UNIVERSITY OF SOUTH CAROLINA
School of Law

This information packet has been written for foster parents, those individuals licensed by the Department of Social Services (DSS) to provide temporary care for children in DSS custody. It explains the rights of foster parents to participate in the family court's child protection process and describes various hearings in the child protection process.

This packet was prepared by the Children's Law Center (CLC) of the University of South Carolina School of Law. The CLC is a resource center for South Carolina professionals involved in child maltreatment or juvenile justice court proceedings and child advocates working to improve the safety and well-being of children. The mission of the CLC is to improve outcomes for children by enhancing the knowledge and skills of professionals and promoting informed, sound public policy.

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Spring 2014

Role of Foster Parents in Family Court

General Statement of Rights

Under South Carolina law, DSS must notify foster parents when there are probable cause hearings, merits hearings, hearings to approve a placement plan, permanency planning hearings, and termination of parental rights hearings. The hearing notice must be in writing and may be delivered in person or by regular mail. The notice must inform the foster parent of the date, time, and place of the hearing, and that the foster parent may attend the hearing and speak to the court about the child's needs.

Receiving notice of a hearing does not give a foster parent the same rights as a "party to the action." In a child protection case, a "party to the action" is usually DSS and anyone who is named as a defendant (usually the child's parent or guardian). In addition, the child's attorney and guardian ad litem are treated as "parties to the action." Parties are allowed to participate fully in all child protection hearings by presenting witnesses and other evidence to the court. Generally, a foster parent who attends a hearing because she received a written notice from DSS cannot present witnesses or evidence at the hearing. However, the judge may allow the foster parent to inform the court about the child's adjustment in the foster home and tell the court what medical, educational, and therapeutic needs the child might have.

A foster parent who wants to participate more fully in child protection hearings may become a "party to the action" by making a motion to intervene in the case. A motion is a request made to the court. The motion to intervene must be filed in family court and served on DSS, the defendants, the child's attorney, and the guardian ad litem. The family court will schedule a hearing to decide whether the foster parent should become a "party to the action." If the court grants the motion to intervene, the foster parent becomes a party and may participate fully in all child protection hearings by presenting witnesses and other evidence. Becoming a party also subjects the foster parent to the contempt powers of the court for failure to comply with court orders.

Although not necessarily required, it is suggested that a foster parent who wishes to intervene in a child protection case hires an attorney. This will ensure that the motion to intervene is prepared properly and that the foster parent will have competent representation throughout the child protection process.

Following is an explanation of the various types of child protection hearings to which a foster parent must receive notice and in which a foster parent may participate.

Emergency Protective Custody and Probable Cause Hearings

A child who is in foster care typically enters this system by being taken into emergency protective custody. Law enforcement officers and family court judges may take emergency protective custody of a child if they have probable cause to believe that the child's life, health, or physical safety is in imminent and substantial danger due to abuse or neglect.

After a law enforcement officer or family court judge takes emergency protective custody of a child, the child is placed in the care of DSS. A caseworker then places the child in a foster home or an appropriate shelter within a reasonable amount of time.

Within 72 hours of a child being placed into emergency protective custody, there will be a probable cause hearing in family court**.** The judge will decide whether there was probable cause to take the child into emergency protective custody and whether, on the date of the hearing, there remains probable cause for DSS to retain custody of the child. During the probable cause hearing, DSS may present witnesses, and the parent may ask these witnesses questions. The parent is not allowed to present witnesses at the probable cause hearing; however, the parent may submit affidavits (sworn written statements) in support of his or her position.

A foster parent is entitled to receive written notice of the date, time, and place of the probable cause hearing. This hearing is very early in the child protection process; however, if the foster parent has learned any information about the abuse or neglect the child may have suffered and believes the child is in need of services, the foster parent may inform the judge at the probable cause hearing.

At the probable cause hearing, the judge does not have to decide whether the child was actually abused or neglected. The judge will issue a written order deciding the following:

- whether there was probable cause to take the child into emergency protective custody;
- whether there remains probable cause on the date of the hearing to keep the child in protective custody; and
- whether continuation of the child in the parent's home would be contrary to the child's welfare.

If the judge determines that there was and there remains probable cause to take emergency protective custody, the judge will appoint an attorney and guardian ad litem to represent the child at all subsequent hearings. The judge will also appoint an attorney to represent a parent who wants representation, if the parent cannot afford to hire an attorney. The court will schedule a merits hearing to be heard within 35 days.

Merits Hearings

A merits hearing is a proceeding in which a judge hears the facts and determines whether there is sufficient evidence to conclude that a child has been abused or neglected. DSS, the child's parent, and the guardian ad litem may present witnesses and other evidence at a merits hearing.

Prior to the merits hearing, the child's parents, the child's attorney, and the guardian ad litem will be served with a summons and complaint. The summons notifies these parties that a child protection case has been initiated and that the parties have the right to respond. The complaint describes the nature of the alleged abuse or neglect and states the relief

requested by DSS. In addition, the parties will receive notice of the date, time, and place of the merits hearing.

Because a foster parent generally is not considered a party to the action, DSS is not required to serve a foster parent with the summons and complaint. However, the law requires that DSS give a foster parent written notice of the date, time, and place of the merits hearing. As in the probable cause hearing, the notice must inform the foster parent of the right to attend the merits hearing and tell the court about the needs of the child.

At the merits hearing if the judge determines that a child has been abused or neglected and cannot be protected from harm if returned to the home, the judge may keep the child in DSS custody. DSS will present a placement plan at the merits hearing or within ten days after the hearing. The placement plan must be in writing and should be prepared with the participation of the parents, the child (if age appropriate), and any other agency that may be required to provide services.

The placement plan is a written document that describes the type of abuse or neglect that caused the child to be placed in DSS custody and states what a parent must do to correct the problems that caused the child to be placed in DSS custody. The placement plan will also describe the services that are to be provided to the parent, child and the foster parent. The judge will make the placement plan a part of the merits hearing court order. The parent must be given a copy of the placement plan. The foster parent must be given a copy of any portion of the placement plan directed at the foster parent or foster child.

There will be another hearing after the merits hearing. The court will review the child's status in foster care and will review the parent's progress and compliance with the placement plan. This hearing is known as a permanency planning hearing.

Permanency Planning Hearings

The purpose of a permanency planning hearing is to ensure that a child who has been placed in DSS custody receives a safe and permanent home as soon as possible. At a minimum, the permanency planning hearing must be held within 12 months of a child entering foster care.

DSS initiates the permanency planning hearing by filing and serving a motion for permanency planning on all parties to the action at least ten days before the hearing. DSS must also attach a supplemental report to its permanency planning motion, which describes:
the services offered to the parents;

- the extent of compliance with the services offered;
- recommendations of the local foster care review board;
- whether foster care is to continue;
- whether the child's current foster care placement is safe and appropriate;
- whether DSS has made reasonable efforts to assist the parent; and
- what efforts DSS has made in finalizing adoption, if appropriate.

The permanency planning motion and supplemental report are served on the parties to the action. Because foster parents are not parties to the action, they are not entitled to receive a copy of the department's permanency planning motion and supplemental report. However, DSS must give notice of the date, time, and place of the permanency planning hearing to the foster parent. The foster parent may attend the permanency planning hearing and the judge may allow the foster parent to inform the court about the child's adjustment to the foster

home, the child's needs, and whether the child's needs are being met.

At the initial permanency planning hearing, the judge will consider all evidence, the department's supplemental report, and whether the parent has substantially complied with the placement plan ordered at the merits hearing. The judge will then order one of the following permanent plans for the child:

- **Return Home.** If the judge determines that returning the child to the parent would not place the child at unreasonable risk of harm, the child must be returned to the parent on the date of the permanency planning hearing. DSS may also be ordered to monitor the family and continue to provide services for up to 12 months after the child's return home.

- **Extension of the placement plan for the purpose of returning the child home.** Sometimes the judge may determine that it is appropriate to return a child to her parents, but at the same time, may also find it necessary for DSS to coordinate additional services for the parents prior to the child's return home. If this is the judge's decision at the permanency planning hearing, the judge may order that the child be kept in foster care and order the parent to complete additional services within six months.

  At the next permanency planning hearing following such an extension, if the parent has completed most of the services ordered in the placement plan and it is in the child's best interest, the child must be returned home. If the parent has failed to complete most of the services ordered in the placement plan and it is not in the child's best interest to return home, the judge cannot give the parent additional time to cooperate with the placement plan. Instead, the court will change the plan from reunification to a permanent plan of relative custody/guardianship, termination of parental rights and adoption, or if there are compelling reasons and it is in the best interest of the child, "another planned permanent living arrangement" (APPLA). This means that a parent has 18 months from the time a child is placed in DSS custody to solve the problems of abuse or neglect which caused the child to be placed in foster care.

- **Relative (or non-relative) custody/guardianship.** If it is not in the child's best interest to return home to the parent, and the judge has also decided that termination of parental rights and adoption are not in the child's best interest, the court may grant custody or guardianship to a relative (or non-relative). Prior to the relative (or non-relative) gaining custody or guardianship, DSS must present a favorable home study to the court and the judge may require a period of visitation before granting custody or guardianship to the relative (or non-relative).

- **Termination of parental rights and adoption.** The judge may order a permanent plan of termination of parental rights for a number of reasons such as, failure of a parent to substantially comply with the placement plan, failure to visit the child, or failure to support the child. Before ordering the permanent plan, the judge must also determine that termination of parental rights and adoption are in the best interest of the child. (More information on termination of parental rights is provided below.)

- **Another planned permanent living arrangement (APPLA).** When DSS presents compelling reasons for doing so, such as when a child 14 years old or older does not want to be adopted, the judge

may order, “another planned permanent living arrangement.”

At a minimum, based upon notice and motion of DSS, the family court must have a permanency planning hearing for each child in foster care once a year. However, as previously stated, a foster parent may make a motion to intervene in the case or may hire an attorney to make the motion. If the motion to intervene is granted, the foster parent becomes a party and may make a motion for review of the child’s case at any time.

Review Hearings

Review hearings are not required, however any party may request that the family court review a case when issues related to the child or the child’s family need the court’s attention. A notice and motion for review of a case must be served on all parties to the action at least ten days before the review hearing. The motion must explain the reason why the case should be reviewed and should explain what the requesting party would like for the court to do at the review hearing. In addition, the foster parent must be given written notice of the date, time, and place of the review hearing, and the foster parent may ask to address the court concerning the needs of the child.

At the review hearing, a foster parent who has been made a party to the action may present evidence and call witnesses. A foster parent may ask the court to review the child’s status in foster care, the progress being made toward securing a stable and permanent home for the child, and to review the parent’s level of compliance with the placement plan. At the conclusion of a review hearing, the court will issue an order based upon a determination of what is in the best interest of the child.

Termination of Parental Rights

At the permanency planning hearing, if the judge decides that termination of parental rights and adoption is in the best interest of the child, DSS must file a complaint for termination of parental rights within 60 days. However, it should also be noted that not only may DSS file a complaint for termination of parental rights, but <u>any</u> “party in interest” may file a summons and complaint seeking termination of parental rights. The termination of parental rights hearing will be held within 120 days of filing the action.

Although not necessarily a “party to the action”, every foster parent is a “party in interest” as defined by law. Therefore, a foster parent may file a summons and complaint in family court which asks the court to terminate parental rights. The summons and complaint for termination of parental rights must be served on the parents, the child, and DSS. A foster parent is not required to hire an attorney to file a termination of parental rights action, but as previously stated, retaining an attorney ensures that the case will be handled competently.

As long as a child remains in foster care, the family court must review the child’s status in foster care at least once every 12 months. A termination of parental rights hearing may serve as a permanency planning hearing.

The law currently provides 11 reasons upon which a judge may base a decision to terminate parental rights. The court must find that at least one of those reasons exists and that termination of parental rights is in the best interest of the child. The reasons for termination of parental rights are:

- severity or repetition of abuse or neglect, and the home cannot be made safe in 12 months;
- parent has not remedied the conditions of the child’s removal and the child has been out of the home for six (6) months following the issuance of the placement plan;
- willful failure to visit for six (6) months;

- willful failure to support for six (6) months;
- presumptive legal father is not the biological father, and termination of parental rights best serves the welfare of the child;
- diagnosable condition unlikely to change in a reasonable period of time;
- abandonment;
- child in foster care for 15 of the most recent 22 months;
- child or sibling-as a result of physical abuse-has died or been admitted to the hospital and the parent has been convicted for an offense against the person;
- child's parent is convicted of the murder of the child's other parent; or
- conception of a child as a result of criminal sexual conduct.

Termination of parental rights ends the legal relationship between the biological parent and child. However, the child has the right to inherit from a biological parent until an adoption is finalized. Additional permanency planning hearings must be held annually until a child is adopted.

Adoption establishes the legal parent-child relationship between a child and her adoptive parents. A child who is adopted has all of the rights and benefits of a child born naturally to a family. Once an adoption is finalized, there are no additional permanency planning hearings.

Trials and Agreements

All of the child protection hearings described in the preceding sections will be resolved by a trial or by the agreement of the parties. A trial is an evidentiary type of proceeding. The parties are allowed to present evidence by direct examination and cross-examination of witnesses and by submitting documents or other demonstrative evidence. A foster parent would only be allowed to participate in a trial if called as a witness or if the foster parent has made a motion to intervene in the case and has been made a party to the action. Family court trials are not decided by a jury. The family court judge listens to the evidence and decides the outcome of the case. The judge may issue an order on the date of the trial or may take more time to consider the evidence, and issue an order in the days or weeks following the trial.

There are also times when the parties in a child protection case settle the case without presenting witnesses and other evidence in the courtroom. The parties may discuss the case outside the courtroom and negotiate settlement of the case When this happens, the parties announce to the judge that they have an agreement Typically, the agreement is read in court, in the presence of the judge. The judge listens to the agreement, reviews the guardian ad litem's report, the foster care review board's report, and the report written by the DSS caseworker. A foster parent may also address the court concerning the needs of the child at this time. The judge will then question the parties to make sure they understand the agreement and are voluntarily entering into the agreement. If the judge finds that the parties have knowingly, freely, and voluntarily entered into the agreement and that the agreement is in the best interest of the child, the judge is likely to approve the agreement. Once the judge approves the agreement, it becomes a written court order that has the same force and effect of an order issued as a result of a trial.

Conduct at Hearings

Unless a foster parent is subpoenaed or ordered to appear, simply receiving written notice of a hearing does not mean that a foster parent is required to attend a hearing. However, if a foster parent chooses to attend a hearing, the foster parent should dress appropriately, arrive early, and take a copy of the hearing notice to court. Upon arrival at the

hearing, the foster parent should inform the DSS attorney or caseworker of her presence and whether she wishes to address the court concerning the child. If the foster parent is unable to locate DSS staff she should locate court personnel, such as a bailiff or sheriff's deputy, and tell them which hearing she is there to attend. Once a foster parent is sure that appropriate staff are aware of her presence, she should wait outside the courtroom until the case is called.
Once the case is called, the foster parent should enter the courtroom and ask the sheriff's deputy or bailiff where you should be seated. The DSS attorney will probably introduce the foster parent at the beginning of the hearing along with the other persons present. If this does not occur, the foster parent should raise her hand and wait for recognition from the judge. Upon being recognized by the judge, the foster parent should stand, introduce herself, and tell the judge that she is a foster parent. She should also inform the judge whether she is there only to observe or if she wishes to be heard at the appropriate time. If the foster parent wishes to address the court, she will be called upon at an appropriate time during the hearing. She may be asked to take the witness stand prior to addressing the court.

During the hearing a court reporter will record everything that is said. Therefore, only one person may speak at a time. Do not speak unless the judge recognizes you and then speak loudly and clearly. Unless you are seated on the witness stand, you should stand up when the judge is speaking to you and when you are speaking to the judge. It is also important to address the judge as "your honor." Do not display emotion or react to anything said during the hearing.

Please note that you may only speak to the judge about the case in the courtroom and only when the case is scheduled for a hearing. It is never appropriate to communicate with a judge, orally or in writing, about a specific case outside the courtroom or outside the presence of the parties.

Conclusion

The law provides that DSS must give written notice to a foster parent of the date, time, and place of probable cause hearings, merits hearings, permanency planning hearings, review hearings, and termination of parental rights hearings. The right to receive notice of hearings does not give a foster parent the same rights as a party to the action; however, at these hearings, the judge may allow the foster parent to speak to the court about the child's needs.

A foster parent, who wants to become a "party to the action," may make a motion to intervene at any stage of the child protection process. If the family court grants the motion to intervene, the foster parent becomes a party to the action, has the right to participate fully in all child protection hearings, and is subject to the contempt powers of the court for failure to comply with court orders.

Additionally, based upon their status as "parties in interest," a foster parent has the right to petition the family court for termination of parental rights. This may be done without first making a motion to intervene in the case. A judge may terminate parental rights if evidence proves there is at least one of the 11 reasons for termination of parental rights and that termination of parental rights is in the best interest of the child.

DEFINITIONS

South Carolina Code Annotated Regulations:

Foster Care § 114-550 (A) (1)
Care for children in the custody of the South Carolina Department of Social Services who must be separated from their parents or guardians. It is a temporary living arrangement within the structure and atmosphere of a private family home (kin or

non relative), or a group home, emergency shelter, residential facility, child care institution, or pre adoptive home, and is utilized while permanent placement plans are being formulated for the involved children.

South Carolina Code Annotated (Supp. 2013):

Child § 63-7-20(3)
A person under the age of eighteen.

Abused or Neglected Child § 63-7-20(4)
Child abuse or neglect, or harm occurs when the parent, guardian, or other person responsible for the child's welfare:

a) Inflicts or allows to be inflicted upon the child physical or mental injury, or engages in acts or omissions which present a substantial risk of physical or mental injury to the child, including injuries sustained as a result of excessive corporal punishment
   - Corporal punishment or physical discipline is not considered abuse if it (i) is administered by a parent or person in loco parentis; (ii) is perpetrated for the sole purpose of restraining or correcting the child; (iii) is reasonable in manner and moderate in degree; (iv) has not brought about permanent or lasting damage to the child; and (v) is not reckless or grossly negligent behavior by the parents.
b) commits or allows to be committed against the child a sexual offense as defined by the laws of this State, or engages in acts or omissions that present a substantial risk that a sexual offense as defined in the laws of this state would be committed against the child;
c) fails to supply the child with adequate food, clothing, shelter, education, supervision appropriate to the child's age and development, or health care though financially able to do so or offered financial or other reasonable means to do so and the failure to do so has caused physical or mental injury or presents a substantial risk of causing such injury;
d) abandons the child;
e) encourages, condones, or approves the commission of delinquent acts by the child and the commission of the acts are shown to be the result of the encouragement, condonation, or approval; or
f) has committed abuse or neglect [as previously defined] such that a child who subsequently becomes a part of the person's household is at substantial risk of one of those forms of abuse or neglect.

Probable Cause § 63-7-20(20)
Facts and circumstances based upon accurate and reliable information, including hearsay that would justify a reasonable person to believe that a child subject to a report under this chapter is abused or neglected.

Guardianship of a child § 63-7-20(10)
The duty and authority vested in a person by the family court to make certain decisions regarding the child, including: (a) consenting to marriage, enlistment in the armed forces, and medical and surgical treatment; (b) representing a child in legal actions and to make other decisions of substantial legal significance affecting a child; and (c) rights and responsibilities of legal custody when legal custody has not been vested by the court in another person, agency, or institution.

Party in interest § 63-7-20(15)
Includes the child, the child's attorney and guardian ad litem, the natural parent, an individual with physical or legal custody of the child, the foster parent, and the local foster care review board.

REFERENCES

S.C. Code Ann. Regulations § 114-550
S.C. Code Ann. §§ 63-7-20, 620, 1630, 1700, 2530, 2550, 2570, and 2590 (2008).

The Children's Law Center thanks Mary C. Williams of the S. C. Department of Social Services, Cheryl Elrod of the Governor's Office-Division of Victim Assistance, and Carl and Mary Brown of the S.C. Foster Parents' Association for reviewing earlier drafts of this information packet. Your comments and suggestions were greatly appreciated.