

**ADMINISTRATIVE LETTER Family Support and Child Welfare Services Section #06-03**

**TO: COUNTY DIRECTORS OF SOCIAL SERVICES**

**SUBJECT: Stumbo Case Decision**

**DATE: December 10, 2003**

**EFFECTIVE DATE: Immediately**

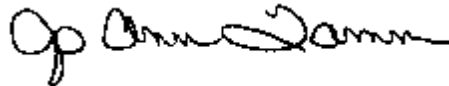
**ATTENTION: Children's Services Social Workers  
Children's Services Supervisors**

North Carolina's Supreme Court ruled on the Stumbo case July 16, 2003. The Stumbo case decision directly impacts CPS practice in North Carolina. The State Division of Social Services requested an in-depth interpretation of the Stumbo case decision from the Attorney General's office.

This Administrative Letter provides further guidance and clarification relating to the following: obstruction/interference hearings, Structured Intake and Intake screening decisions, Fourth Amendment rights, interviewing children at schools/child care centers, and family-centered practice.

Please contact your Children's Program Representative or the Work First/CPS Policy Team at (919) 733-4622 if you have questions.

Sincerely,



Jo Ann Lamm, Program Administrator  
Family Support and Child Welfare Services Section

JL: cb

Attachment

cc: Sherry S. Bradsher  
Pheon Beal  
Family Support and Child Welfare Team Leaders  
Children's Program Representatives

## Summary of In re Stumbo, NC Supreme Court decision filed July 16, 2003

This legislative interpretation is provided by the Division of Social Services through consultation with the Attorney General's office. Cleveland County Department of Social Services received an anonymous report of an unsupervised two-year-old naked child in the driveway of a house. When a CPS caseworker went to investigate some two hours later, the parents refused to allow her to privately interview the child or his siblings. Cleveland County DSS then filed a petition under N.C.G.S. § 7B-303 alleging that the parents were obstructing/interfering with the CPS investigation.

At the obstruction/interference hearing, no information was provided as to how long the child was outside unsupervised; the character of the surrounding area; or whether the child had ever been outside, naked and unsupervised before. Most of the evidence related to the effort of the caseworker to interview the children in private, and the parents' refusal to allow her to do so. The trial judge, focusing her inquiry exclusively on whether the parents had interfered with the investigation, concluded that they had, and ordered the parents not to obstruct/interfere with the CPS investigation. The parents, arguing their right under the Fourth Amendment to be free from unreasonable searches and seizures, appealed the trial court's order to the N.C. Court of Appeals, which, in a divided decision, affirmed the order of the trial court. The parents then appealed that decision to the N.C. Supreme Court, again arguing their rights under the Fourth Amendment.

Without addressing the constitutional issue, the N.C. Supreme Court, in its majority opinion, found from its review of prior cases that conduct determined to constitute neglect was either severe or dangerous conduct, or a pattern of conduct potentially or actually causing injury to the juvenile. The Court also found that the investigative requirements of N.C.G.S. § 7B-302 are triggered only if the facts of any report, if taken as true, satisfy the definition of abuse, neglect or dependency under N.C.G.S. § 7B-101. The Court concluded that **the anonymous report of a naked two-year-old unsupervised in a driveway, did not, standing alone, constitute a report of abuse, neglect, or dependency.** Therefore, the investigative mandate of N.C.G.S. § 7B-302 was not properly invoked. Since there was no basis for the investigation, there could be no basis for the trial court's order issued upon a petition pursuant N.C.G.S. § 7B-303 charging the parents with obstruction/interference. As an aside, the Court stated that if there had been a complaint of a pattern of lack of supervision of the child or other credible evidence indicating a serious failing on the part of the parents to look after the child, then such conduct could have risen to the level triggering the investigative mandate of N.C.G.S. § 7B-302.

In a concurring opinion, Justice Martin held that the Fourth Amendment does apply to CPS investigations and interviews of juveniles in private, an issue the majority found no need to address because the case could be decided on other grounds. He would also require that a trial court find reasonable grounds to believe that a child is abused or neglected before issuing a noninterference order over a caretaker's objection to DSS searching a home or interviewing a juvenile in private. However, too much emphasis should not be placed upon this opinion by county departments of social services, as it is a minority opinion. Instead, county departments of social services should be aware of, place more emphasis upon, and comply with Senate Bill 421 that was recently passed by our General Assembly and signed into law on July 4, 2003 as G.S. 7B-302(h). It addresses Fourth Amendment issues implicit in CPS visits to a home by county departments of social services and reads as follows:

"(h) The director or the director's representative may not enter a private residence for investigation purposes without at least one of the following:

- (1) The reasonable belief that a juvenile is in imminent danger of death or serious physical injury.
- (2) The permission of the parent or person responsible for the juvenile's care.
- (3) The accompaniment of a law enforcement officer who has legal authority to enter the residence.
- (4) An order from a court of competent jurisdiction."

### Policy Issues

The Stumbo decision has implications for CPS practice in county departments of social services. Before ordering parents not to obstruct or interfere with a CPS investigation, a trial court must first

determine whether there has been sufficient evidence presented at the obstruction/interference hearing to support the triggering of the investigative requirements of N.C.G.S. § 7B-302. This requires a county DSS, when seeking an obstruction/interference order, to make certain that sufficient evidence is presented at such a hearing to demonstrate that the facts surrounding the report would meet the definitions under N.C.G.S. § 7B-101 before proceeding to evidence of the parents' conduct that constitutes obstruction/interference. The Stumbo decision was impacted by the minimal amount of information presented, "naked 2 year old, unsupervised in the driveway." This minimum amount of information does not meet our legal definitions of abuse, neglect, or dependency.

There will be instances where a county DSS must file an obstruction/interference petition in order to proceed with the investigative assessment required in the provision of protective services. At the obstruction/interference hearing, all relevant information from the CPS report should be presented; you must demonstrate to the judge that your decision to initiate an investigative assessment did in fact meet the statutory threshold for abuse, neglect, or dependency. In determining what information from the CPS report is relevant, it is helpful to think in broad terms. The reporter's identity remains confidential information; however, the judge may order disclosure.

It is vitally important that a thorough interview is conducted at Intake, and that the interview solicits sufficient information to make a clear-cut screening decision as to whether the allegations reported meet the legal definitions of abuse, neglect, or dependency. The use of the Structured Intake Report Form helps ensure thorough, pertinent information is obtained, while the Structured Intake screening tools serve to guide screening decisions that are based on statutory definitions.

It is the Division's position that the provision of child protective services, including visiting and interviewing the child in his home, with the parent's permission does not infringe upon Fourth Amendment rights. Securing parental consent is vital; your efforts to secure voluntary consent should never be coercive. Explain your role and express your desire to interview the child in order to assess safety, risk, and the strengths and needs of the family. It is important to remember that our ability to interview children at school or child care centers has not been compromised – schools and child care centers are not private residences. The debate regarding parental rights versus the provision of child protective services is an issue that has existed for some time; however, it appears that the public's consciousness has been piqued in light of recent court decisions and media attention. The Fourth Amendment to the U.S. Constitution reads as follows, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." Family-centered practice and the concept of involving parents in decision-making throughout service provision can be challenging at times. It is important to remember that every interaction with the family is an opportunity to make a connection. Take the time to engage the family, recognize the family's strengths, help the family with transitions, give the family choices, pay attention to the words you use interacting with families, and make an effort to act as a change agent, not as an authority figure. Families should never be pressured or coerced into signing Safety Responses or Family Services Case Plans. Family members should be made to feel their involvement and participation throughout the life of the case is crucial and that their feedback is valued.

Policy guidance regarding N.C.G.S. 7B-302 was provided in Administrative Letter #4-03 issued August 5, 2003, and reads as follows: "The North Carolina Supreme Court's Stumbo case decision filed July 16, 2003 prompted the Division to request further interpretation from the Attorney General's office. The Stumbo case decision reiterates the importance of obtaining thorough, comprehensive information at Intake. Utilization of Strengths Based Structured Intake provides a mechanism for ensuring that all reports are screened consistently and that reporters are questioned exhaustively regarding their knowledge of the alleged abuse, neglect, or dependency. In those instances when a reporter has minimal information, your screening decision is contingent upon whether that minimal information, if true, meets the legal definitions of abuse, neglect, or dependency. For example, if all efforts to solicit information from the reporter produce a report consisting of only one sentence, that one sentence must be evaluated to determine whether that information, if true, meets the legal

definitions of abuse, neglect, or dependency. If the information provided by the reporter does not clearly meet the definitions provided in the statutes relating to abuse, neglect, or dependency, there is not a valid CPS report and there is no authority to intervene in the family's life.”

The Stumbo case decision makes reference to patterns of neglect versus single incidents as a factor contributing to screening decision-making. It is important to note that reports alleging single incidents of abuse/neglect/dependency can, and many times do, meet the definitions of abuse/neglect/dependency and invoke the statutory authority to begin an investigative assessment. A valid CPS report does not hinge on the establishment of a pattern of abuse/neglect/dependency. In the Stumbo case decision, North Carolina's Supreme Court concluded that a single report of a naked child, two years of age, unsupervised in a driveway, in and of itself, standing alone, does not constitute a report of abuse, neglect or dependency. The use of Structured Intake gives the agency the opportunity to complete a comprehensive, strengths-based interview that leads to clear screening decision-making the majority of the time. For those few times when the allegations are concerning or you have received a report that consists of only one sentence and the screening decision is not clear, an examination of agency history provides valuable information. A combination of statutory authority, consistent policy, and professional social work judgement form a strong base for the delivery of child protective services. It would be impossible and counterproductive to remove professional social work judgement from the day to day work in child protective services. There are some reports that do not clearly meet legal definitions of abuse, neglect or dependency, however, the allegations are concerning. It may be that the reporter did not have enough information to provide specifics or was not willing to do so. In these situations, it is acceptable to use agency history in your screening decision. If a review of agency history reveals a pattern of substantiations or a particularly egregious substantiation that correlates with the current allegations, it is acceptable to screen in the report and initiate an investigative assessment. At any time a report is concerning, but does not clearly meet the legal definitions of abuse, neglect, or dependency, it is acceptable to review your agency's history in order to make a more well informed screening decision. Please refer to Chapter VIII, Section 1407, dated 6-01-03 and the July 15, 2003 Structured Intake Question and Answer Document. Your agency cannot contact other counties for CPS history in order to make a screening decision but you can use your own agency records. The Division recognizes this interpretation provides greater guidance in making screening decisions than was provided in the August 5, 2003 Administrative Letter which is referenced above, however we believe this clarification is needed. The screening decision in the majority of CPS reports received by county departments of social services is clear – the reports meet our statutory definitions or do not. For those exceptions to the rule, an examination of agency history allows DSS to better serve children and families.

It is important to note that examining agency history in order to make a more well informed screening decision is not the equivalent of extended intake. North Carolina law prohibits extended intake activities. N.C.G.S. 7B-301 outlines the duty to report **suspected** abuse, neglect, or dependency, while N.C.G.S. 7B-302 outlines the responsibilities of the director of the department of social services in relation to **reports** of abuse, neglect or dependency. While the Stumbo case decision affords the opportunity to ascertain patterns by examining agency history, it does not afford the opportunity to conduct extended intake.