Reaching out to people at this early point in a case will leave enough time for any necessary follow-up.

**Communicating with other parties.** Determine your approach for how and when to contact other parties in the case.

- *DSS.* How and when you should communicate with DSS is case-specific. It can be good for the DSS attorney to know that you are paying attention to a case, your client has been in contact with you and is involved, and you are prepared to litigate the issues. In some cases, it may be best to convey to the DSS attorney that your client is eager to work out a case plan, is committed to services or programs, and that you are available to facilitate those conversations.
- *The guardian ad litem.* Consider helping your client reach out to the guardian ad litem, who your client is likely unfamiliar with. Discuss how the client can convey their wishes and the information about the client's child that is important for the guardian ad litem to know.
- *Other respondents and parties.* Depending on the case, your client may or may not need to be in communication with other respondents and parties. During your initial meeting, advise the client as to each party, including who the party is, the party's role in the proceeding, and how the client should or should not communicate with that party. You may want to schedule a meeting with attorneys for the other respondents and/or

the child's attorney advocate. You may learn valuable information from a meeting about other parties and your own client as well. A meeting also gives you the chance to discuss potential trial strategy with attorneys for some of the other parties. Doing so early in a case may help keep other parties' interests aligned with your client's interests.

**Subpoenas and records requests.** As a case progresses, it is inevitable that you will learn of additional people to speak with. Still, you will be able to identify at least some of the individuals you want to contact from your review of the pleadings and your initial client meeting. Begin preparing a list of possible witnesses, particularly people who would be testifying as experts or in a professional capacity. Issuing subpoenas early in the process allows time for service, helps ensure witness availability, and reduces the chance of a potentially harmful delay to your client.

Similarly, as you review the filings in a new case and work with your client, think about records you would like to see that may answer questions you have or can help you achieve your client's goals. Some of these records may be obvious from the petition allegations. For example, the petition may explicitly or strongly suggest the existence of records in the possession of law enforcement, hospitals or medical centers, treatment and therapeutic providers, or other emergency or service providers. Other record types may be less obvious, such as paystubs or employment verifications, child-support orders and payment history, rental and lease agreements, or the child's school records.

Obtaining these records will take time, and the requests do not always look the same. Some offices will comply with a simple records request on your letterhead explaining your role as the attorney. Create a template record request to save yourself time in future cases. The appendix contains an example of a written records request on attorney letterhead. (See page 19.) If your client has signed a release for an agency or provider to release records to you, include a copy of that release with your letter. Other providers will require a subpoena or a court order. Identifying record holders early in a case will improve your representation of your client. Do not be in the position of having to choose between proceeding with a hearing for which you do not have all the relevant information or seeking an otherwise avoidable continuance, which the court may deny. Record holders are more likely to cooperate when given sufficient time. Avoid the headache of scrambling two days before a hearing to hound an office for records.

**DSS records and discovery.** DSS records contain a wealth of information and are highly relevant to A/N/D proceedings. You need to access as much of these records as you are allowed. DSS records can help you investigate the facts, prepare a defense, impeach a witness, or propose alternative resolutions and dispositions. It is also important that you know the information included in DSS records so that you can make proper objections if the court is asked to review large portions of DSS's files at a hearing. Figure out how you will obtain access to DSS's records, which are subject to numerous confidentiality and disclosure restrictions and procedures. *See, e.g.,* G.S. 7B-302(a1)(5), -700, -2901; 108A-80. Parent attorneys need to be familiar with any local rules or administrative orders in their jurisdiction that govern discovery and information-sharing among parties. *See* G.S. 7B-700(b), -808(c). Before issuing a subpoena and notice for a deposition pursuant to Rule 30 of the Rules of Civil Procedure, and before filing a motion for discovery under G.S. 7B-700(c), a party must first request the information from the party through the sharing provision in 7B-700(a). *In re M.M.*, 272 N.C. App. 55, 845 S.E.2d 888 (2020).<sup>10</sup>

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10. For a detailed overview of information-sharing and discovery, including motions for discovery and protective orders under G.S. 7B-700(c) and (d), see section 4.6, "Discovery," of Sara DePasquale and Jan S. Simmons, *Abuse, Neglect, Dependency, and Termination of Parental Rights Proceedings in North Carolina* (UNC School of Government, 2019). An electronic version of the manual can be found here: <https://www.sog.unc.edu/resources/microsites/abuse-neglect-dependency-and-termination-parental-rights>.



## Potential Alternative Placements and Caregivers

**Requesting home studies.** If relevant, request that DSS and the guardian ad litem begin looking into potential alternative placements or supervisors for visits identified by you and your client. Put the request in writing. If the request is made in person or by telephone, send a follow-up email to memorialize the conversation. These early actions may help the lengthy process of a home study or other assessment get underway more quickly. Obtaining the results of these assessments sooner may make a significant difference to the case outcome. Requesting these assessments also documents your client's early and consistent efforts to have someone the client is comfortable with explored as a short- or long-term caretaker.

**Conducting background checks.** This section is not meant to suggest that you must complete your own assessment of all possible placement providers. For the most part, DSS will conduct background checks on individuals being considered by the court for placement. There may be times, however, when you have a reason for wanting to conduct a background check yourself. For example, there may be someone the client wants to propose as an alternative placement, and you want to learn more about the person first without drawing the attention of the other parties. Or, you may want to conduct your own background check on another individual in the child's life, such as another parent's new significant other.

North Carolina criminal-record checks can be obtained through the clerk of superior court's office and through public-access computers at all courthouses in North Carolina. The procedure for obtaining these records and the associated cost, if any, depend on whether you are requesting a county-only or statewide search and whether you are requesting that the results be certified.<sup>11</sup>

Civil-background checks should also be completed. You can use the North Carolina Civil Case Processing System, commonly referred to as VCAP, to search for possible red flags in a potential caretaker or other person's background, such as prior restraining orders. VCAP is accessible through the civil department of the clerk of court's office.<sup>12</sup> Remember, court records in juvenile proceedings are withheld from public inspection, so a background check will not indicate whether a specific person or the person's household members have had any involvement with an abuse, neglect, and dependency action; termination of parental rights proceeding; or juvenile delinquency case.

Always remember to check social-media accounts for anyone involved in a case, including other parties, people living with other parties, foster-care parents, potential caretakers, and your own client. Compare the results of your social-media search to the statements made by people in meetings or witnesses testifying in court. Social-media histories may be evidence of someone's good and caring nature, or they may make you aware of possible red flags or impeachment issues. Encourage the client to make their accounts private and to be smart about the information they share. Be upfront with your client that you are going to check their social-media pages so that your client does not feel like you are spying on them. Then, follow through so that you can see what other parties doing the same will see.

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11. For a detailed explanation of the procedure for obtaining criminal records and links to appropriate forms, visit the North Carolina Judicial Branch's website at <https://www.nccourts.gov/help-topics/court-records/criminal-background-check>. Other states will have their own systems for background checks.

12. For more information on VCAP, visit <https://www.nccourts.gov/services/remote-public-access-program>. A user manual for VCAP is available at <https://www.nccourts.gov/documents/publications/civil-case-processing-system-vcap-user-manual>.

## Motions and Other Requests

There may be pre-trial motions that are in your client's interest for you to file before adjudication. You will rarely file these motions in the first week following your appointment, although the facts of a case could warrant early action. Always look for issues that may require a motion or request. Some requests will take significant time to complete, making it important to begin work on them early.

Examples of motions or requests<sup>13</sup> parent defenders may file in the early stages of a case include the following:

- motions related to the juvenile's placement, including for home studies or initiating the Interstate Compact for the Placement of Children process for possible out-of-state placement;
- requests for continued nonsecure custody hearings in addition to those hearings already required by G.S. Chapter 7B, Article 5, or for a hearing specifically on the issue of placement of a juvenile in nonsecure custody (G.S. 7B-506(g));
- a motion in limine to exclude evidence another party plans to admit;
- a motion in limine seeking a ruling on the admissibility of evidence you wish to offer; and
- a motion for the appointment of a Rule 17 guardian ad litem for your client if you are concerned about your client's capacity to understand the proceedings. (A request for a Rule 17 guardian ad litem is a significant step. An attorney in this situation must think through the issues of making that request and discuss those challenges with the client before filing.)

## In Summary

The work of a parent defender is critical to our child welfare and judicial system. You represent your client during one of the most difficult and important chapters of the client's life. Each client and case are different. So too are the exact approaches you will take to your work. There are familiar patterns across cases, however, and steps a parent defender will routinely take. There are actions you can take in the first week following your appointment that will save you critical time down the road and will improve your representation. Some of these steps, such as creating and implementing templates, take time to develop at first. Once you have incorporated them into your routine and become comfortable with using these tools, you should soon see the benefits for you and your clients.

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13. You can find examples for other motions, including for remote testimony of a witness, for discovery and depositions, for recusal of a judge, or to obtain and pay for an expert witness, on the Office of the Parent Defender's website at <https://www.ncids.org/parent-representation/abuse-neglect-dependency-and-termination-of-parental-rights/forms-parent-representation/>.

## Appendix: Templates and Checklists

### Case-File Insert

#### Key Case Information

File number	
Client's name	
Client's address	
Client's telephone	
Client's date of birth	
Social worker's name and contact	
Guardian ad litem's name and contact	
Hearing date(s)	

#### Client Notes (e.g., diagnoses, medications, service providers)

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#### Quick Time Tracker

Date	Time spent	Work performed

Parent(s)

Other Relatives

Client

Children with Partner A

Children with Partner B

*Note: The following is an example of a template to use during your first meeting with a new client. You may want to consider a layout like the one in this template, but with topics and questions broken down into smaller pieces. Leave space to add questions specific to each new case based on your review of the filings.*

## Initial-Client-Meeting Checklist

### Information to share with the client

- Explain role as attorney.
- Provide overview of abuse, neglect, and dependency court, including possible consequences.
- Review the roles of each party, including DSS and the guardian ad litem.
- Inform client of the right to contest the petition and the right to be present and heard.
- Remind client of when and where court is.
- Review client's need to make transportation and childcare arrangements for court.
- Discuss possible accommodations the client needs, including a courtroom interpreter or assistance with reading.

### General questions and topics for the client

- Ask client to tell you about themselves.
- What does the client enjoy doing? Where does the client enjoy spending time?
- Where does the client live? Who does the client live with?
- Does the client work? Does the client receive disability assistance? How does the client support themselves and their family?
- Does the client have a doctor? Does the client have a therapist? Who are other service providers the client has interacted with?
- What is the client's medical history? Mental-health history? Substance-use history?
- Who did the client grow up with? What type of upbringing did the client have?
- What is the client's current relationship with relatives?
- What has been the client's experience as a parent? Ask the client about the client's child(ren), both named and unnamed in the petition(s).
- Does the client have a relationship with their child(ren)? Ask the client to describe the client's child(ren). What are they like? What are their needs? How do they typically spend time together?
- What have been the biggest challenges to parenting? What is the best part of being a parent?
- If the client could change something about themselves or their situation, what would it be?
- Find out about any previous DSS involvement or court history the client has.
- Ask the client about friends, family members, or others who could vouch for the client.
- Discuss social media, text messaging, and other possible traps for the client to be careful of.

Use this section to write additional questions that come up during the meeting or to take notes.

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## Initial-Client-Meeting Checklist *(continued)*

### Petition-and-case-specific questions for the client

- Ensure that the client has received a copy of the filings and any other documents.
- Review the allegations completely before discussing each allegation specifically.
- Ask the client about the client's relationship and history with the other parties. Does the client know, like, and trust the other respondent(s)? Do the respondents have a good relationship with each other?
- If applicable, is co-parenting happening? What are the good things and what are the challenges when it comes to the child(ren)'s other parent(s)?
- Review specific allegations one at a time. Ask for the client's reaction to each allegation. Then, ask more pointed follow-up questions. Learn who was there, what happened, and what happened next.
- Ask the client about any interactions the client has had so far with the social worker or guardian ad litem. Discuss what the client's interactions moving forward with those individuals should look like.
- Identify and discuss the client's goals for themselves, their child(ren), and the case. What are the biggest hurdles to those goals? How can the client best position themselves to achieve those goals?
- Identify potential alternative placements and supervisors for visits. Explain the necessity of being fully prepared for any possibility in court. Discuss who will contact these individuals and how.

### Steps for the end of the meeting with the client

- Have the client review and sign any releases for records.
- Give the client a list of required tasks, including evidence gathering and report writing, if any.
- Remind the client again of when and where court is. Write it on your business card and give the card to your client.
- Schedule a second meeting with the client. Write it on your business card and give the card to your client.
- Encourage the client to reach out with questions or concerns. Remind the client that you are there to help the client and that they should keep you informed on what is happening in their life.
- Ask your client to give you multiple ways to contact them. For example, ask for the client's telephone number, mailing address, and email address, if any. Ask the client for the telephone numbers of friends or family members who may be able to help you contact the client.

Use this section to write additional questions that come up during the meeting or to take notes.

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## Authorization and Consent for Release of Client/Patient Records Including for Release of Protected Health Information

### Patient Information

Name: \_\_\_\_\_

Prior name: \_\_\_\_\_

Date of birth: \_\_\_ / \_\_\_ / \_\_\_\_\_

Address: \_\_\_\_\_

SSN (last four digits): XXX-XX- \_\_\_\_\_

Telephone: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

Email: \_\_\_\_\_

I am requesting that \_\_\_\_\_,  
*NAME OF RECORDS HOLDER (e.g., UNC Health)*

located at \_\_\_\_\_,  
*ADDRESS OF RECORDS HOLDER*

release a copy of my records. This request is being made for legal and personal use. I understand the information may be related to treatment for alcohol and/or drug abuse, psychological and psychiatric assessments and care, Acquired Immunodeficiency Syndrome, Human Immunodeficiency Virus, and otherwise private medical diagnoses, treatment, and history. I am requesting the release of all records, including but not limited to notes, treatment plans, laboratory results, imaging, photographs, and billing statements. This authorization is voluntary. This authorization may be revoked at any time by notifying the records holder in writing. I understand that my revocation will have no effect if the authorization has been relied on. I understand the risks associated with the release of this information, including by electronic means. I understand that if I redisclose any of the information released by the records holder, the information may no longer be protected under the HIPAA Privacy Rule.

I am requesting that, if possible, the information be released to me by the following:

I will pick up the records from the office of the records holder.

Mail the records to this address: \_\_\_\_\_  
\_\_\_\_\_ .

Email the records to this email: \_\_\_\_\_ .

This authorization expires on

(DATE) \_\_\_\_\_ or  (EVENT) \_\_\_\_\_.

By signing below, I authorize the release of my confidential records and protected health information.

Client/Patient Printed Name: \_\_\_\_\_

Client/Patient Signature: \_\_\_\_\_

Date Signed: \_\_\_\_\_

## Checklist For Patient Authorizations

You can use this checklist to review patient authorizations received from other covered entities to ensure that these non-DHHS complies with the HIPAA privacy regulations regarding the use and disclosure of our patients' protected health information (PHI).

Check off each element that is contained in the patient authorization you have received before accepting the authorization.

*Note: The required elements may be listed in a different order from in the checklist, but if any of the required elements are missing, you must deny the request for PHI and give the requesting party the reason for the denial.*

- The authorization is written in plain language (is easy to read and understand.)
- The authorization describes in detail the PHI that is being requested (for example, lab reports.).
- The authorization says who (the name of our organization or a person at our organization) is permitted to make the requested use or disclosure of PHI.
- The authorization says to whom (the name of the person or organization and address) the PHI may be disclosed.
- The authorization includes an expiration date or expiration event, which has not yet passed.
- The authorization states that the individual who signed it has the right to revoke the authorization, in writing.
- The authorization describes the exceptions to that revocation right (for example, no revocation if authorization has already been relied upon, or if authorization was obtained as a condition of getting insurance and insurance law gives the right to contest a claim).
- The authorization describes how the individual may revoke it.
- The authorization states that the PHI, once disclosed to others, may be redisclosed to individuals or organizations not subject to HIPAA and may no longer be protected by HIPAA.
- The authorization is either signed by the individual or signed and dated by the individual's personal representative, and describes that person's authority to act for the individual.
- The authorization is dated.

Source: North Carolina Department of Health and Human Services, Division of Public Health, <https://schs.dph.ncdhhs.gov/hipaa/policy.html>.

## Initial-Client-Contact Letter

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# The Your Name Here Law Firm, P.L.L.C.

Date  
Street Address  
City, State, Zip Code

Dear *[Recipient]*:

My name is *[attorney's name]*, and I have been appointed as your attorney in a juvenile abuse, neglect, and dependency case that has been filed by the *[county name]* County Department of Social Services. The case is regarding *[name(s) of client's child(ren)]*. It is my job to determine what you want to have happen in the case and to represent you in court. Your case is scheduled for *[time of hearing]* on *[date of hearing]* at the *[courthouse name]*, located at *[courthouse address]*.

Serious allegations have been made about you and your family. The court will make decisions about who has custody of your child and where your child will live. Your own ability to live with your child or to see your child may be affected. Your rights as a parent may be at risk. The court may order you to complete certain tasks. The outcome of this case could affect your ability to work in certain jobs.

You have a right to contest this case. It is very important that you and I speak as soon as possible so that we can discuss this case and so that I can advise you on your rights and what steps to take next. Please call me or come by my office at the number and address below to make an appointment as soon as possible. My office is open on *[dates]*, between *[times]*.

Sincerely,

*[your name]*



## Attorney's Request for Records

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# The Your Name Here Law Firm, P.L.L.C.

Date  
Street Address  
City, State, Zip Code

Dear [*Recipient*]:

My name is [*attorney's name*], and I am the attorney for [*client's name*]. My client is requesting that your office release all records, including those that contain otherwise protected health information, in accordance with the enclosed authorization signed by my client.

Please do not hesitate to contact me if you have any questions or if I can help in any way.

Sincerely,

[*your name*]





## ABOUT THIS BOOK

This guide focuses on what parent attorneys in G.S. 7B juvenile abuse, neglect, and dependency proceedings should do in the first week after being appointed. Strategies are explored that will improve client representation and help attorneys better manage their workloads and stress; these strategies include the use of various templates—examples of which are included in the guide. This guide offers practical tips and highlights concrete steps that parent attorneys can incorporate into their practices to hit the ground running early, including setting up a file, reaching out to the client, conducting discovery, and preparing for court.

This guide includes templates for case notes, reports, and initial contact with your client. You can access and download them at no charge at [defendermanuals.sog.unc.edu/manual/indigent-defense-practice-guides](http://defendermanuals.sog.unc.edu/manual/indigent-defense-practice-guides).

## ABOUT THE AUTHOR

**Timothy Heinle** is the Civil Defender Educator with the School of Government's Public Defense Education program. Timothy graduated from New England Law-Boston in 2009 and moved to eastern North Carolina, where he practiced law for ten years, primarily handling trial and appellate juvenile abuse, neglect, and dependency cases; hearings regarding termination of parental rights; incompetency and guardianship matters; and child-support contempt proceedings.

**The Public Defense Education Group** at the UNC School of Government offers resources for criminal defense attorneys and counsel for respondents in civil matters, including juvenile proceedings, civil commitment, child-support enforcement actions, and matters of incompetency and adult-protective services.

**[sog.unc.edu](http://sog.unc.edu)**

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