

XI. CUSTODY CASES TRANSFERRED FROM THE SUPERIOR COURT

A. Code Section: O.C.G.A §15-11-30.1(b)

B. Uniform Juvenile Court Rule 5.2

C. Procedure

1. These cases are transferred to the juvenile court either:
 - (a) "... *for investigation and a report back to the superior court*", or
 - (b) "... *for investigation and determination*"
2. Upon receipt of the Order of Transfer from the superior court, the clerk of the juvenile court should docket the order and assign it as case number.
3. If the juvenile court clerk has not received a copy of the transfer order together with the original superior court file or a certified copy thereof, the juvenile court clerk should contact the superior court clerk and request compliance with UJCR 5.2(c).
4. The juvenile court can transfer the case back to the superior court prior to determining the merits of the case.
5. If the juvenile court simply investigates and reports back to the superior court then, in that event, the juvenile court clerk sends a copy of the report and record of the investigation to the referring superior court judge.

See Anderson v. Anderson, 238 Ga. 235. It is not error for the report to contain a recommendation for custody. "It is error for the issue of child custody to be decided on the basis of that report where either parent is denied access to the report and is thereby denied a hearing and the right to examine witnesses in an effort to refute the report."
6. If the matter has been sent to the juvenile court for investigation and determination, the juvenile court clerk shall file the original order of the juvenile court in the juvenile court file and should make a certified copy thereof for filing with the clerk of the superior court and furnish a courtesy copy of the final order to the referring superior court judge.
7. Certain expenses may be assessed against the parties involved in the superior court transfer under UJCR 5.2(b) such as attorney's fees for a guardian ad litem to represent the child's interest.
8. The discovery provisions of UJCR 7 should be followed and in complex cases, a pre-trial conference might be advisable under UJCR 7.5. A sample order setting a date for such a pre-trial conference and ruling on certain pre-trial motions is attached hereto as Exhibit "A".

9. An order should be executed by the juvenile court setting the matter down for a pre-trial conference (see D.) or setting the matter down for a final hearing on the merits of the case.

10. It is suggested that the parties should be informed of the procedures in juvenile court as to electronic recording devices in the order setting the matter for pre-trial conference or trial and if any party wishes to record the same by any other means, it would be the responsibility of that attorney to arrange for a court reporter.

D. Sample Letters and Forms

1. Cover Letter to Attorneys Re: Setting Matter for Hearing in Juvenile Court

November 9, 1993

Mr. Larkin Redd
Attorney at Law
P.O. Box 1237
Sample City, GA 30000

Mr. Bill Green
Attorney at Law
P.O. Box 1748
Sample City, GA 30000

Mr. Jody Brown
Attorney at Law
P.O. Box 68
Sample City, GA 30000

Ms. Mary Ann Black
Attorney at Law
300 Circle Dr.
Sample City, GA 30060

Re: In the Interest of John and Mary Doe, minor children
Juvenile Court File Nos. xxx-93J-123A and xxx-93J-124A
Sample County Juvenile Court

Please find enclosed herewith an Order setting the pre-trial matters we discussed yesterday down for hearing on November 24, 1994, at 8:30 a.m. here at the Juvenile Court Complex in Sample County. Henceforth, anything filed in this case by any party should be filed with the Clerk of Juvenile Court of Sample County under the Juvenile court numbers assigned to these cases set forth above with a courtesy copy sent to me at my chambers.

I was not aware of Ms. Black's involvement when we had our conference call yesterday and she is excused from the November 24, 1994, hearing with Mr. Brown representing the plaintiff mother's interest.

As we discussed, I reasonably hope to decide all the pre-trial motions from the bench on the 24th or within a few days thereafter with the objective of deciding the merits of this case before the Christmas holidays.

Sincerely,

T. Jefferson Overlook, II
Judge, Sample County Juvenile Court
via Designation

TJO,II/dsl

Enclosure

cc: Ms. Cynthia M. File, Deputy Clerk, Juvenile Court of Sample County

P.S. *The Deputy Clerk of Juvenile Court in Sample County advises that there is sealed deposition of the Plaintiff mother in the Superior Court file. If any party wishes to use this deposition than appropriate arrangements should be made to transfer that original deposition to the Juvenile Court.*

2. Order Setting Date for Hearing

**IN THE JUVENILE COURT
COUNTY OF SAMPLE
STATE OF GEORGIA**

IN THE INTEREST OF:

John Doe and Mary Doe,
minor children

- JUVENILE COURT
-
- FILE NOS. xxx-93J-123A:
xxx-93J-124A
-
- [SUPERIOR COURT CIVIL
ACTION FILE NO. 93-CVD-124J]
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ORDER SETTING DATE FOR HEARING

The above-captioned and styled cases are hereby set and scheduled for hearing as to certain pre-trial matters before this Court at 8:30 a.m. on the 24th day of November, 1994, in the Juvenile Courtroom in the Juvenile Court Complex, 438 Smith Avenue, Sample City, Georgia. The following preliminary matters will be taken up and heard by the Court at that time pursuant to a conference call held November 8, 1994, between the Court and the various counsel of record, to wit:

1. Motion to Appoint a Guardian *Ad Litem* in behalf of John and Mary Doe, filed by Sample County DFCS.

2. Motion for Protective Orders and Motion to *Quash* Notices to take Depositions of: Susan Smith, Cindy Loner, Margaret Truman, Chris Masher and Thomas Doe filed by Sample County DFCS.

3. Hearing on Motion by defendant father for production of certain documents by Sample

County DFCS.

4. Motion to Determine Suitability of Placement of John and Mary Doe filed by the defendant father.
5. Interpretation of the Consent Order entered by the Superior Court of Sample County, Georgia, on July 13, 1994, as to what constitutes "... *all necessary costs and expenses of placement*"
6. Motion by the plaintiff mother for temporary child support for John and Mary Doe; and
7. Any other matter necessary to prepare these cases for final hearing before the Court during the month of December, 1994.

Counsel of record for all parties are hereby directed and required to be and appear at said date, time, and place ready for a hearing on all of the foregoing matters. Failure of counsel to so appear may subject the offending counsel to the penalties of contempt and the Court shall proceed with the hearing on said matters or otherwise as permitted by law. Ms. Mary Ann Black, co-counsel for the plaintiff mother, is specifically excused from this hearing with the interests of the plaintiff mother being represented by Mr. Jody Brown.

The hearing aforesaid shall be recorded by electronic means as provided by applicable provisions of the Juvenile Proceedings Code. If any party wishes to have a court reporter present, it shall be the responsibility of the party desiring to have the court reporter present to make the necessary arrangements; otherwise, the recording of the hearing shall be by electronic means.

If any party desires to brief any of the matters to be considered, do so in advance of the hearing, serve all parties of record, and send a courtesy copy to the Court. All legal authority to be relied upon at the hearing shall be reproduced for the Court's review and consideration at the hearing with copies to opposing counsel.

SO ORDERED, this 9th day of November, 1994.

T. Jefferson Overlook, II
Judge, Sample County Juvenile Court via
Designation

cc: Mr. Larkin Redd
Mr. Jody Brown
Ms. Mary Ann Black
Mr. Bill Green

Ms. Cynthia M. File, Deputy Clerk,
Juvenile Court of Sample County