

### Case Update DSS Attorneys Conference (Winter 2022)

BY: SARA DEPASQUALE,  
UNC SCHOOL OF GOVERNMENT

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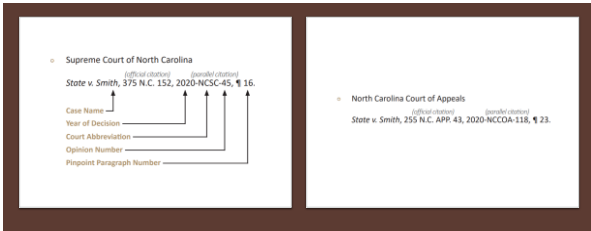
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### Do You Know about Universal Citation



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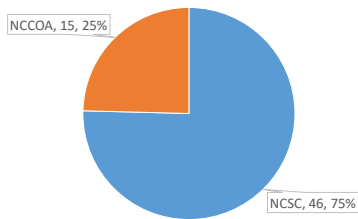
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### Published Opinions: July 8, 2021 – Feb. 15, 2022



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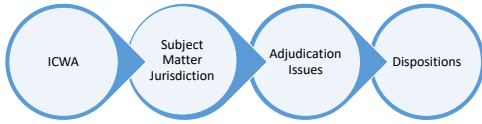
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Today's Topics



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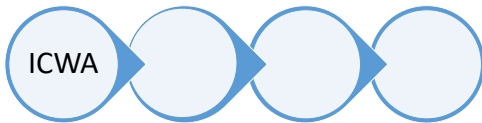
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Today's Topics



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PURPOSE

Protect the best interests of Indian children

Promote stability and security of Indian tribes and families

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### NC Supreme Court

“All participants should become familiar with the Indian Child Welfare Act of 1978, codified at 25 U.S.C. ch. 21, and the corresponding regulations, ... to ensure compliance with the ICWA and to assert objections on the record if compliance in a proceeding has not occurred.  
*In re M.L.B.*, 377 N.C. 335, n.4 (2021)

“The state courts bear the burden of ensuring compliance with ICWA.”  
*In re E.J.B.*, 375 N.C. 95, 101 (2020).

“The ICWA imposes a duty on the trial court to inquire of participants as set forth in 25 C.F.R. § 23.107(a) **in all child-custody cases...**”  
*In re A.L.*, 2021-NCSC-92, ¶ 27

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### Mandatory Inquiry by Court



- At commencement of a child-custody proceeding
- Of each participant
- Do you know or have reason to the know the child is an Indian child
- Responses on the record
- Instruct parties to inform court if subsequently receives info that provides reason to know

**Quick Reference Sheet for State Court Personnel**

  
 U.S. Department of the Interior, Bureau of Indian Affairs  
 Final Rule: Indian Child Custody Proceedings  
 25 CFR 23  
 25 C.F.R. 23.107  
<https://www.bia.gov/sites/bia.gov/files/assets/bia/ois/ois/pdf/idc2-041404.pdf>

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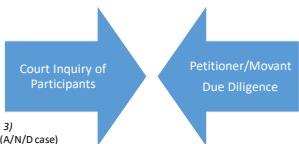
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Burden: 25 CFR 23.107



- In re A.L.* (p. 3)
- Lumbee (A/N/D case)
  - No inquiry on record (TPR)
  - No responses on the record (TPR)
  - TPR: Remanded for inquiry

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Notice

- Registered/Certified Mail, Return Receipt
- Parents
- Indian custodians
- Tribe
- Copy to Regional Director
- Specific Contents
  - Include right to intervene



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<https://www.bia.gov/bia/ois/dhs/icwa/icwa-notice>



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Yes or No?



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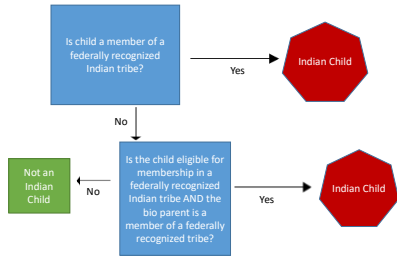
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Indian Child, 25 U.S.C. 1903(4)




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No  
In re C.C.G. (p. 3)




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Departure from prior opinions of COA

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Can be Cured  
*In re D.J.*, (p. 4)  
see also *In re E.J.B.*



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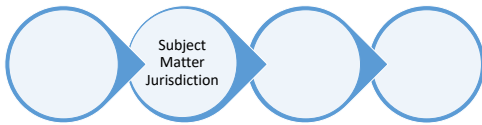
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Today's Topics



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TPR – which court  
*In re M.J.M.* (p. 19)

Wake County  
Neglect Action  
GS 7B-600

Robeson  
County  
Guardian  
& Child Reside  
TPR Filed

Does Robeson County Court have SMJ?

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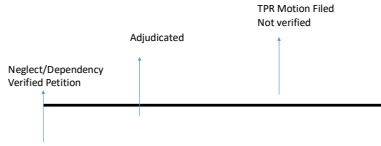
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### Verification

In re O.E.M. (p. 19)



Is there SMJ for TPR in A/N/D Case?

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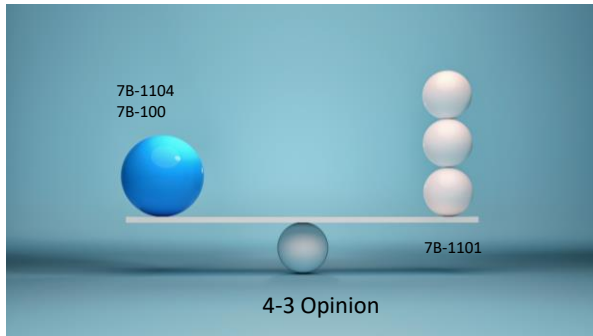
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### In re C.N.R (p. 20)



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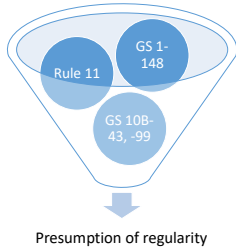
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Statutes examined




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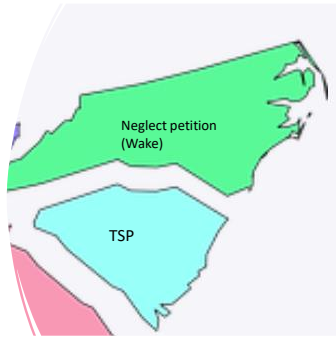
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Venue

In re M.R.J. (p 21)

- Is there SMJ?
- GS 153A-257(a)
- GS 7B-400




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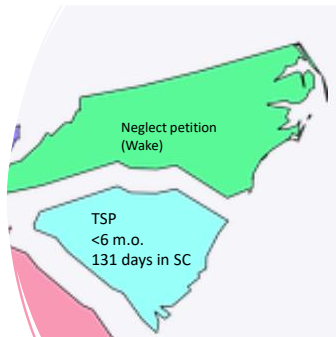
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UCCJEA

In re M.R.J. (p 21)

- Is there SMJ?
- Are findings required?




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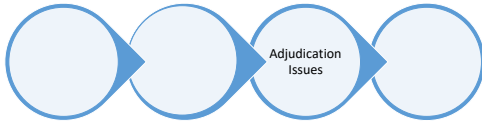
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Today's Topics




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"Services Needed"  
In re A.D. (p. 5)

Mom refuses to sign agreement  
 Mom participates in some services during assessment  
 Mom stops engaging in services (children's therapy too)

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What does DSS do?

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7B-302 (must)

<b>STATE OF NORTH CAROLINA</b>		File No. _____
_____ County		In The General Court Of Justice District Court Division
<b>IN THE MATTER OF</b>		
Name And Address Of Juvenile		<b>JUVENILE PETITION</b> <b>(ABUSE/NEGLECT/DEPENDENCY)</b>
Juvenile's Date Of Birth	Age    Race    Sex	
Name Of Petitioner		
		G.S. 7B-101, -400, -402
		Condition Alleged <input type="checkbox"/> Abused <input type="checkbox"/> Neglected <input type="checkbox"/> Dependent

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Does it matter “Services Needed” and not “substantiation”

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### Child Welfare Manual

- [Purpose, Philosophy, Legal Basis and Staffing](#)
- [CPS Intake](#)
- [Assessments](#)
- [In-Home Services](#)
- [Permanency Planning](#)
- [Adoptions](#)
- [Interstate Compact on the Placement of Children](#)
- [Foster Home Licensing Manual](#)
- [Child Fatality Prevention and Review](#)
- [Cross Function](#)
- [Appendix 1. CPS Data Collection](#)

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Initial disposition:  
mom retains custody; ordered to comply with plan



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Are the Results Admissible?

Employee of drug testing company, did not perform the test

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Business record exception: 803(6)

- Not authenticated by person who made it can be other qualified witness
- Familiar with business entries and system that they are made
- Testimony showed records made by someone with knowledge and transmitted and retained in company's regular course of business

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### Substance Use Not Per Se Neglect



What do you need to prove?



What happened here?

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Evidence at hearing In re Z.G.J. (p. 26)

Some oral testimony, extensive is not required




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What is the problem with this for proving grounds: Neglect, Dependency, Failure to make reasonable progress

13 months from petition to hearing




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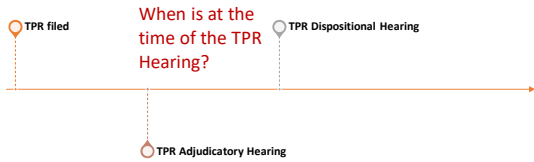
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G.S. 7B-1111(a)(2): Failure to make reasonable progress  
In re B.J.H. (p. 40)



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7B-1111(a)(3)  
In re SCC; JKF; APW (p. 43-44)

Two forms from the State of North Carolina are shown side-by-side. The left form is titled "VOLUNTARY SUPPORT ADJUDGMENT AND APPROVAL BY COURT" and the right form is titled "ORDER ESTABLISHING CHILD SUPPORT".

= Evidence of ability to pay  
No findings about income, employment, capacity to work required

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What if there is no order or VSA?  
In re D.C. (p.45)

- Lack of notice is not a defense
- Parents have inherent duty to support

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7B-1111(a)(4): Failure to pay child support  
M.R.F. (p. 46)

- Grandma brings TPR against dad
- Granted
- Is this correct?

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(4) **One parent** has been awarded custody of the juvenile by judicial decree or has custody by agreement of the parents, and the other parent whose parental rights are sought to be terminated has for a period of one year or more next preceding the filing of the petition or motion willfully failed without justification to pay for the care, support, and education of the juvenile, as required by the decree or custody agreement.

No evidence mom had custody by order or agreement  
No evidence of court order or agreement for child support

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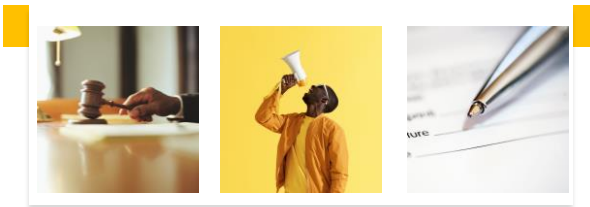
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Standard of Proof at Adjudication  
In re M.R.F. (p. 27)

Clear, cogent, and convincing evidence  
Must be announced in court or in order

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## Summary – Findings in Orders

- Can't be allegations only – must be indication of court's independent review
- Not recitations of testimony
- Trial court evaluates credibility, weight, inferences
- Dispositional evidence cannot be considered for adjudication
- Must resolve conflict in evidence (disputed factual issues)
- Ultimate findings needed – proper appellate review
- Unsupported challenged findings disregarded on appellate review
- Unchallenged findings deemed binding and supported by evidence
- In wrong place, treated as what it is

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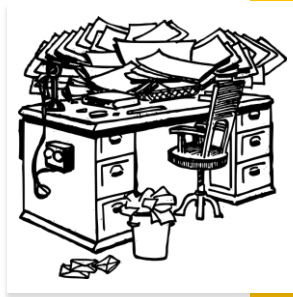
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**Judicial notice of non-adjudicatory orders**



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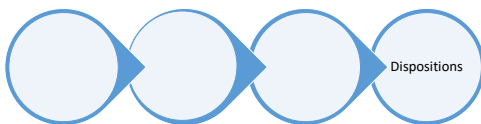
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## Today's Topics



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Americans with Disabilities Act (ADA)

APPLIES

In re A.P. (p. 9)



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Reasonable Efforts and Reasonable Accommodations

Reasonable efforts Findings and Conclusion made = Compliance with ADA of not discriminating

- Referrals for case plan services
- Attempt to engage mom in services recommended by psych eval
- Attempt to enroll mom in assisted living facility with focus on independent living skills
- Monitor compliance and progress with case plan
- Supervised visits with parenting skills teacher

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Reasonable Efforts and Reasonable Accommodations

- Adequacy of Services
- Waived
- Time to raise is it not on appeal



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### Waive further hearings, release GAL

No special obligations under ADA to change those obligations imposed by Juvenile Code (unrelated statutes)

A/N/D Case



Services, programs, or activities under ADA

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MOUD/MAT



U.S. Department of Justice  
Civil Rights Division

Director's Office  
100 M St., NE  
Washington, DC 20530

February 2, 2022

**VIA EMAIL**

Robert J. Kravitz  
Legal Counsel  
Supreme Court of Pennsylvania  
Administrative Office of Pennsylvania Courts  
1515 Market Street, Suite 1414  
Philadelphia, PA 19102  
Robert.Kravitz@pscourts.us

Re: The United States' Findings and Conclusions Based on Its Investigation of the Unified Judicial System of Pennsylvania under Title II of the Americans with Disabilities Act, (U.S. 2014-641-13)

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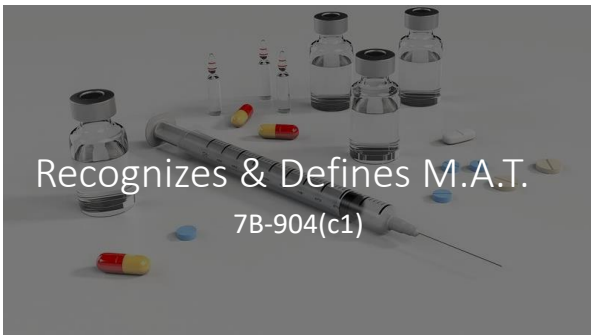
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### M.A.T.

- Pharmacological meds Rx in SAMHSA accredited and certified opioid Tx program (OTP) or by certified practitioner licensed in this state to practice medicine
- In combination with counseling and behavioral therapies, providing a whole patient approach to treatment

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When comply with MAT,  
not violating conditions/terms  
of court order requiring SUD  
treatment

G.S. 7B-904(c1)

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### Eliminate Reunification

In re E.A.C. (p. 11)

Notice of recommendation not required

No burden of proof

Findings under 7B-906.2(b), (d)

No abuse of discretion by court in not specifying requirements for parent – aware via case plan with DSS

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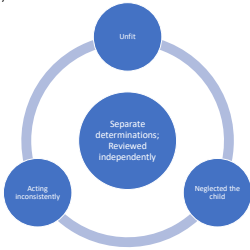
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Parent's constitutional rights

In re B.R.W. (p. 13)




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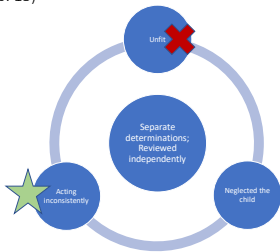
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Parent's constitutional rights

In re B.R.W. (p. 13)




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In re J.R.  
(p. 18)

Finding

Clear and convincing evidence

Willfulness not required

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See You at  
the Beach



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