

1981 WL 157909 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 13, 1981

**\*1 SUBJECT: Child Abuse, Procedure**

Physical presence of a Solicitor is not necessarily required at the pretrial hearing mandated by Section 20-10-80(D) unless the best interests of the child, law enforcement officers' or the Department of Social Services requires it.

Whether or not to issue a written order after this pretrial hearing is a matter within the discretion of the family court.

The Solicitor's mandated responsibility to represent the interests of the State and the local child protective services agency is satisfied once all judicial proceedings provided for by the Child Protection Act have been concluded.

The Honorable William T. Jones  
Solicitor, Eighth Judicial Circuit

QUESTIONS:

1. Is the Solicitor, designated as the attorney to represent the interests of the State and the local child protective services agency in any judicial proceeding under the Child Protection Act, required to physically appear at the pretrial hearing provided for by Section 20-10-80(D)?
2. Is it necessary for the family court to issue a written order of its findings at this pretrial hearing?
3. When does the statutory responsibility of the Solicitor to represent the interests of the State and the local child protective services agency in any judicial proceeding under the Child Protection Act terminate?

OPINION:

Pursuant to Section 20-10-80(D) of the Child Protection Act of 1977, the local child protective service agency shall, upon being notified that a child has been taken into emergency protective custody, initiate a removal proceeding pursuant to Section 20-10-170 on or before the next working day in the appropriate family court. The family court must then schedule a pretrial hearing pursuant to Section 20-10-170 to be held within ten days of the initiation of the proceedings. At that hearing, the court shall undertake to appoint a guardian ad litem and an attorney for the child as well as an attorney for the parents, as well as consider such matters as will promote a fair and expeditious trial including a prima facie review of any emergency action taken or initiated on behalf of the child. The hearing to actually determine whether removal of custody is needed, pursuant to Section 20-10-170, shall be held within thirty days of the date of receipt of the removal petition.

It is apparent that this preliminary, pretrial hearing serves two primary functions. The first is the disposal of important administrative matters by the family court so as to promote a fair and expeditious trial on the merits of custody removal. This is not an adversarial hearing to determine the merits of the removal petition, but merely to insure that substantial rights of the parties are protected. It is, of course, anticipated that the parties may appear without counsel. The second function is the expeditious prima facie judicial review of the reasonableness of actions of law enforcement officers taken under exigent

circumstances without prior court approval. The court must be satisfied that the law enforcement officer had probable cause to believe that by reason of abuse or neglect there existed an imminent danger to the child's life or physical safety.

\*2 While this pretrial hearing is certainly a judicial proceeding held pursuant to the Child Protection Act, the fact that it is not adversarial or intended in any way to be a hearing on the ultimate merits of removal of custody, the physical presence of the Solicitor at this pretrial hearing would not be necessarily required unless the best interests of the child, the law enforcement officer or the Department of Social Services demanded it.

Furthermore, since the family court is a court of record and since any findings made by the court could be incorporated in the written order issued after the full removal of custody hearing is held on the merits, the family court would not necessarily be required to issue a written order at this preliminary point in the proceedings. This is a matter entirely within the discretion of the family court.

Finally, Section 20-10-180(C) clearly designates the circuit Solicitor or his representative in the appropriate judicial circuit to represent the interests of the State and the local child protective services agency only in those judicial proceedings conducted under this chapter. Proceedings under the Child Protection Act include those involving removal of children due to abuse or neglect by their parents or guardians, as well as an adjudicatory hearing in all cases involving indicated physical, mental or sexual abuse wherein the agency initiates protective services. This hearing, mandated by Section 20-10-120(H), is for the purpose of determining whether the agency had reasonable cause to initiate the protective services offered, and whether the services being offered are reasonable in light of the agency's justification for intervention.

It is the opinion of this office that once these judicial proceedings have been concluded, the responsibility of representation of the agency by the circuit Solicitor is satisfied. While this does not preclude the possibility that the same child or children might need to be protected pursuant to the Child Protection Act at some point in the future, the Department of Social Services has legal representation for the performance of its duties under all other laws of this State; such as Section 20-11-20, et seq., giving the agency the power and authority to bring actions for termination of parental rights.

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