

1982 WL 189427 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 16, 1982

***1 RE: Applicability of Circuit Court Rule 102 to the Family Court**

James C. Williams, Jr. Esquire
130 Centre Street, NE
P. O. Box 1764
Orangeburg, SC 29116-1764

Dear Mr. Williams:

Your letter of September 9, 1982 to the Attorney General has been referred to me for reply. It is my understanding from your letter that you are retained on a contractual basis by the Solicitor's office to represent the Orangeburg and Calhoun Counties Departments of Social Services in all neglect and abuse cases filed by them. Because of your involvement in these cases you are concerned over the potential effect of the recently enacted Circuit Court Rule 102 on the statutory provisions of [§ 20-7-440\(D\)](#), [S. C. Code](#) of Laws, 1976, as amended ([§ 20-7-440\(D\)](#) has been amended by Sec. 9 Act 398, 1982 Joint Acts and Resolutions and renumbered as [§ 20-7-736](#)) which requires that a hearing be held to determine whether a child should be removed because of neglect or abuse within thirty (30) days of the date of the receipt of the petition for removal in the Family Court. With Circuit Court Rule 102 allowing thirty days for a responsive pleading, a potential situation for conflict is created wherein a parent may be denied either the full thirty (30) days to respond or a hearing within thirty (30) days of the filing of the petition as required by [§ 20-7-440\(D\)](#).

No reference is made in Circuit Court Rule 102 as to its applicability or non-applicability to the Family Court. Nevertheless Family Court Rule 3.5 provides in pertinent part:

The Rules of Practice for the Circuit Courts of South Carolina with the appropriate change of nomenclature as to the Court shall apply in all Domestic Relations actions and related proceedings, with the modifications and/or exceptions set forth in these rules.

The rule further states in reference to the Family Court Rules that:

To the extent that these Rules conflict with such Circuit Court Rules, these Rules shall prevail.

[Family Court Rule 7](#) reads as follows:

The pleading on behalf of the Respondent shall be an answer or counter-claim which shall be served on the Petitioner or his attorney within twenty (20) days after service of the petition. Where a Respondent fails to answer or otherwise plead to the petition, he may be declared in default.

Circuit Court Rule 102 reads as follows:

The only pleading on the part of the defendant is either a demurrer or an answer. It must be served within thirty (30) days after the service of the copy of the complaint.

It clearly appears that [Family Court Rule 7](#) and Circuit Court Rule 102 are in conflict and under the provision of Family Court Rule 3.5, previously stated, [Family Court Rule 7](#) must prevail. Therefore, it is the opinion of this office that a party has twenty (20) rather than thirty (30) days for filing a responsive in the Family Court. Since Circuit Court Rule 102 is not applicable to

your particular situation, the same procedure which was previously followed in removal cases, assuming it is legally proper in other respects, should be continued after October 1, 1982.

*2 I hope this information will be beneficial to you. If you have any questions please contact me.

Sincerely,

B. J. Willoughby
Assistant Attorney General

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