

## Juvenile Emancipations

In North Carolina, a 16 or 17 year old who has resided in the same North Carolina county for six months may petition the district court for an emancipation from his or her parents, guardian, or custodian. According to statistics from the North Carolina Administrative Office of the Courts (AOC), there have been 986 emancipation filings between fiscal year 2007-2008 and 2014-2015, averaging over 120 cases a year. Despite this number, there is a surprising lack of appellate decisions regarding juvenile emancipations. The lack of opinions has left both district courts and petitioners to figure out what the statutes require.

### What Is a Juvenile Emancipation?

An emancipation means a child is no longer under his or her parent's control and others may treat the child as if he or she were an adult who has the ability to make decisions for him/herself. A juvenile's emancipation relieves a child's parent, guardian, or custodian of all legal duties and obligations over the child and divests him or her of all rights regarding the child. [G.S. 7B-3507\(2\)](#). This includes child support. [G.S. 50-13.4\(b\)](#). An emancipated juvenile has the same right to enter into contracts, be a party in a lawsuit, and transact business as if he or she were an adult. G.S. 7B-3507(1). For example, an emancipated juvenile may consent to his or health care. [G.S. 90-21.5\(b\)](#). In North Carolina, an emancipation occurs in one of two ways:

1. marriage ([G.S. 7B-3509](#); see [G.S. 51-2.1](#) for information on a marriage of an underage party) or
2. court order (G.S. 7B-3507).

### An Emancipation Is Not...

An emancipation is not a termination of parental rights; the parents are still the child's parents. An emancipated child may continue to communicate and visit with his or her parents. He or she is entitled to inherit property from his or her parents by intestate succession. G.S. 7B-3507. And, an emancipated child is not exempt from prosecution for the misdemeanor crime of failing to support his or her parents when the elements of [G.S. 14-326.1](#) apply. G.S. 7B-3507.

An emancipation does not exclude the juvenile from laws that impose conditions based upon age. For example, an emancipated juvenile cannot purchase tobacco or vapor products ([G.S. 14-313](#)) or alcohol ([G.S. 18B-302](#)).

### Who Can Petition for Emancipation?

A 16 or 17 year old who has lived in the same county or federal territory located in North Carolina for six months before the petition is filed. [G.S. 7B-3500](#)

## The District Court

The district court has exclusive original jurisdiction over an emancipation proceeding. [G.S. 7B-200\(a\)\(3\)](#); [-1603\(3\)](#). The juvenile files a petition for emancipation in the district court that is located in the county where the juvenile has resided for six months before filing the petition. G.S. 7B-3500.

## The Petition

[G.S. 7B-3501](#) sets forth the mandatory contents of the petition:

- The petitioner's name, date of birth, and state and county of birth;
- The name and last known address of the parent, guardian, or custodian;
- The petitioner's address and how long he or she has resided at that address;
- The reasons for emancipation; and
- The petitioner's plan for meeting his or her needs and living expenses.

A certified copy of the petitioner's birth certificate must be attached to the petition. *Id.* If the petitioner is employed, a verified statement of the petitioner's employment and wages from his or her employer may be attached to the petition. *Id.* The AOC has a form petition, [AOC-J-900M](#), that the juvenile may use.

The petition must be signed and verified by the juvenile petitioner. G.S. 7B-3501. Based on case law in other types of juvenile proceedings, such as an abuse, neglect, or dependency case, a petition that is not properly signed or verified prevents the court from obtaining subject matter jurisdiction over the action. [In re T.R.P.](#), 360 N.C. 588 (2006).

## Who Must Be Served?

[G.S. 7B-3502](#) states that a copy of the petition and a summons must be served pursuant to Rule 4 of the North Carolina Rules of Civil Procedure on the juvenile's parent, guardian, or custodian, who are respondents to the action. The summons must include the location and time of the hearing, and notify the respondent to file an answer within 30 days after service. *Id.* There is a specific AOC summons for an emancipation proceeding, [AOC-J-910M](#).

What the statute does not address is whether more than one parent, guardian, or custodian must be served. Because a parent's rights to his or her child are directly affected by an emancipation, a parent is a necessary party. A necessary party is a person who has a claim or material interest in the subject matter and whose interest will be directly affected by the outcome of the litigation. *Lombroia v. Peek*, 107 N.C. App. 745 (1992). If both parents are alive and their rights have not been terminated by a court order, both parents should be served. In addition, if there is a guardian or custodian of the child, those persons are also necessary parties who should be served. A

custodian is a person or agency with a court order of legal custody of the child. See [G.S. 7B-101\(8\)](#), [-1501\(6\)](#). A guardian is appointed by the court in an abuse, neglect, or dependency proceeding pursuant to [G.S. 7B-600](#) or by a guardianship of a minor proceeding before the clerk of court pursuant to [Article 6 of G.S. Chapter 35A](#).

What if the juvenile does not have a parent, guardian, or custodian? The court may look to [G.S. 35A-1220](#), which states that the county social services department where the juvenile resides or is domiciled shall be the guardian of a minor who either has no natural guardian or has been abandoned, and who requires services from the county department. The department remains as the child's guardian by operation of law until a court enters a custody order or appoints a guardian of the child. *Id.* It is likely a juvenile who is without parents, a guardian, or custodian and is petitioning for emancipation will need services from a county department, whether in the form of protective services because the child is dependent or financial services such as Medicaid or Supplemental Nutritional Assistance (food stamps). The county department should be served with a summons and copy of the petition.

## **The Hearing**

The juvenile petitioner must prove by a preponderance of the evidence that emancipation is in his or her best interests. [G.S. 7B-3503](#). The court must look at the following factors when determining best interests:

- The juvenile's ability to function as an adult;
- The juvenile's need to contract as an adult or marry;
- Whether the juvenile is employed;
- The stability of the juvenile's living arrangement;
- The extent of family discord that may threaten reconciliation between the juvenile with his or her family;
- The juvenile's rejection of parental supervision or support and the quality of the parental supervision or support; and
- The parent's need for the juvenile's earnings.

### [G.S. 7B-3504](#).

The parties are permitted to present evidence and cross-examine witnesses. [G.S. 7B-3503](#). The Rules of Evidence apply. [G.S. 8C-101](#), [-1101](#). But, the husband-wife and physician-patient privilege do not apply. [G.S. 7B-3504](#).

The court may continue the hearing in order to obtain additional information. Specifically, if the court finds reasonable cause exists, the court may order the juvenile to be examined by an expert to evaluate the child's mental or physical health. [G.S. 7B-3504](#). Reasonable cause is not defined. A court may want to make specific findings based on competent evidence of the facts that support

its conclusion of reasonable cause. A court may also order a juvenile court counselor or a county department to substantiate allegations made by the juvenile or the respondent. *Id.* The court should specify the allegations it is ordering be investigated.

## **The Order**

A court may order a juvenile's emancipation if it makes findings that each of the four factors have been satisfied:

1. All the parties were properly before the court or were duly served and failed to appear, and the 30-day time period to file an answer has expired;
2. The juvenile has shown a proper and lawful plan for adequately providing for his or her needs and living expenses;
3. The juvenile is knowingly seeking the emancipation and fully understands what it means; and
4. Emancipation is in the juvenile's best interests.

### [G.S. 7B-3505.](#)

There is an AOC form Final Decree of Emancipation, [AOC-J-901M](#), that a court may use. If the order is granted, it is irrevocable. G.S. 7B-3507(3). If one of the four factors is not met, the court must dismiss the action. G.S. 7B-3505. A court may also order any party to pay the costs of the proceeding or based on good cause, waive the costs. [G.S. 7B-3506](#).

It is unclear whether the statutes governing emancipations require the court records be withheld from public inspection. See [G.S. 7B-2901\(a\)](#), [-3000](#); [G.S. 1-72.1\(f\)](#); [G.S. 7A-109](#). A reference is made in G.S. 7B-3506 to a certificate of emancipation that includes the juvenile's name and the fact that there is a court decree of emancipation. The comment to Rule 12.14 of the AOC Rules of Record Keeping states that the certificate of emancipation is filed as a Registration and all the other documents in the emancipation proceeding are confidential. The AOC created a form Certificate of Emancipation, [AOC-J-902M](#), that a clerk may use if the juvenile requests a certificate.

## **The Right to Appeal, [G.S. 7B-3508](#)**

The juvenile petitioner and respondent may appeal the order. Notice of the appeal must be provided in open court at the time of the hearing or in writing within ten days after the order is entered. While an appeal is pending, the district court has jurisdiction to enter a temporary order for custody or placement of the juvenile that the court finds is in the best interests of the juvenile or the State.