

## Responsible Individuals List: Procedural Questions

1. Within 5 working days of a DSS determination of abuse or serious neglect and the identification of a responsible individual, DSS must personally deliver written notice of that determination to the identified individual. G.S. 7B-320(a). If, after making diligent efforts to locate the identified individual, personal written notice cannot be made within 15 days of the determination, there is a process for the DSS director to obtain an ex parte order allowing that individual's placement on the RIL. *See* G.S. 7B-323(b), (c). A person has a right to judicial review after receiving the notice. G.S. 7B-323.
  - a. Is the failure to act within the statutory time period a jurisdictional defect such that DSS cannot place the person on the RIL?
  - b. If it is not a jurisdictional defect, what are the arguments for and against proceeding with the placement?
  
2. G.S. 7B-323 allows the alleged responsible individual (RI) to petition for a judicial review of DSS's determination. A copy of the petition must be included with the DSS notice to the individual that abuse or serious neglect was found and the individual is the alleged RI. G.S. 7B-323(d); *see* AOC-J-131. The petition may be filed "with the district court of the county in which the abuse or serious neglect report arose." G.S. 7B-323(a).
  - a. What is the proper county if the actions resulting in abuse/serious neglect occurred in one county but the report is made in another county?
  - b. What recourse does DSS have if the petition is filed in the wrong county?
  
3. There is no summons requirement for a judicial review of the RIL determination. G.S. 7B-323(a) requires the alleged RI to provide a copy of the petition for judicial review to the DSS director by either in person delivery or certified mail, return receipt requested.
  - a. Does DSS have any recourse/defense if the petition is not served on the director as required by G.S. 7B-323(a)?

4. If there is also an abuse or neglect proceeding involving the same incident that DSS has determined requires placement on the RIL, and the alleged RI petitions for judicial review, the court may stay the RIL judicial review hearing. G.S. 7B-325(b). The court exercises its discretion when determining whether to stay the proceeding. *In re Patron*, \_\_\_ N.C. App. \_\_\_, 792 S.E.2d 853 (2016).
  - a. May the hearings be consolidated?
  - b. If the RIL hearing is stayed, and there is an adjudication of abuse, is the RIL hearing required? What about if there is an adjudication of neglect?
  
5. If after a hearing, DSS proves by a preponderance of the evidence the abuse or serious neglect and the individual is the responsible individual, the court shall order the director to place the RI on the RIL “consistent with the court’s order.” G.S. 7B-323(d). The use of the word “shall” mandates that the court conclude as a matter of law that the respondent be placed on the RIL. *In re Patron*, \_\_\_ N.C. App. \_\_\_, 792 S.E.2d 853 (2016).
  - a. What does the language “consistent with the court’s order” mean?
  - b. Can the court limit the time a person is on the list?
  
6. G.S. 7B-601(a) states the child is a party in all actions under Subchapter I.
  - a. What is the role of the child in RIL proceeding?
  - b. How does the best interest of the child factor into your hearing strategy?