



2023 Intensive Parent Defender Training

March 9-10, 2023/ Chapel Hill, NC

Co-sponsored by UNC School of Government & NC Office of Indigent Defense Services

AGENDA

Thursday, March 9

Pretrial through Adjudication

8:50 to 9:00

Welcome and Program Overview

Timothy Heinle, Teaching Assistant Professor
UNC School of Government, Chapel Hill, NC

9:00 to 9:45

Evaluating and Challenging Pleadings

Annick Lenoir-Peek, Deputy Parent Defender
Office of Indigent Defense Services, Durham, NC

9:45 to 10:30

The First Seven Days as a Parent Defender

Timothy Heinle, Teaching Assistant Professor
UNC School of Government, Chapel Hill, NC

10:30 to 10:45

Break

10:45 to 12:15

A/N/D Overview: The Early Stages

Sara DePasquale, Associate Professor of Public Law and Government
UNC School of Government, Chapel Hill, NC

12:15 to 1:15

Lunch

1:15 to 2:30

Hearsay Evidence at Adjudication

Timothy Heinle, Teaching Assistant Professor
UNC School of Government, Chapel Hill, NC

2:30 to 2:45

Break

2:45 to 3:45

Breakout #1

3:45 to 4:15

Special Issues Related to DSS Records

Timothy Heinle, Teaching Assistant Professor
UNC School of Government, Chapel Hill, NC

4:15

Adjourn



Friday, March 10

Disposition, Reviews, and Permanency Planning

9:00 to 10:15	A/N/D Overview: Later Stages <i>Sara DePasquale, Associate Professor of Public Law and Government</i> UNC School of Government, Chapel Hill, NC
10:15: to 11:15	Tactics for Later Hearings <i>Lyana Hunter, Assistant Public Defender</i> District 5, New Hanover County, NC
11:15 to 11:30	<i>Break</i>
11:30 to 12:15	Breakout #2
12:15 to 1:15	<i>Lunch</i>
1:15 to 1:30	Update from the Office of the Parent Defender <i>Wendy Sotolongo, Chief Parent Defender</i> Office of Indigent Defense Services, Durham, NC
1:30 to 2:30	Evidence at Later Hearings <i>Timothy Heinle, Teaching Assistant Professor</i> UNC School of Government, Chapel Hill, NC
2:30 to 3:30	What to do When Reunification Stalls <i>Darice Good, Attorney, and S. Colleen Puckett, Parent Mentor</i> Good Legal Firm, LLC, Atlanta, GA
3:30	<i>Adjourn</i>

Estimated 11 hours of CLE, pending bar approval.

EVALUATING AND CHALLENGING PLEADINGS

Annick Lenoir-Peek

Deputy Parent Defender

Annick.Lenoir-Peek@nccourts.org

(919) 354-7230

RESOURCES:

- Legislative website (statutes)
<https://www.ncleg.net/>
- Abuse, Neglect, Dependency and Termination of Parental Rights Manual by SOG
<https://www.sog.unc.edu/resources/microsites/abuse-neglect-dependency-and-termination-parental-rights>
- On the Civil Side Blog by SOG
<https://civil.sog.unc.edu/>
- Office of the Parent Defender Website
<http://www.ncids.org/ParentRepresentation/index.html>
- Child Welfare Case Compendium
<https://www.sog.unc.edu/cwcc>
- Parent Counsel Listserv
Email: Kathryn.E.Warren@nccourts.org



Adjudication Checklist

Prior to Any Hearing Being Held

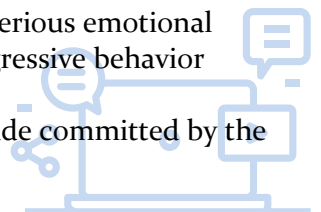
- ☐ Petition verified [7B-403(a)] [AOC-J-130]
- ☐ Summons issued to all parties [7B-406] [AOC-J-142]
- ☐ Summons served on your client [7B-407]
- ☐ Affidavit of Status of the Child attached [7B-402(b), can be contained in petition] [AOC-C-609]
 - ☐ UCCJEA (Uniform Child Custody Jurisdiction Enforcement Act)
- ☐ Servicemembers' Affidavit attached [50 USC 3901-4043] [AOC-G-250]
- ☐ Petition requests relief [G.S. 1A-1, Rule 7(b)(1)]
- ☐ Allegations rise to need for State intervention [7B-402(a)]
- ☐ Child in NC
- ☐ Parents in NC
 - ☐ ICWA (Indian Child Welfare Act)
- ☐ Other court/jurisdiction already involved [7B-200(c), 50A-13.5(f), 50A-201 *et seq.*]
 - ☐ UCCJEA (Uniform Child Custody Jurisdiction Enforcement Act)

Non-Secure Custody

- ☐ Non-secure custody order issued and served [7B-504]
- ☐ Non-secure custody order issued by authorized person (judge) [7B-502]
- ☐ Criteria for non-secure custody alleged [7B-503]
- ☐ Non-secure custody hearing held within 7 days [7B-506]
- ☐ Non-secure custody hearings held while service pending [7B-506(h)]
- ☐ Non-secure custody hearings reflect search for relatives? [7B-506(h)]
- ☐ Non-secure custody hearings reflect establishment of paternity? [7B-506(h)]

Pre-Adjudication/Motions

- ☐ Check box on petition coincides with allegations
- ☐ Allegations meet definition of Abuse/Neglect/Dependency [7B-101(1), (9), (15)]
- ☐ Abuse
 - ☐ A. Inflicts or allows to be inflicted upon the juvenile a serious physical injury by other than accidental means;
 - ☐ B. Creates or allows to be created a substantial risk of serious physical injury to the juvenile by other than accidental means;
 - ☐ C. Uses or allows to be used upon the juvenile cruel or grossly inappropriate procedures or cruel or grossly inappropriate devices to modify behavior;
[When Parental Discipline Goes Too Far, It's Abuse](#)
 - ☐ D. Sex crimes
 - ☐ E. Creates or allows to be created serious emotional damage to the juvenile; serious emotional damage is evidenced by a juvenile's severe anxiety, depression, withdrawal, or aggressive behavior toward himself or others;
 - ☐ F. Encourages, directs, or approves of delinquent acts involving moral turpitude committed by the juvenile.



☐ Neglect

Any juvenile less than 18 years of age

- ☐ (i) who is found to be a minor victim of human trafficking under G.S. 14-43.15 or
- ☐ (ii) whose parent, guardian, custodian, or caretaker does not provide proper care, supervision, or discipline; or
 - ☐ who has been abandoned; or
 - ☐ who is not provided necessary medical care; or
 - ☐ who is not provided necessary remedial care; or
 - ☐ who lives in an environment injurious to the juvenile's welfare; or
 - ☐ the custody of whom has been unlawfully transferred under G.S. 14-321.2; or
 - ☐ who has been placed for care or adoption in violation of law.
- ☐ In determining whether a juvenile is a neglected juvenile, it is relevant whether that juvenile lives in a home where another juvenile has died as a result of suspected abuse or neglect or lives in a home where another juvenile has been subjected to abuse or neglect by an adult who regularly lives in the home.

☐ Dependency

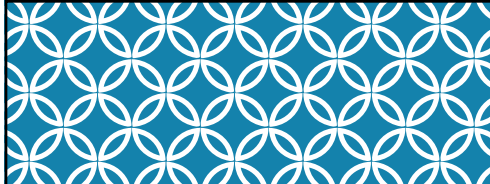
A juvenile in need of assistance or placement because

- ☐ (i) the juvenile has no parent, guardian, or custodian responsible for the juvenile's care or supervision or
- ☐ (ii) the juvenile's parent, guardian, or custodian is unable to provide for the juvenile's care or supervision **and** lacks an appropriate alternative child care arrangement.
 - ☐ *In re H.H. and R.H.*, No. COA14-650 (N.C. Ct. App. Dec. 2, 2014) (if parent available, then not dependency)
- ☐ Allegations result from actions of "parent, guardian, custodian or caretaker" [7B-101(3), (8)]
- ☐ Continued beyond 60 days from filing [7B-801(c), 7B-803]
- ☐ Discovery turned over as requested [7B-700]
- ☐ Petition amended [7B-800]
- ☐ Petition too generic (allegations don't seem to indicate which child A/N/D or why the others are in harms' way)

Adjudication

- ☐ Hearing held (must be some testimony by DSS unless by stipulation/consent) [7B-801]
 - ☐ No summary judgment allowed.
- ☐ Rules of evidence apply [7B-804]
 - ☐ Objections to inadmissible testimony.
 - ☐ Offer of proof made if judge does not allow a witness to testify.
- ☐ Burden kept on DSS to prove A/N/D [7B-805]
- ☐ Standard of proof – clear and convincing [7B-805]
- ☐ Objection to commingling of disposition evidence [7B-808]
- ☐ Petition amended to conform to the evidence
- ☐ Review order for accuracy [7B-807(b)]
 - ☐ Submit amendment/changes.
 - ☐ Schedule for entry of judgment to be heard on alterations.
- ☐ Order filed within 30 days [7B-807(b)]
 - ☐ Schedule for entry of judgment if not.
- ☐ Cannot appeal until the disposition order is entered!






EVALUATING AND
CHALLENGING PLEADINGS

Amick Lenoir-Peck
Deputy Parent Defender

1

GETTING THE CASE



2

READING THE PETITION



3

THE PETITION

What are we checking for?

- ☐ § 78-402 Requirements
 - ☐ Name, address, facts
- ☐ Chapter 50 (UCCJE) Requirements
 - ☐ Other state involvement
- ☐ Verification
 - ☐ Social worker or director
- ☐ § 78-401.1 Identification of Parties
 - ☐ Caretaker
- ☐ Relief requested

4

VERIFICATION

Being first duly sworn, I say that I have read this Petition and that the same is true to my own knowledge, except as to those matters alleged upon information and belief, and as to those, I believe it to be true.

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME

Name And Address Of Petitioner

Date _____ Signature Of Person Authorized To Administer Oaths

☐ Deputy CSC ☐ Clerk Of Superior Court ☐ District Court Judge ☐ Assistant CSC ☐ Magistrate

Signature Of Petitioner

☐ Notary Date My Commission Expires _____ Telephone No. _____

SEAL County Where Notarized _____ ☐ Director ☐ Authorized Representative Of Director _____
County Department of Social Services

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STATE OF NORTH CAROLINA

County _____ File No. _____

In The General Court Of Justice
District Court Division

IN THE MATTER OF

Name And Address Of Juvenile _____

**JUVENILE PETITION
(ABUSE/NEGLECT/DEPENDENCY)**

Juvenile's Date Of Birth _____ Age _____ Race _____ Sex _____

Name Of Petitioner _____ Condition Alleged ☐ Abused ☐ Neglected ☐ Dependent

G.S. 78-101 - 400, 402

I have sufficient knowledge or information to believe that a case has arisen that invokes the juvenile jurisdiction of the court, and therefore allege that:

- The juvenile named above resides in the district at the address shown above, was found in the district as alleged herein, or venue exists pursuant to G.S. 78-400(a) or (b).
- The information required by G.S. 80A-209 is set out in the Affidavit As To Status Of Minor Child (AOC-CV-609), which is attached hereto and incorporated herein by reference.
- The names, addresses, and telephone numbers of the juvenile's parents, guardian, custodian, or caretaker are as follows:

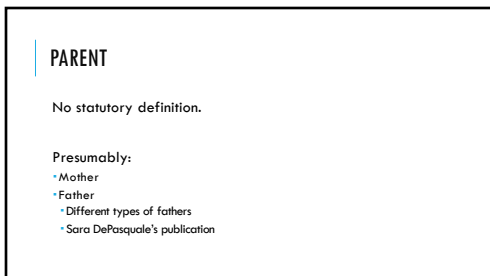
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GUARDIAN OR CUSTODIAN

CUSTODIAN: 7B-101(8)

The person or agency that has been awarded legal custody of a juvenile by a court.

GUARDIAN: 7B-600

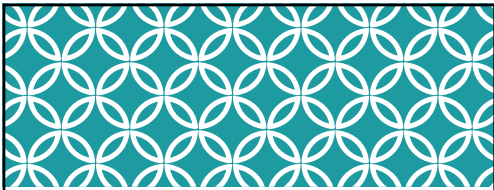
The guardian shall have the care, custody, and control of the juvenile or may arrange a suitable placement for the juvenile and may represent the juvenile in legal actions before any court. The guardian may consent to certain actions on the part of the juvenile in place of the parent including (i) marriage, (ii) enlisting in the Armed Forces of the United States, and (iii) enrollment in school. The guardian may also consent to any necessary remedial, psychological, medical, or surgical treatment for the juvenile. The authority of the guardian shall continue until the guardianship is terminated by court order, until the juvenile is emancipated pursuant to Article 35 of Subchapter IV of this Chapter, or until the juvenile reaches the age of majority.

10

CARETAKER: 7B-101(3)

Any person other than a parent, guardian, or custodian who has responsibility for the health and welfare of a juvenile in a residential setting. A person **responsible** for a juvenile's health and welfare means a stepparent; foster parent; an adult member of the juvenile's household; an **adult entrusted with the juvenile's care**; a potential adoptive parent during a visit or trial placement with a juvenile in the custody of a department; [plus others not generally applicable to us].

11



DEPENDENCY

12

REPEAT AFTER ME:

DEPENDENCY
IS NOT
A LESSER INCLUDED OFFENSE
OF NEGLECT
AGAIN
DEPENDENCY
IS NOT
A LESSER INCLUDED OFFENSE
OF NEGLECT!

13

☐ C. The juvenile is a **DEPENDENT JUVENILE**, in that:

☐ 1. the juvenile needs assistance or placement because the juvenile has no parent, guardian, or custodian responsible for the juvenile's care or supervision.

☐ 2. the juvenile's parent, guardian, or custodian is unable to provide for the juvenile's care or supervision and lacks an appropriate alternative child care arrangement.

Specifically, on or about date or time period _____; (State facts supporting allegations that the juvenile is a neglected juvenile as indicated above. Attach additional pages if necessary.)

14

DEPENDENCY

1. Who
2. What
3. Where
4. When
5. Why
6. How

15

WHAT IS NOT DEPENDENCY?

BAD PARENTING!!!!



16

ABUSE

17

4. The juvenile is an abused juvenile, neglected juvenile, or dependent juvenile, as alleged more specifically below: (Check only the blocks that apply.)

- ☐ A. The juvenile is an **ABUSED JUVENILE**, in that:
- ☐ 1. the juvenile's parent, guardian, custodian, or caretaker has inflicted or allowed to be inflicted on the juvenile a serious physical injury by other than accidental means.
 - ☐ 2. the juvenile's parent, guardian, custodian, or caretaker has created or allowed to be created a substantial risk of serious physical injury to the juvenile by other than accidental means.
 - ☐ 3. the juvenile's parent, guardian, custodian, or caretaker has used or allowed to be used upon the juvenile cruel or grossly inappropriate devices or procedures to modify behavior.
 - ☐ 4. the juvenile's parent, guardian, custodian, or caretaker has committed, permitted, or encouraged the commission of a sex or pornography offense by, with, or upon the juvenile in violation of the criminal law.
 - ☐ 5. the juvenile's parent, guardian, custodian, or caretaker has created or allowed to be created serious emotional damage to the juvenile.
 - ☐ 6. the juvenile's parent, guardian, custodian, or caretaker has encouraged, directed, or approved of delinquent acts involving moral turpitude committed by the juvenile.
 - ☐ 7. the juvenile is a minor victim of human trafficking under G.S. 14-43.15.

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ABUSE

1. Who
2. What
3. Where
4. When
5. Why
6. How

19


WHAT IS NOT ABUSE?

- *Providing alcohol or a joint to your kid
- *Spanking
- *Emotional abuse

20




21



NEGLECT

22



☐ B. The juvenile is a **NEGLECTED JUVENILE**, in that the juvenile:
☐ 1. does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker.
☐ 2. has been abandoned.
☐ 3. is not provided necessary medical care.
☐ 4. is not provided necessary remedial care.
☐ 5. lives in an environment injurious to the juvenile's welfare.
☐ 6. has had his/her custody unlawfully transferred under G.S. 14-321.2.
☐ 7. has been placed for care or adoption in violation of law.
☐ 8. is a minor victim of human trafficking under G.S. 14-43.15.
Specifically, on or about (date or time period) _____, (State facts supporting allegations that the juvenile is a neglected juvenile as indicated above. Attach additional pages if necessary.)

23

NEGLECT

1. Who

2. What

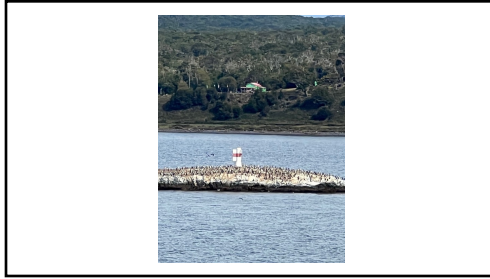
3. Where

4. When

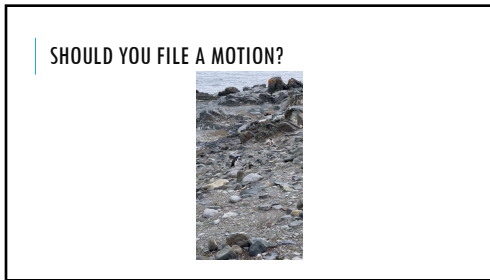
5. Why

6. How

24



25




26




27

CAN YOU DO THIS?



28

YOUR TAKE AWAY:



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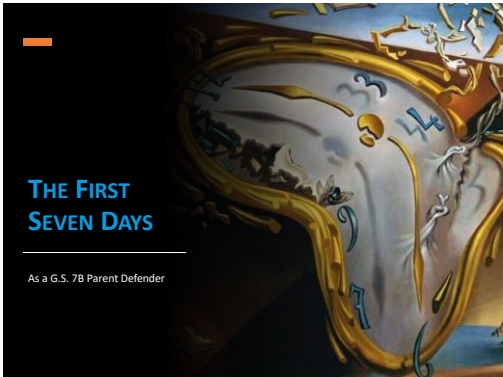


ANNICK LENOIR-PEEK | annick.lenoir-peek@seaworthy.org
(919) 354-7230

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1



2



3



The First
Seven Days:
Parent
Defender

THE
FIRST[48]



- Review the filings
 - What is left unsaid?




Double-check the
notice of hearing!

4

The First
Seven Days:
Parent
Defender

THE
FIRST[48]




- Review the filings
 - Compliance with procedural requirements

5

The First
Seven Days:
Parent
Defender

THE
FIRST[48]



- Review the filings
 - The players involved

6

THE FIRST

48

The First Seven Days: Parent Defender

- Review the filings
- Create a file
 - Develop office filing system
 - Case-File Insert template

7

Case-File Insert Template

Case-File Insert

Key Case Information

File number	
Client's name	
Client's address	
Client's telephone	
Client's date of birth	
Work address name and contact	
Employer address name and contact	
Insurance (if any)	

Client Notes (e.g., diagnosis, medications, service providers)

Quick Time Tracker

Date	Time spent	Work performed

Parent

Other Relative

Client

Children with Partner A

Children with Partner B

8

THE FIRST

48

The First Seven Days: Parent Defender

- Review the filings
- Create a file
 - Develop office filing system
 - Case-File Insert template
 - Calendar case dates

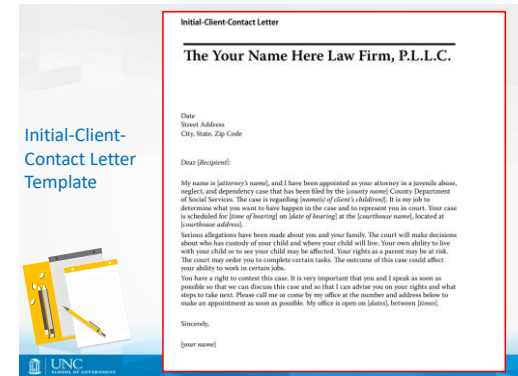
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11



12

The Next Five Days as a Parent Defender

- Initial client contact
- Prepare for client interview

13

Initial-Client-Contact Letter Template

14

The Next Five Days

Moving the case forward using the initial client meeting.

- ✓ Provide a roadmap
- ✓ Sign releases

15

Client Releases and Records Requests

Authorization and Consent for Release of Client/Patient Records
Including for Release of Protected Health Information

Patient Information
Name: _____
Phone Number: _____
Date of Birth: ____/____/____
Address: _____
City/State/Zip: _____
Email: _____
SSN (last four digits): XXX-XX-XXXX

I am requesting that _____
located at _____

I am requesting that, if possible, I receive a copy of my records. This information may be related to my treatment and care. Accepted and otherwise private medical and other records, including but not limited to billing statements. This authorization is for the release of records held by the authorization has been released information, including by records released by the records holder, in full.

I am requesting that, if possible, I _____
☐ I will pick up the records from _____
☐ that the records be sent to this address _____
☐ Email the records to this email _____
This authorization expires on: ____/____/____
☐ (DATE)

By signing below, I authorize the Client/Patient Printed Name: _____
Client/Patient Signature: _____
Date Signed: _____

Checklist for Patient Authorizations
You can use this checklist to ensure patient authorizations received from other covered entities to ensure that these non-SHIPs comply with the HIPAA privacy regulations regarding the use and disclosure of your patients' protected health information (PHI). Check off each element that is contained in the patient authorization you have received before accepting the authorization.
Note: The required elements may be listed in a different order from in the checklist, but if any of the required elements are missing, you must deny the request for PHI and give the requesting party the reason for the denial.

- ☐ The authorization is written in plain language (is easy to read and understand).
- ☐ The authorization describes in detail the PHI that is being requested (for example, lab reports).
- ☐ The authorization says who the name of the organization or a person at the organization is permitted to make the requested use or disclosure of PHI.
- ☐ The authorization says to whom (the name of the person or organization and address) the PHI may be disclosed.
- ☐ The authorization includes an expiration date or expiration event, which has not yet passed.
- ☐ The authorization states that the individual who signed it has the right to revoke the authorization, in writing.
- ☐ The authorization describes the exceptions to that revocation right (for example, no revocation if authorization has already been relied upon, or if authorization was obtained as a condition of getting insurance and insurance law gives the right to contact a client).
- ☐ The authorization describes how the individual may revoke it.
- ☐ The authorization states that the PHI, once disclosed to others, may be disclosed to individuals or organizations not subject to HIPAA and may no longer be protected by HIPAA.
- ☐ The authorization is either signed by the individual or signed and dated by the individual's personal representative, and describes that person's authority to act for the individual.
- ☐ The authorization is dated.

Source: North Carolina Department of Health and Human Services, Division of Public Health. <https://dhhs.dph.ncdhhs.gov/HealthInformation>

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Client Releases and Records Requests

Attorney's Request for Records

The Your Name Here Law Firm, P.L.L.C.

Date: _____
Street Address: _____
City, State, Zip Code: _____

Dear [Recipient]:

My name is [attorney's name], and I am the attorney for [client's name]. My client is requesting that your office release all records, including those that contain otherwise protected health information, in accordance with the enclosed authorization signed by my client.

Please do not hesitate to contact me if you have any questions or if I can help in any way.

Sincerely,
[your name]

17

The Next Five Days

Moving the case forward using the initial client meeting.

- ✓ Provide a roadmap
- ✓ Sign releases
- ✓ Prepare witness list
- ✓ Identify alternatives
- ✓ Client tasks



18

The Next Five Days as a Parent Defender

- Initial client contact
- Prepare for client interview
- Move the case forward
- Begin gathering information

19

The Next Five Days as a Parent Defender

Criminal records: many available through public access computers at NC courthouses. For information on types, certified results, and costs, see:
<https://www.nccourts.gov/help-topics/court-records/criminal-background-check>.

Civil background checks, including prior restraining orders and other red flags, use Civil Case Processing System, VCAP:
<https://www.nccourts.gov/services/remote-public-access-program>

Check social media

20

The Next Five Days as a Parent Defender

- Initial client contact
- Prepare for client interview
- Move the case forward
- Begin gathering information
- Consider motions

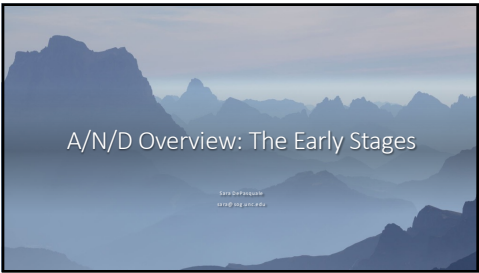
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The First
Seven
Days:
Parent
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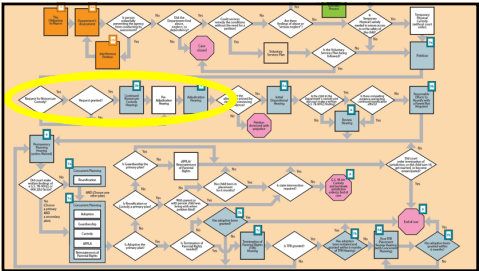


Timothy Heinle
Heinle@sog.unc.edu

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1



2

Two Kinds of Nonsecure Custody Orders

Initial (Removal)

Continued

STATE OF NORTH CAROLINA	
County	
In the General Court of Justice District Court Division	
IN THE MATTER OF	
ORDER FOR NONSECURE CUSTODY (ABUSE/NEGLECT/DEPENDENCY)	
Case No. _____	Date: _____
State and Federal of North Carolina Court System	

STATE OF NORTH CAROLINA	
County	
In the General Court of Justice District Court Division	
IN THE MATTER OF	
ORDER ON NEED FOR CONTINUED NONSECURE CUSTODY (ABUSE/NEGLECT/DEPENDENCY)	
Case No. _____	Date: _____
State and Federal of North Carolina Court System	

3

Petition Must Be Filed First!



Clerk's Office Is Open Clerk's Office Is Closed

4

Request for
Nonsecure
Custody

Statute Does Not Specify

- who
- how
- time period

5

Ex parte but...

- Telephone notice
- Limited situations

6

The Statutes G.S. 7B-

- -502 (Authority, ex parte/notice)
- -503 (Criteria)
- -504 (Initial order, take physical custody)
- -505 (Placement)
- -505.1 (Medical consent/CME)
- -506 (Con't nonsecure)
- -507 (Findings, services)
- -508 (Telephone)
- -302(c), (d) (Assessment, immediate removal)
- -403 (verified petition)
- -404 (clerks office closed)
- -405 (commencement of an action)
- -905.1 (visitation)
- -3800 (ICPC)

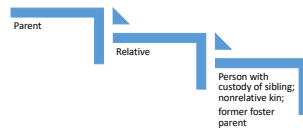
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Specific criteria in G.S. 7B-503

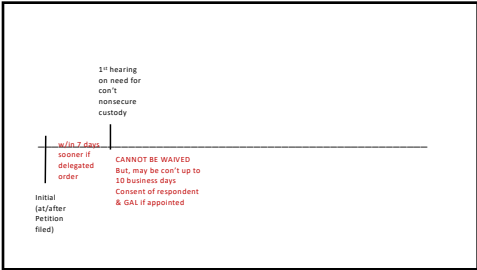
- Based upon the verified petition, this Court has jurisdiction over the subject matter of this proceeding and of the person of the juvenile.
1. As grounds for the issuance of this Order, the Court finds that there is a reasonable factual basis to believe that the matter...
- Except as the petition may state that there is no other reasonable means available to protect the juvenile, and unless one or more
- Must have 1**
- ☐ a. the juvenile has been abandoned.
 - ☐ b. the juvenile has suffered physical injury or sexual abuse.
 - ☐ c. the juvenile is exposed to a substantial risk of physical injury or sexual abuse because the parent, guardian, custodian, or caretaker has created conditions likely to cause injury or abuse or has failed to provide, or is unable to provide, adequate supervision or protection.
 - ☐ d. the juvenile is in need of medical treatment to cure, alleviate, or prevent suffering serious physical harm which may result in death, disfigurement, or substantial impairment of bodily functions, and the juvenile's parent, guardian, custodian, or caretaker is unwilling or unable to provide or consent to the medical treatment.
 - ☐ e. the parent, guardian, custodian, or caretaker consents to the nonsecure custody order.
 - ☐ f. the juvenile is a runaway and consents to nonsecure custody.

8

Placement Priorities



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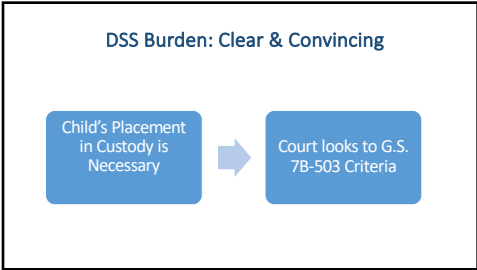


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What's happening from parent's perspective?

Images showing a parent with a child, a person in a car, and a man in a suit.

11



12

Not an adjudication on the merits

Cannot order dismissal to dispose of action



13

Other Requirements

Both

- Sibling placed together
- Order DSS notice relatives & other persons w/ legal custody of sibling(s)
- ICWA
- MH Eval of alleged abuse w/ violent history*
- May order notice to state tribe

Continued

- Inquiry/findings missing parent & paternity
- Inquiry re: other juveniles in the home
- Non-emergency/non-routine medical
- Visitation

14

Adjudicatory Hearing



Formal



Adversarial


Burden on DSS



Rules of Evidence

Clear Convincing

15



Timing

- 60 days
- Continuance disfavored

16

What's Being Decided

Status of the Child

- Abused
- Neglected
- Dependent

17

Read the Definitions

- Very Specific
- Remember the WHO
 - Exception: Human Trafficking Victim

18

Child's Status

- Does not require determination of fault by a parent, guardian, custodian, or caretaker
- Adjudication is not "as to" a particular respondent
- Adjudication may occur if service on one parent*

19

STATE OF NORTH CAROLINA

County

In The General Court Of Justice
District Court Division

IN THE MATTER OF:

Name And Address Of Juvenile

JUVENILE PETITION
(ABUSE/NEGLECT/DEPENDENCY)

Standard's Date Of Birth

Age

Place

Sex

Name Of Petitioner

☐ Abused

☐ Neglected

☐ Dependent

G.S. 7B-101

DSS Burden by clear and convincing evidence of proving the allegations in the petition
G.S. 7B-805, -807(a)

Note: Cannot amend petition to conform to the evidence

20

2 Procedural Paths for Adjudication

Hearing

Consent

21

A consent order is

- An agreement of the parties
- Their decree
- Entered on the record
- With the sanction of the court

22

Required Procedure

G.S. 7B-801(b1)

- All parties or authorized counsel are present
- Juvenile represented by counsel
- Court makes sufficient findings of fact

23

Practices referred to by the COA

- Draft of a proposed consent order
- Statement by parties/attorneys of proposed consent
- Findings that parties are consenting
- Court informed parties of intent to enter adjudication order based on consent

24

Hearing
G.S. 7B-802

A judicial process to adjudicate the existence or nonexistence of any of the conditions alleged in the petition

The court shall protect the rights of the child and parents to assure due process

Requires a hearing

25


Relevant
Time Period

- What is DSS required to prove?
 - Truth or falsity of the allegations
- So what is the relevant time period?

26

Adjudication:
Post-Petition
Evidence

Adjudicatory Hearing



Petition

27

§ 7B-802. Conduct of hearing.
The adjudicatory hearing shall be a judicial process designed to adjudicate the existence or nonexistence of any of the conditions alleged in a petition. In the adjudicatory hearing, the court shall protect the rights of the juvenile and the juvenile's parent to assure due process of law. (1979, c. 815, s. 1; 1998-202, s. 6; 1999-456, s. 60.)

28

Dependency
In re L.N.H.

Report Assessment Petition	Considered Evidence at Time of petition	Reversed Should have considered evidence at time of hearing	Reverse CDA, determination of A/N/D is fixed at time of filing of petition
DSS	District Court	Appeal to COA	NC Supreme Court

29

Plain Language

§ 7B-802. Conduct of hearing.
The adjudicatory hearing shall be a judicial process designed to adjudicate the existence or nonexistence of any of the conditions alleged in a petition. In the adjudicatory hearing, the court shall protect the rights of the juvenile and the juvenile's parent to assure due process of law. (1979, c. 815, s. 1; 1998-202, s. 6; 1999-456, s. 60.)

conditions underlying determination of whether a juvenile is an abused, neglected, or dependent juvenile are fixed at the time of the filing of the petition. This inquiry focuses on the status of the child at the time the petition is filed, not the post-petition actions of a party.

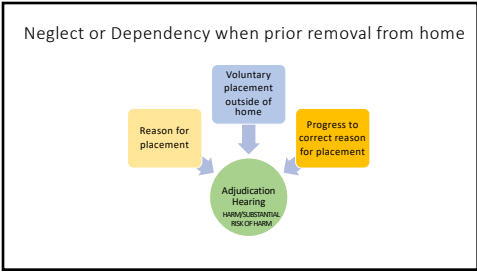
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COA
Exceptions

Fixed and ongoing circumstance,
not discrete event or one-time occurrence

- Paternity
- Mental Health

31



32



Do the
exceptions
still apply?

33



Stipulations

- Judicial admissions
- Binding on the party who agrees to them

34

Stipulate to


Facts

Conclusion of law

X

"Stipulations as to questions of law are generally held invalid and determinative of the merits of a case on appeal."
 Abuse, Neglect, Dependency
 appellate courts have held.

35

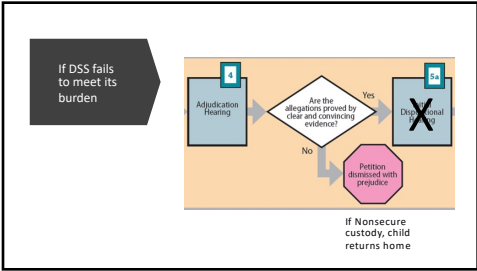


Stipulations

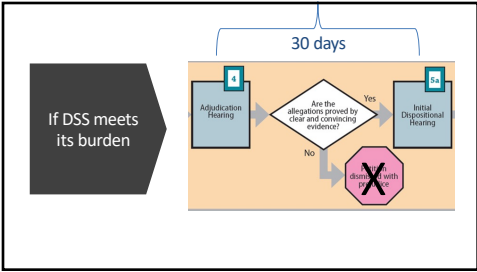
G.S. 7B-807(a)

- In writing, signed by each party, submitted to the court
- Read into record with oral statement of agreement from each party stipulating

36



37



38

Timing of Entry of Juvenile Orders

30 days

If not, court response

- Clerk shall schedule a subsequent hearing...
- Shall be entered within 10 days of subsequent hearing

39

Remedy?


File for a Writ of Mandamus

"The appropriate remedy for a trial court's failure to enter a timely order is mandamus, not a new hearing."
In re T.H.T., 362 N.C. 446 (2008)

40

Appeal

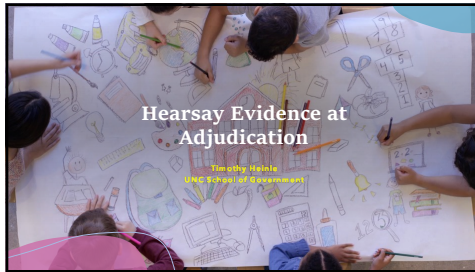
- When can adjudication order be appealed?
- After initial dispositional order entered



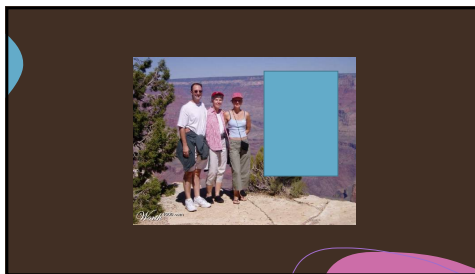
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Advocate

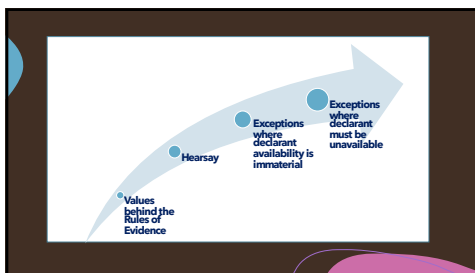
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1



2



3

Values, Not Just Rules

- Avoid unreliable evidence
 - Rules re personal knowledge, hearsay, opinion, competency
- Minimize prejudicial distractions
 - Rules re relevance
- Promote social policies
 - Rules re privilege
- Ensure fairness
 - Predictability and notice

4

Now I get it!

Hearsay is an out-of-court statement offered to prove the truth of the matter asserted.



5

For the Truth

Out-of-court statement
+ Offered to prove the truth of what was said

The value of the evidence depends on the credibility of the out-of-court declarant.

To test the declarant's credibility,

- the declarant must be subject to cross-examination, or
- the statement must satisfy a hearsay exception.

6

"The father's drug counselor told dad that as part of his case plan, he must submit to screens."

Social Worker

7

Not for the Truth

Out-of-court statement
+ Offered for reasons other than the truth

The value of the evidence usually depends on the credibility of the in-court witness.

An in-court witness' credibility is tested by being subject to cross-examination.

8

"The father's drug counselor told dad that as part of his case plan, he must submit to screens."

Social Worker

9

Hearsay Exceptions

Category 1:
Declarant Availability Irrelevant



Category 2:
Declarant Must Be Unavailable



10

Hearsay Exceptions

Category 1: Declarant Availability Irrelevant

Remember the values behind the Rules. These statements are admissible because they carry inference of **reliability** or **sincerity**.

Common exceptions in child welfare cases

- Business and public records
- Medical diagnosis or treatment
- Excited utterance
- Residual hearsay

11

Business and Public Records

Is it a
business?

Business

Production

Association

Profession

Occupation

(And calling of every kind)

Whether or not conducted for profit

N.C. Gen. Stat. § 8C-1, R. 803(a)

12

Business and Public Records

Is it a business record?

- A memorandum, report, record, or data compilation
- In any form
- Of acts, events, conditions, opinions, or diagnoses
- Made at or near the time
- By or from information transmitted by
- A person with knowledge

N.C. Gen. Stat. § 85C-1, R. 603(a)

13

Business and Public Records

Advanced Notice Required!

Exception applies to records that satisfy the requirements concerning both

1. the method and circumstances of preparation, and
2. the contents of the records.

14

Rule 602

"A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that he has personal knowledge of the matter."

15



Reconceptualizing Business and Public Records

The record must be competent to testify.

To determine competency, we look at how the records were prepared.

If the record is competent to testify, then we analyze the admissibility of individual statements within the records.

16

Business and Public Records




Determining if the Records are Competent

- Prepared in the ordinary course of business
- At or near the time of the event being described
- By someone with knowledge (or based on information transmitted by someone with knowledge)

17

Business and Public Records



Tip!

R. 803(6) was amended to allow business records with an attached affidavit of nonparty records custodian...

But courts can insist on live-witness testimony for critical issues.

18


Business and Public Records

Remember, just because a record is admitted under this exception does not necessarily mean that every statement contained within the record is admitted. Must analyze.

Example: medical records with proper affidavit of records custodian attached. Records contain a written note from a nurse that "Jonny told me his dad did this."

19

Business and Public Records



How is this exception consistent with the **values** behind the Rules?


The idea is that the "business environment encourages the making of accurate records by those with a duty to the enterprise".
BRANDIS & BROUN § 225, at 911 n.451.

20

Medical Diagnosis or Treatment Exception

Applies when the statements are

- made with the declarant understanding they would lead to medical diagnosis or treatment, and
- reasonably pertinent to diagnosis and treatment.



21

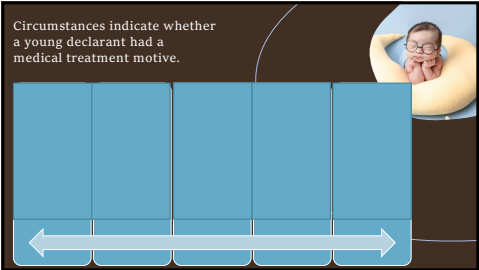
Medical Diagnosis or Treatment Exception

Requirements include that the declarant made the statements *understanding* they would lead to medical diagnosis or treatment.



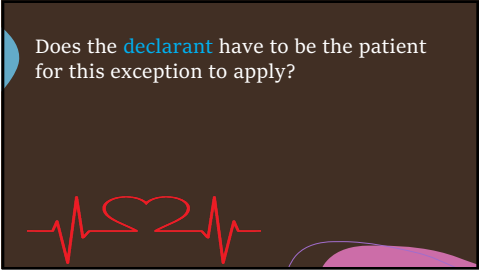
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Circumstances indicate whether a young declarant had a medical treatment motive.




23

Does the *declarant* have to be the patient for this exception to apply?

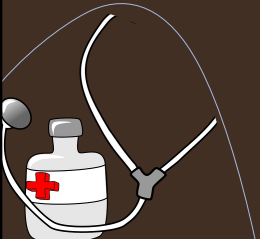


24

Does the **listener** have to be the medical provider for this exception to apply?



25



Medical Diagnosis or Treatment Exception

How is this exception consistent with the values behind the rules?

26

Other Hearsay Exceptions under Rule 803

Present Sense Impression Rule 803(1)	"Hello, 911? A red Ferrari just hit another car."
Excited Utterance Rule 803(2)	"Oh no, you just hit another car!"
Mental, Emotional, or Physical Condition Rule 803(3)	"I cannot believe I have to drive home; I am exhausted."
Reputation as to Character Rule 803(21)	"He is known around town for being dishonest."
Records of Vital Statistics Rule 803(9)	E.g., certificates of birth, death, or marriage.

27

Hearsay Exceptions
Category **12**: Declarant Availability Irrelevant

Another value: **fairness**.

28

Admission of "Party-Opponent"

- Declarant availability irrelevant
- Rule 801(d) - not Rule 803
- Basic elements:
 - Declared or endorsed
 - By party-opponent
 - Offered against that party

X Any statement made or endorsed by any party to this case can come in for any purpose?

29

What if...

"Your Honor, I saw Father 1 at the grocery store recently. He said, 'I just know that the kids' mom is using cocaine.'"

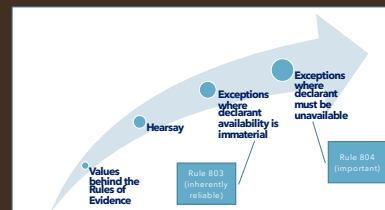
X Admissible in adjudication hearing in proceeding brought by DSS involving both juveniles?

30

Admission of "Party-Opponent"

- Statements of parent ✓
- Statements of DSS worker, law enforcement officers, and other government agents ✓
- What about statements of child?

31



32

Hearsay Exceptions under Rule 804

Unavailable means the declarant is

- precluded from testifying,
- refusing to testify despite a court order to do so,
- claiming, under oath, to have a lack of memory about the statement,
- unable to testify because of a physical or mental illness, or death, or is
- absent and reasonable means to procure the declarant have been unsuccessful.

33

Hearsay Exceptions under Rule 804

Former Testimony
Rule 804(b)(1)

Declarant testified in this proceeding, or another proceeding where a party had similar interests as a party in the current proceeding.

Impending Death
Rule 804(b)(2)

At issue is whether Dan hit a woman with his red Ferrari. The victim's son testifies that he came out of the store and found his mom on the ground, in pain. He testifies that when he asked his mom who did this, she "pointed at Dan as he drove away." She died before the ambulance could get to the scene.

34

EXTRA! EXTRA!

Residual Hearsay

Required Showing	Rule 803(24)	Rule 804(b)(5)
Circumstantial guarantees of trustworthiness exist	✓	✓
Statement offered as evidence of a material fact	✓	✓
More probative than other reasonably available evidence	✓	✓
Purpose (value) of Rules and interests of justice served by admission	✓	✓
Witness is unavailable	?	✓
Advanced notice was given	✓	✓

For more, see A/N/D Manual, Ch. 11, Section II, beginning on page 11-46.

35

EXTRA! EXTRA!

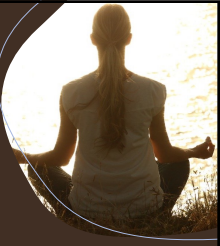
Residual Hearsay

36

Don't Panic

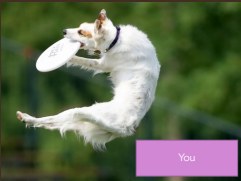
If the correct rule comes to you immediately, great. If not:

- Is it hearsay? (out-of-court + offered for truth)
- Whose credibility matters? (hearsay = out-of-court declarant; non-hearsay = usually in-court witness)
- What values are in play? How is proposed evidence consistent or not with those values?
- Answers should guide your arguments on admissibility.
- Ask for time to research issue (particularly in lengthy trial and if critical issue).



37

Timothy Heide
Heide@seattleu.edu



You

38

Special Issues Related to DSS Records

Timothy Heinle
UNC School of Government

1

Poll Time

POLL EVERYWHERE

Or you can open a browser and respond at [Polls.com/timothyheinle](https://polls.com/timothyheinle)

2

Where do you represent parents? (Click all that apply)

NORTH CAROLINA

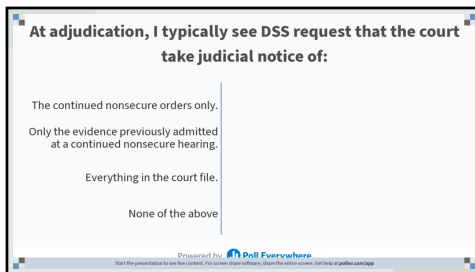
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Start this presentation to see how to use the Poll Everywhere interface. Get help at polls.com/help

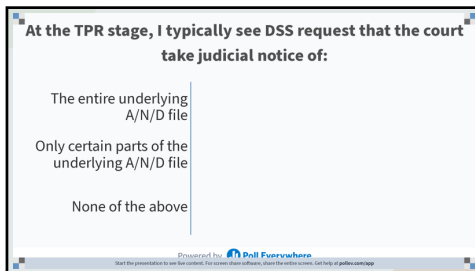
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4



5



6

I have seen the court rule against a request by DSS to take judicial notice of a prior order or previously admitted evidence.

True False Super false

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Start the presentation to see the content. For content share software, share the entire screen. Get help at poll.com/help

7

As for DSS' own file,

I have seen DSS offer its file at adjudication.

I have seen DSS offer its file at a non-adjudicatory hearing.

I have seen DSS offer its file at both adjudication and other hearings.

I have never seen DSS seek to admit its file.

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8


Finally, what word or phrase comes to mind when you think of the nature of your objection(s) to judicial notice in A/N/D proceedings and to the admission of DSS' file?

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9

Grandma's Famous Judicial Notice Recipe

- 2 parts Judicial Notice
- 1 part Collateral Estoppel
- 1 part Res Adjudicata
- Equal parts confusion among bench and bar




10



11

Judicial notice of prior entered orders

YOU'VE GOT TO FIGHT FOR YOUR RIGHT TO ~~OWN~~ ^{OWN} YOUR OBJECT




A timely request entitles you to be heard about whether the court should take judicial notice. See *State v. Anthony*, 267 N.C. App. 45 (2019) (improper where matters were not offered in evidence and were only discussed in argument).
If not notified ahead of time, a request to be heard may be made after judicial notice is taken. N.C. R. EVID. 201(e).

12

Judicial notice of prior entered orders

- At hearings where Rules of Evidence apply, object to prior findings of fact based on now-inadmissible evidence.
- Make DSS name the specific findings and conclusions the court is being asked to take notice of.
 - General objection may be insufficient
 - Big picture: practical barriers may reduce the flood
 - Cleaner record on appeal
- Offer contradictory evidence.
- Admissibility vs effect.




13

Judicial notice of previously admitted evidence

In re L.N.H., 382 N.C. 536 (2022)

- COA reversed trial court's dependency adjudication. NC Supreme Court granted the petition for discretionary review.
- Multi-layered case with hard facts for the parent attorney to deal with.
- NC Supreme Court examined whether it was ineffective assistance of counsel to fail to object at adjudication to the court taking notice of evidence received at continued nonsecure hearing.
- Reversed COA.



14

Judicial notice of previously admitted evidence

In re L.N.H., 382 N.C. 536 (2022)

- But!

"[Neither] this Court nor the Court of Appeals has directly addressed...whether a trial court [at adjudication may take judicial notice of] evidence that has previously been admitted [at a hearing on continued] non-secure custody...with reasonable arguments in support of and in opposition to the admissibility of this evidence having been advanced in the parties' briefs before this Court."



15

**Judicial notice of
previously admitted
evidence**

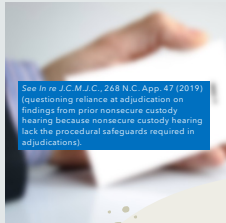
Your Argument:
Hearsay evidence admitted without
objection at a nonsecure custody hearing
should not be allowed as admissible
evidence by judicial notice at an
abuse/neglect adjudication.



16

**Judicial notice of
previously admitted
evidence**

Your Argument:
Hearsay evidence admitted without
objection at a nonsecure custody hearing
should not be allowed as admissible
evidence by judicial notice at an
abuse/neglect adjudication.



17

**This all
stresses the
importance of:**

- Being prepared at adjudication
 - Know what is already in the file.
- Objections
 - Strenuously object.
 - Specify objections.
- Keeping out FOF unsupported by competent evidence
 - Review draft orders.
 - Rebut a presumption that court disregarded incompetent evidence by showing it was based on inadmissible evidence.
- Reducing the effects of prior non-adjudicatory hearing findings
 - Non-binding.
 - Different standards of proof across hearings can affect weight of evidence.
 - Courts may reject prior non-adjudicatory FOF and credit contrary testimony.
- Offering evidence and proposing findings
 - E.g., parent reports, family photographs.
 - Get good findings (even in bad orders).

18

Judicial notice and collateral estopped can prevent DSS from relitigating allegations it lost at adjudication.

See *in re F.S.*, 268 N.C. App. 34 (2019) (DSS could not argue that mother's hospitalizations showed risk of harm to child where issue was fully litigated and court previously found no nexus of harm or substantial risk of harm.)

19

Your turn

20

Key points regarding DSS' records

- ❑ Wealth of information
- ❑ Be specific and all-encompassing when requesting access
- ❑ When DSS seeks to admit its entire file
 - ❑ May be expressly requested ("we'd like to offer our entire file") or more subtly (e.g., a social worker report that includes a reference to attaching and incorporating the file).
 - ❑ Make DSS do the legwork and be specific.
 - ❑ Remember! Business records:
 - ❑ is a two-step process (hearsay within hearsay).
 - ❑ A different social worker can lay foundation but only if knowledgeable about preparation.
 - ❑ Advanced notice is required.

21

*Special Issues Related
to DSS Records*

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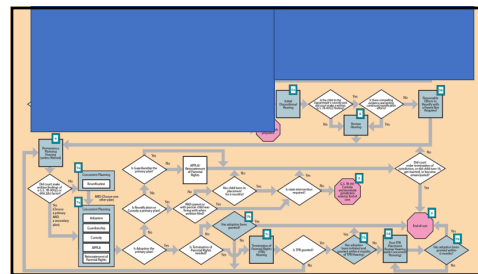
An abstract graphic consisting of numerous small, colored dots in shades of blue, green, yellow, and orange. These dots are arranged to form a shape that resembles a map of North Carolina, with the dots being more densely packed in the central and northern regions and more sparse towards the bottom and right edges.

22

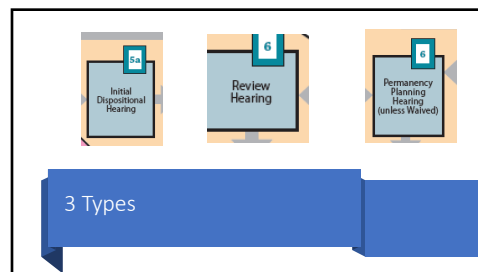
A/N/D Overview

The Later Stages

1



2



3

Purposes of Disposition

Design a plan that reflects

- consideration of facts
- child's needs and limitations
- family's strengths and weaknesses

If possible,

- keep child at home
- use appropriate community resources for care, supervision, treatment
- to strengthen home situation



4

Provides services that

1

protect the child

2

respect family autonomy

3

reflect child's needs for safety, continuity, and permanence

4

prevent unnecessary separation of child and parent

5

Protective Services

- Screen reports & perform assessments
- Casework
- Other counseling services to parents, guardians, other caretakers to
 - help prevent abuse/neglect
 - Improve quality of child care
 - Be more adequate parents
- Preserve & stabilize family life

G.S. 7B-300

6

Safe Home

A home in which the juvenile is not at substantial risk of physical or emotional abuse or neglect.

G.S. 7B-101(19)

7

Design a Plan

Services & Conditions

Consistency & Decision Making

Placement & Visitation



Permanence

w/in reasonable period of time

8

At some point, in all of the dispositional hearings

Considering reasonable efforts & reunification...

9

Reasonable Efforts

In re N.L.M.

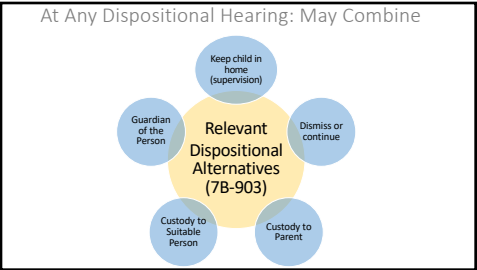
G.S. 7B-101(18): Defined

G.S. 7B-903(a3): Did DSS make reasonable efforts

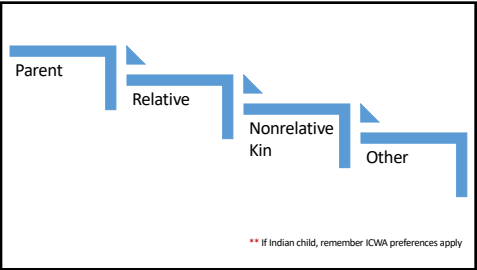
Federal regulations = Nonexhaustive list

- Crisis counseling
- Individual/family counseling
- Mental health and substance use counseling
- Services to unmarried parents
- Day care
- Emergency shelter
- Vocational Counseling
- Emergency caretaker
- Homemaker services

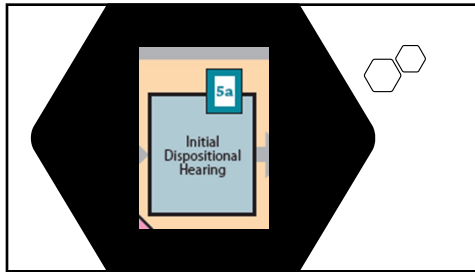
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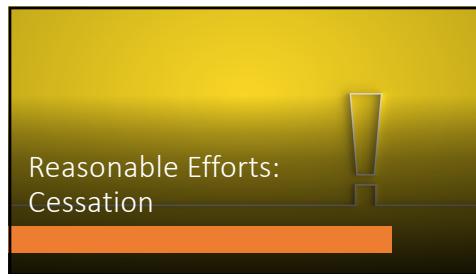
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12



13



14

7B-901(c) Factors	Aggravating Circumstances
	TPR of another child
	Parent committed (or attempted) certain felonies of juvenile or another child
	Registered sex offender

15

Cease
Reunification
Efforts
In re L.N.H.

G.S. 7B-901(c) requires written findings

Must explain "aggravating circumstances"

7B-901(c)(1) if any other act, practice, or conduct that increases the enormity or added to the injurious consequences of the abuse or neglect

16




Two Different Tracks

w/in 90 Days
of Initial Disposition


17

REVIEW ONLY



Continue in
Custody of Parent,
Guardian,
Custodian,
Caretaker*

PPH ONLY



Removed from
Custody of Parent,
Guardian, or
Custodian

18

Review Hearing: 7B-906.1(d)(1a), (d1), (d2)

Continuation	Appropriateness of continuation in home of parent, guardian, or custodian (Removal can occur)
--------------	--

19

Review Hearing: 7B-906.1(d)(1a), (d1), (d2)

Completion	Absent extraordinary circumstances, when P, G, or C completes court-ordered services and juvenile in safe home, court may waive further hearings or termination its jurisdiction
------------	--

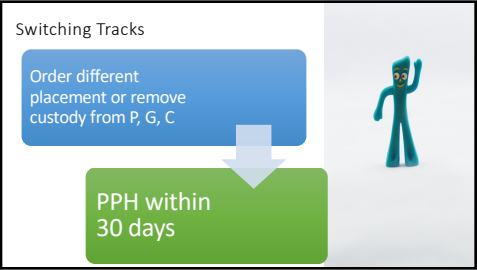
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Shall not waive or refuse to conduct reviews if

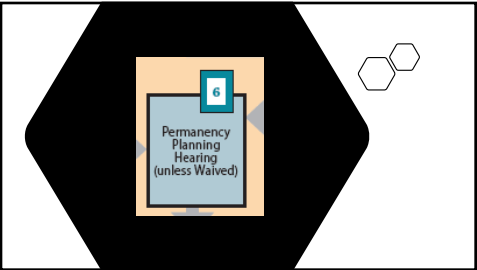
Party files a motion for review <u>and</u>	Alleges a significant fact
--	----------------------------

7B-906.1(k1)

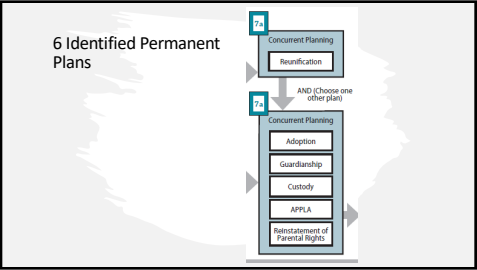
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22



23



24

PPH: Reasonable Efforts

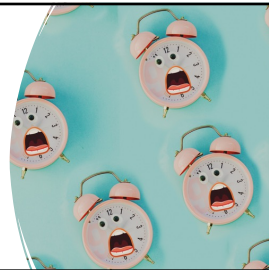
The court shall order department to make efforts to
finalize each plan

The court may specify efforts that are reasonable
and timely to achieve permanence

25

Reasonable Efforts and Reasonable Accommodations

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

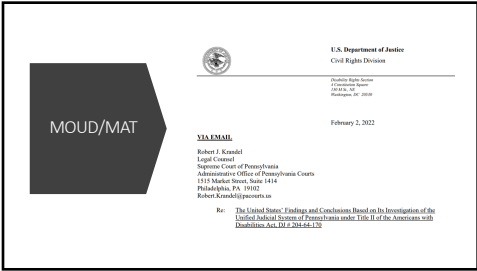


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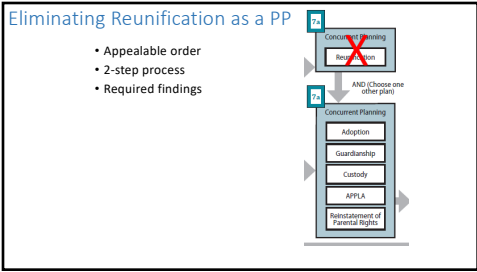
When comply with MAT,
not violating conditions or
terms of court order requiring
SUD treatment

G.S. 7B-904(c1)

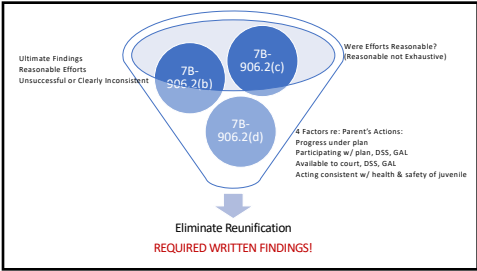
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30

Findings required re: parent's



What statute requires these findings?

31

Findings before conclusion



32

When Are These Findings Required?

Non-Parent	Timing	Waivable?
<ul style="list-style-type: none">• Custody• Guardianship	<ul style="list-style-type: none">• Permanent order (PPH)• BUT, In re S.J.T.H.	YES

33

Guardianship & Custody

Inclusive of decision-making



34

7B-906.1(e)(2)

- Consider and if relevant make findings on
 - Legal guardianship/custody and
 - Rights & responsibilities that should remain with the parents
- If none specified in order, rights (except for visitation) are lost
 - *In re M.B.*, 253 N.C. App. 437 (2017)

35



36

Reunification: Rylan's Law

- Return physical custody to removal P, G, C, C
 - If in DSS custody, must have hearing w/ finding proper care and supervision in a safe home
- Before DSS recommends return of physical custody, DSS observe 2 visits

37

G.S. 7B-101(18b): Reunification!

38

Status of Court Case

TERMINATE JURISDICTION

- G.S. 7B-201: terminate by court order
- G.S. 7B-911
- Adoption
- Emancipation

RETAIN JURISDICTION

- Hold regular PPH
- Waive regular PPH
 - G.S. 7B-906.1(k), (n)

39



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41

TACTICS FOR LATER
HEARINGS

REPRESENTING PARENTS AFTER ADJUDICATION

USANA HUNTER
ASSISTANT PUBLIC DEFENDER, WILMINGTON, NC

1

AGENDA

- Definitions
- Tactics
- Initial PPH
- PPH - Approaching a year
- PPH - Recommended plan change
- Wrap up

2

DEFINITIONS

Case Plan

Reasonable Efforts

Permanency Planning Hearings

Motion for Review

3

CASE PLAN (AKA PERMANENCY PLANNING FAMILY SERVICES AGREEMENT)

10A NCAC 70G .0504 OUT-OF-HOME FAMILY SERVICES AGREEMENT FOR CHILDREN RECEIVING FAMILY FOSTER CARE SERVICES

- (a) The agency shall develop a written out-of-home family services agreement within 30 days of admission of a child in a family foster home.
- The out-of-home family services agreement ~~shall be developed in cooperation with~~ parents, guardian or legal custodian, and, when possible, the child and foster parents.
- The out-of-home family services agreement shall be based upon an assessment of the ~~needs~~ of the child, parents or guardian.

4

CASE PLAN (CONTINUED)

- The out of home family services agreement shall include goals stated in ~~specific, realistic, and measurable terms and plans~~ that are ~~action oriented~~, including responsibilities of staff, parents or guardian, other family members, legal custodian, foster parents, and the child.
- The agreement shall address the following services to be provided or arranged:
 - (1) the visitation plan designed to maintain links with the family;
 - (2) the expectations of the family, agency, placement provider, and community members;
 - (3) target dates; and
 - (4) expected outcomes.

5

REASONABLE EFFORTS

N.C. Gen. Stat. § 7B-101 - Definition

- The ~~diligent~~ use of preventive or reunification services by a department of social services when a juvenile's remaining at home or returning home is consistent with achieving a safe, permanent home for the juvenile within a reasonable period of time.
- If a court of competent jurisdiction determines that the juvenile is not to be returned home, then reasonable efforts means the diligent and timely use of permanency planning services by a department of social services to develop and implement a permanent plan for the juvenile.

6

PERMANENCY PLANNING HEARINGS

§ 7B-906.1. Review and Permanency planning hearings

KEY TAKEAWAYS FOR PPH

- Initial hearing within 90 days of Dispositional hearing
- After the initial PPH - 6 months - can be shorter - ask for shorter
- Court will hear from DSS, GAL, parents, caregivers
- Hearsay evidence can be considered → relevant, reliable & necessary → court reports
 - We can and should admit evidence when possible

7

PERMANENCY PLANNING HEARINGS (CONTINUED)

• COURT MUST CONSIDER THESE FACTORS:

- Services offered for reunification
 - Visitation update - modification? Expansion?
- Whether efforts to reunite the juvenile with either parent clearly would be unsuccessful or inconsistent with the juvenile's health or safety and need for a safe, permanent home within a reasonable period of time.
- Reports on juvenile's placement - appropriateness, goals of foster care plan - role of foster parent in planning
 - 16, 17 yr. olds - Independent Living Assessment - Independent Living Plan
- Anything else

8

MOTION FOR REVIEW/MODIFICATION

§ 7B-1000. Authority to modify

- (a) Upon motion in the cause or petition, and after notice, the court may conduct a modification hearing to...
- determine whether the order of the court is in the best interests of the juvenile.
- The court may modify the order in light of changes in circumstances or the needs of the juvenile and address the issues raised in the motion that do not require a review or permanency planning hearing *pursuant to G.S. 7B-906.1*.

9

OVERVIEW OF TACTICS

Review Petition

Get signed releases from client

Reach out to providers directly

Request updated SW notes, other docs from DSS

Request drugs screens

Include pictures

Talk about family placements

Encourage client to continue to parent

Use Adjudication/disposition order as roadmap

10

REVIEW PETITION

- Are the services ordered related to the reasons why the child was removed
 - Curate your client's plan – link them up to personalize it to your client/family
 - Listen to client concerns/challenges with ordered services
- You get parenting classes, YOU get parenting classes...it is necessary
 - Group classes vs. one on one
- Judge may have ordered over your objection at disposition → object again
- Let's prioritize – substance abuse main issue – let's get that under control and reassess
- Can some services be combined – therapist can provide anger management/empowerment – just try it – DVOP is 6 mos

11

GET SIGNED RELEASES FROM CLIENT

- Don't just rely on DSS records – why?
- Get the complete record → at the same time, **DSS doesn't need the entire record**
 - Ask the court to limit DSS access to provider records to:
 - Initial Assessment/Diagnosis
 - Treatment plan/Compliance
 - Drug Screen results
 - Successful Completion?
- Paint the whole picture – Court report – “client experiencing cravings” → provide context
 - Talking to medical doctor who is monitoring/prescribing medication

12

REACH OUT TO PROVIDERS DIRECTLY

- Client signed release
 - Parenting – how did client do, praises/concerns, observe interaction with children, feedback from SWs – could be a letter, could be a witness
 - Substance Abuse – level of engagement, growth, consistency
 - Mental Health – compliant with medication management; if no meds – why, what's the plan; level of engagement; consistency; stability/progress – what does that look like for YOUR client
 - Domestic Violence – level of engagement, safety plan in place, group involvement

13

REQUEST UPDATED SW NOTES, OTHER DOCS FROM DSS

- Especially when reunification seems to be stalled
- What's in there?
 - Conversations with FP, provider conversations, visitation notes, referral information, client interaction with social worker, conversations with family members
- Identify concerns – even if they're not being directly communicated with client – ex. Vists are terrible → do notes reflect that?
 - The absence of information is still information → no concerns noted but concerns referenced in report?
- CFT notes (should get from client or attend yourself)
- Vendor agreements, referrals – time frame for both

14

REQUEST DRUG SCREENS

- Why? DSS documents the results in reports
- DSS makes mistakes!
- Is the testing reliable? If you have questions call the lab!!!
- Look at the levels – especially hair screens (levels decreasing?)
- How frequently are they requested?
 - If not frequently requested – DSS can't be too concerned with use – let's move forward
- Client missing drug screens – why? → challenge reports that don't provide explanations for missed screens

15

INCLUDE PICTURES

- Why?
- Judge may have never seen the child
- Pictures humanize both parents and children
- Reminds everyone why we are here – this is a family
- Positive evidence to have in the record

16

TALK ABOUT FAMILY PLACEMENTS

- Discuss early with clients – even if they can't take kids → visitation resource
- Family placement is statutory preference/edict
- Even if they don't love their family – start having discussions about placement
- At initial PPH – parent not engaged → don't delay
- ICPC Home studies can take a long time
- Make sure that it's clear to the court that there are potential family members – (provide family members with info about process)

17

ENCOURAGE CLIENT TO CONTINUE TO PARENT

- Go to doctor appointments
- Go to school appointments
- If they can't go – why not? Get updates – ask regularly
- Remind the parents that these are their kids – they know them best
- REMIND THE JUDGE/DSS/GAL OF THIS FACT
- Especially in cases with complicated medical issues → parents have to know how to care for their child/don't want it used as excuse to delay reunification

18

USE ADJUDICATION/DISPOSITION ORDER AS ROADMAP

- The order should outline the judge's expectations
- Hold DSS responsible for connecting client to services
- Has DSS made timely referrals?
- Having a release signed by client is helpful here → get independent documentation from provider
 - Request referral/fax from DSS – actual paperwork → nail down dates
- Punch to face – no psych eval needed!!

19

INITIAL PPH - PREPARATION

- Talk to your client (read report)
- Reach out to DSS – can we expand? Issues?
- What is your client's progress?
 - Client has disappeared – SW NOTES COULD SHED LIGHT
 - Client visiting – nothing else – SW NOTES, FAMILY PLACEMENT – COMMUNITY VISITS?
 - CLIENT IS KILLING IT! – HOW CAN WE EXPAND VISITS

20

INITIAL PPH – PREPARATION (CONTINUED)

- Why are you struggling – what are barriers → Address with court
 - TRANSPORTATION
 - ANXIETY IN GROUP SETTING
 - WORKING – CAN'T MAKE DRUG SCREENS/VISITS
- Have candid conversation with client – explain what is at stake
- Make sure client understands court expectations
- Look at age of child – how can we expand – what are the needs?
 - PUSH AS MUCH VISITATION AS POSSIBLE RIGHT FROM THE START – use visitation resources – family/friends

21

INITIAL PPH – APPLY TACTICS

- Review Petition – ARE CLIENT'S NEEDS BEING ADDRESSED
 - ARE THOSE PARENTING CLASSES NECESSARY; PRIORITIZE – no cookie cutter services
 - Revisit order – are all services necessary?!
- Get signed releases from client – DEFINITELY HELPFUL
- Reach out to providers directly – DEPENDS ON CASE PROGRESS, LETTERS CAN BE ADMITTED, DISPUTE W DSS?
 - DOES CLIENT NEED AN ACCOMMODATION
- Request updated SW notes, other docs from DSS – DEPENDS ON PROGRESS

22

INITIAL PPH – APPLY TACTICS (CONTINUED)

- Request drugs screens – ALWAYS HELPFUL TO HAVE UPDATED SCREENS – ADMIT NEGATIVE SCREENS!!
 - TROUBLE GETTING TO SCREENS – REASONABLE EFFORTS MEANS THAT DSS NEEDS TO IDENTIFY A PLACE FOR AFTER HOUR DRUG SCREENS
- Include pictures – NOT A NOTEBOOK – A FEW
- Talk about family placements – LIST POTENTIAL FAMILY PLACEMENTS/VISITATION RESOURCES – HAVE THEM PRESENT IF POSSIBLE
- Encourage client to continue to parent – ASK THE COURT'S ASSISTANCE TO EMPOWER CLIENT
- Use Adjudication/disposition order as roadmap – IDENTIFY REFERRALS/SERVICES CLIENT IS WAITING ON – HOUSING/EMPLOYMENT ISSUES → IDENTIFY SUPPORTS

23

PPH – APPROACHING A YEAR - PREPARATION

- Talk/Meet with client (read report) – we need to move the needle
 - Client has disappeared
 - Client visiting – nothing else (barely anything else)
 - CLIENT IS KILLING IT! – HOW CAN WE EXPAND VISITS/NEXT STEPS
- ADDRESSING GOALS
 - SAOP
 - Parenting
 - Empowerment
 - Therapy
 - Visiting regularly – visits going well → EXHIBITION – use relatives, unsupervised

24

PPH – APPROACHING A YEAR – PREPARATION (CONTINUED)

- Visits stalled - file a motion - reach out to DSS
 - Creative ways to expand
- Candid conversation with client – if i was talking to the SW what would they tell me?
- ICPC home studies? Judge doesn't have to send kids immediately

25

PPH – APPROACHING A YEAR – APPLY TACTICS

- Review Petition – ARE WE FOCUSED ON ISSUES
- Get signed releases from client – GET UPDATED INFORMATION
- Reach out to providers directly – ANY EVIDENCE TO PROVIDE TO COURT?
- Request updated SW notes, other docs from DSS
 - COMPLETED SERVICES - EMPHASIZE VISITS GOING WELL - MORE TIME
- Request drugs screens – ADMIT MORE NEGATIVE SCREENS

26

PPH – APPROACHING A YEAR – APPLY TACTICS (CONTINUED)

- Include pictures – VISITS IN COMMUNITY – CLIENT'S HOME
- Talk about family placements – VISITS, STATUS OF HOME STUDIES
- Encourage client to continue to parent – ATTENDING APPTMTS – Issues with that?
PROVIDER FEEDBACK – HAVE CLIENT SIGN RELEASE/GET FROM DSS
 - Could be helpful notes/feedback in the notes of the children's provider
- Use Adjudication/disposition order as roadmap (prior PPH orders too) – ALL
REFERRALS MADE, SERVICES OUTSTANDING? ADDRESS WITH COURT IF DSS IS
RESPONSIBLE

27

PPH – RECOMMENDED PLAN CHANGE - PREPARATION

- Client has disappeared
- Client visiting – Inmate else
- CLIENT IS KILLING IT!
- Meet/talk to client
- Have candid/difficult conversation with client
- Review court expectations again
- Discuss progress – barriers to progress
 - Address barriers with judge if appropriate
- Explain to client potential outcomes, including the possibility that a primary plan can change back to reunification with progress
- Permanent placement identified?

28

PPH – RECOMMENDED PLAN CHANGE – APPLY TACTICS

- Review Petition – PROGRESS ON ISSUES FROM PETITION – ARGUE IMPROVEMENTS
- Get signed releases from client – UPDATED RECORDS – CLIENT'S PROGRESS DOCUMENTED
- Reach out to providers directly – INPUT FROM PROFESSIONALS – WITNESSES!
 - A YEAR IS NOT ENOUGH TIME. STRUGGLES WITH MH/SA ARE NOT "FIXED" IN ANY CERTAIN PERIOD OF TIME
- Request updated SV notes, other docs from DSS – REASONING OF PLAN CHANGE. IDENTIFY ALL POTENTIAL CAUSES FOR CHANGE OF PLAN

29

PPH – RECOMMENDED PLAN CHANGE – APPLY TACTICS (CONTINUED)

- Request drugs screens – ADMIT NEGATIVES
- Include pictures – MORE IMPORTANT THAN EVER
- Talk about family placements – GO FULL FORCE- PLACEMENT NEEDS TO BE MADE
- Encourage client to continue to parent – CONTINUE TO PARENT – DON'T GET DISCOURAGED
- Use Adjudication/disposition order as roadmap – DID DSS DO EVERYTHING THEY WERE SUPPOSED TO DO – WE NEED RECEIPTS!
- Closing argument – POINT OUT PROGRESS, REUNIF POSSIBLE IN 6 MONTHS, PARENT/CHILD BOND, FOCUS ON POSITIVES, LOSS OF FAMILY CONNECTION, DSS FAILURES, PLACEMENT ISSUES

30

WRAP UP

Lyana Hunter

910-343-5423

Lyana.g.hunter@nccourts.org

- Keep the identified goals/services of the disposition order in the forefront
- Continue to get updated records from DSS and from your client's providers directly
- Share pictures of the family with the judge
- Provide relative placement option ASAP
- Remind parents to participate in all services regarding their kids and ask for updates
- Candid but kind conversations are essential with our clients
- Hold DSS accountable for reunification along with your client

31

Office of the
Parent Defender

Wendy C. Sotolongo
Parent Defender
Indigent Defense Services
[Wendy.C.Sotolongo@dcba.ny.us](#) 3/10/2023

1

OPD

The Office of the Parent Defender provides and promotes high quality legal representation for parents affected by the child welfare system (DSS) and parents facing contempt in child support and other civil proceedings.

Wendy C. Sotolongo	Parent Defender
Annick Lenoir-Peek	Deputy Parent Defender
J. Lee Gilliam	Senior Assistant Parent Defender
Jacky L. Brammer	Assistant Parent Defender
Kate Warren	Administrative Assistant
Shari Neal	Contracts Administrator
Sharice Zachary	Interdisciplinary Representation Program Manager

2

FY 18-FY22 AND/TPR Appeals

Fiscal Year	All cases	TPR cases	Non-TPR
FY 18	180	140	40
FY 19	190	130	60
FY 20	170	120	50
FY 21	180	110	70
FY 22	210	160	50

Appeals

In FY22, OPD made assignments in 211 AND/TPR appeals. OPD appellate attorneys received 59 of these appeals. The remaining assignments went to one of our 25 appellate roster attorneys.

3

Resources

Appellate Attorneys:

- Training
 - Boot Camp-OPD
 - Annual Appellate Advocacy-SOG
- Mentoring
 - Brief bank
 - Moots for oral arguments
 - Consultations
 - Listserv

Trial Attorneys:

- Training
 - Annual Parent Attorney Conference-SOG
 - Biannual Intensive Parent Defender-SOG
 - Biannual Contempt CLE-SOG
 - Local Districts-OPD
- Case consultations
- Research and sample motions
- Listserv

4

OPD News

- OPD was instrumental in creating a Child Welfare Specialty within the NC State Bar
 - The exam has been offered 2x
 - 10 parent attorneys are certified
 - Application process going on now
- OPD continues to increase the number of attorneys under contract to do parent representation
- OPD is accessing new money through IV-E reimbursement from the Children's Bureau, an agency within the U.S. Department of Health and Human Services
- OPD is working with State DSS and other stakeholders on a legislative bill

5

Contracts-MAC system

Managed Assigned Counsel (MAC) contracts are unique, attorney centered and allow IDS to better track outcomes for the clients as well as needs for the attorneys. These are the highlights.

1. IDS pays attorneys every month for the hours billed the previous month. Attorneys do not have to wait for a disposition in the case to be paid.
2. Attorneys determine their own caseload and may take a break from new case assignments simply upon request.
3. Expenses for out-of-county travel, copies and in-house paralegal administrative time are reimbursed monthly.
4. Expert assistance requests by contracting attorneys for drug analysis and testimony are approved by IDS, not the courts.
5. Consults and trial assistance by OPD and free and reduced costs for CLEs.

6

IV-E Funds

Rate Increase. The cost of the \$10 rate increase for attorneys representing parents will be transferred from the IV-E reimbursement fund to the PAC fund each month.
Example: IDS paid \$65,000 at \$65/hour to parent attorneys in February 2023. In March, IDS will transfer \$10,000 from the IV-E fund to the PAC fund.

Interdisciplinary Representation Program (IRP). NC will develop a model of parent representation in which the attorney and a social worker are an interdisciplinary team whose objectives include:

- promoting parent engagement, and
- ensuring families receive meaningful services that lead to lasting reunifications

Implement strategies to recruit and retain highly qualified parent attorneys. IDS will explore higher rates for Child Welfare Specialists, paid internships and fellowships for law students and recent law school graduates, mentoring programs, and creating regional parent defender positions.

7

Legislative Session

➤ Continued rate restoration-increase hourly rate for indigent defense

➤ Child support

7/2022 New policy from the Children's Bureau calls for states to end automatic referrals to child support (and generally eliminate referrals in any case where the plan is reunification)

[Joint Letter Regarding the Assignment of Risks to Child Support for Children in Foster Care.pdf](#)

➤ Changes to TPR statute based on failure to pay child support

➤ Post adoption contact

8



Questions?

9



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3



4

Evidentiary Standard After Adjudication



The court may consider any evidence, including hearsay...or testimony or evidence from any person that is a party, that the court finds to be **relevant, reliable, and necessary** to determine the needs of the juvenile and the most appropriate disposition.

G.S. 7B-901(a), -906.1(c).

Relevant evidence is evidence that tends to make the existence of a fact of consequence to the action more or less probable.

G.S. 8C-1, R. 401.

5

Examples of Excluded Evidence at Later Hearings

In re K.G.W., 250 N.C. App. 62 (2016)

- Dispositional hearing.
- Trial court determined clinical psychology expert's testimony would not assist the court's role as trier of fact, because the expert
 - had never met with, observed, or tested the juvenile,
 - was not involved in the case otherwise, and
 - lacked familiarity with juvenile proceedings more broadly.
- COA: Trial courts get to determine evidentiary credibility and weight.

6

Examples of Excluded Evidence at Later Hearings

In re J.N.S., 207 N.C. App. 670, 679 (2010)

- Trial court at disposition received DSS and GAL reports.
- Judge addressed parties and family members, none of whom were placed under oath.
- COA:
 - Unsworn statements were not competent evidence.
 - Findings based solely upon unsworn testimony were thus improper.
 - The informal nature of a disposition hearing does not "excuse[] the necessity of having evidence which is based upon sworn testimony if the trial court chooses to rely on information from individuals" in addition to reports.

7

Examples of Excluded Evidence at Later Hearings

In re P.O., 207 N.C. App. 35, 39-41 (2010)

- Trial court at PPH barred documents purportedly created by treatment providers.
- Letters contradicted other evidence and other parties were unaware of existence of documents and identities of some of the authors.
- COA:
 - Trial court did not abuse its discretion where:
 - (1) Proponent failed to explain why providers were not present to testify.
 - (2) Proponent failed to "offer any support for [the] contention that the documents were reliable."
 - (3) DSS' "strenuous objections to the documents based on a lack of authenticity and reliability" and desire to cross-examine on critical issue.
 - Trial courts may consider hearsay evidence. That "permissible language" makes it clear trial court can include or exclude hearsay at PPH.

8



9

The time to fight over credibility is at trial.

IN RE A.C., 247 N.C. APP. 528, FN. 8 (2016)

Testifying therapist struggled to recall dates and other important information.

On appeal, Respondent Mother challenged therapist's testimony as unreliable.

COA: "The trial court's credibility determinations are not a viable basis for relief on appeal."

ELLIOTT V. MUEHLBACH, 173 N.C. APP. 709, 714 (2005)

Evidence lacking objective measurements, an absence of impartial witnesses, or a party's "exaggerated" testimony, are all factors that "relate to the credibility and weight to be afforded the testimony."

"Such questions must be resolved by the trial court and are not a basis for overturning a finding of fact."

10



When is Live Testimony Required?

11

When is Live Testimony Required?



Disposition

- Trial court relied only on written reports and adjudication findings. *In re K.W.*, 272 N.C. App. 487 (2020).
- A.D.J. + Disp. = two-step hearing process (formal/adversarial → inquisitive).
- Testimony at disposition is:
 - Not required if reports and Adj. findings sufficiently support the order.
 - Required if order relies on information from people who address the court.

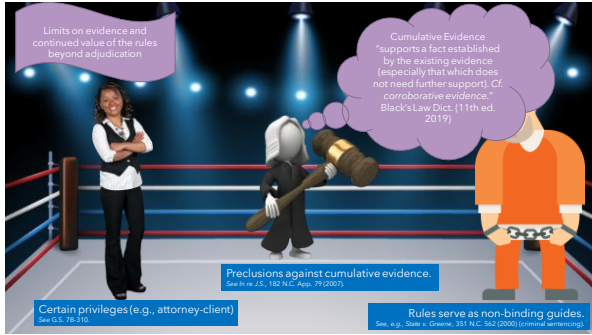
Permanency Planning

- Live testimony is required. Otherwise, COL are made in error. *In re S.P.*, 367 N.C. App. 533 (2019).
- Attorney arguments are not testimony *id.* See also *In re J.T.*, 252 N.C. App. 19 (2017).
- Reliance on prior orders no substitute for competent evidence at PPH. *In re D.V.*, 202 N.C. App. 160 (2019).

Review

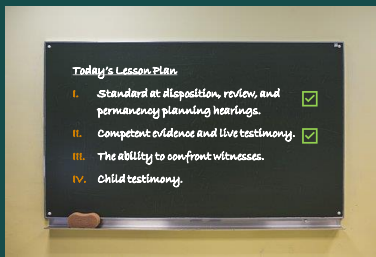
- Governed by same evidentiary standard as PPH. G.S. 7B-906.1(c).
- Appellate holdings on evidentiary standards likely apply.

12



13

Evidence at Later Hearings



14

Confronting Witnesses

~~Crawford~~ and the Confrontation Clause (6th Amendment)

But a safeguard still exists.

- Due Process Clause (14th Am.)
- The right to a fair proceeding, which may include the right to test evidence presented against the respondent through cross-examination.
- Make the argument.

See Section 11.4 of the A/N/D Manual for non-NC case examples.

15



16



Child Testimony

Respondent subpoenas a child for testimony.

GAL moves to quash on the ground that testifying would be harmful to the child.

Question: What is the legal standard for determining whether a child may testify?

17

The Rules for Child Testimony

The legal standard is competency.

- Not unavailability or harm.*
- No *Crawford* but remember Due Process.

Rule 601. General rule of competency; disqualification of witness.

(a) General rule. – Every person is competent to be a witness except as otherwise provided in these rules.

(b) Disqualification of witness in general. – A person is disqualified to testify as a witness when the court determines that the person is (1) incapable of expressing himself or herself concerning the matter as to be understood, either directly or through interpretation by one who can understand him or her, or (2) incapable of understanding the duty of a witness to tell the truth.

18

The Rules for Child Testimony


Cases suggest that harm must be oppressive and unreasonable to be considered.

- See *In re A.H.*, 250 N.C. App. 546 (2016) (strong evidence of severe mental health and distress).
- See also *In re W.H.*, 261 N.C. App. 24 (2018). (record and order reflected thorough inquiry and strong evidence that testifying would traumatize the girls and would cause them confusion, guilt, and fear to the point there was a risk of dishonest testimony).




19

How does the court determine whether the child is competent to testify?



Observe child.



Voire dire.
But see *Spaugh*, 321 N.C. 550 (1988) (voire dire not required where judge observes child).



Testimony of others
Roberts, 18 NC COA 388 (1973) (helpful but not required).

20

Mechanisms for Taking Child Testimony

Testimony in courtroom

- Excluding bystanders. See, e.g., G.S. 7B-801.
- Excluding other witnesses from court. See G.S. 8C-1, R. 615.
- Leading questions. See *State v. Higginbottom*, 312 N.C. 760 (1985) (difficulty understanding because of age, immaturity, or ignorance of subject matter).
- Positioning and location of child. See *State v. Reeves*, 337 N.C. 700 (1994).
- Frequent recesses to allow child breaks. See *Higginbottom*, 312 N.C. 760 (1985).

21

Mechanisms for Taking Child Testimony

Remote
testimony

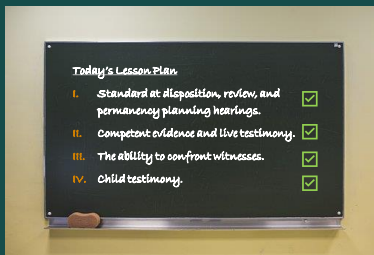
Request through AOC
(1 and 2-way testimony options).

In camera
testimony with
judge only?

Raises concerns re: fairness and the
converting of a judge into an evaluator.

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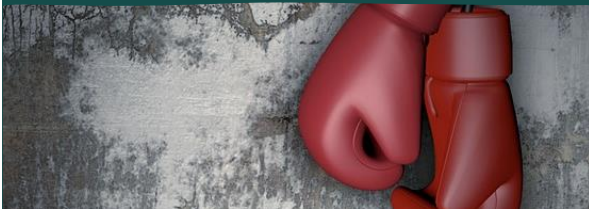
Evidence at Later Hearings



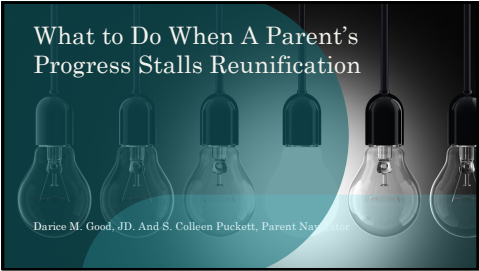
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Evidence at Later Hearings

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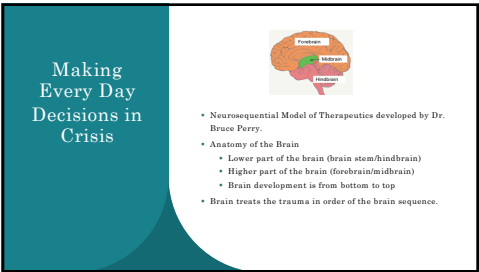
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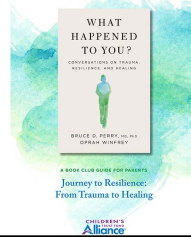
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Communicating With Clients In Crisis

- Regulate
- Relate
- Reason

4

Resource



5

Identifying Signs that a Parent's Progress is Stalling

- Attendance
- Communication
- Defensiveness
- Negative Statements

6

Negative Statements Parents Say

- I give up
- I can't go through this again
- I can't go through this anymore
- They are better off without me
- Why even try when it doesn't make a difference?
- Fine, if they don't want to be with me then I don't care anymore!
- I'm done with all of this!
- What have you heard parents say?

7

Negative Statements Parents Hear

- He/she is a bad mother/father
- The children are doing better in foster care than with the parent
- The foster parent is better than the birth parent
- He/she doesn't know how to care for their child
- There is no bond
- You aren't doing anything right
- What have you heard stated about parents in a negative manner?

8

Identify the Underlying Causes of a Parent's Stalled Progress

- Court hearing
- Outside stressors
- Visitation/Family Time
- Services
- Representation
- Case Manager
- Parent's Schedule
- Relapse
- Family Traditions
- Resource Parent (Foster Parent)

9

Identify Steps to Renew a Parent's Progress Towards Reunification

- Successes and celebrations
- Frequent positive-encouragement
- Check-in's
- Validation
- Requests and Concerns Addressed
- Meaningful Children Updates
- Help Scheduling
- More Appropriate Services
- Meaningful Family Time/Visitations
- Partnership Parenting
- Colleen's 3 C's: Connect, Contact, Compassion

10

Have You Experienced a Parent's Progress Stall?

Were you able to identify the cause of the parent's stalled progress?

What did you do to help to renew the parent's movement towards reunification?

What was the outcome?



11

Resources
(feel free to take a picture)

Children's Trust Fund Alliance Book Club:

- <https://ctfalliance.org/partnering-with-parents/book-club/>

Birth and Foster Parent Partnership Tools:

- <https://ctfalliance.org/partnering-with-parents/bfpp/>

12

LET'S LIGHT UP OUR FAMILIES

Darice M. Good, JD
dmgood@moodlemillfarm.com
404.234.5475

S. Colleen Puckett, Parent Navigator
familiasanchoz@mullica.com
678.570.9612

13

2023 Intensive Parent Defender Training

March 9-10, 2023/ Chapel Hill, NC

Co-sponsored by UNC School of Government & NC Office of Indigent Defense Services

AGENDA

Thursday, March 9

Pretrial through Adjudication

- | | |
|----------------|--|
| 8:50 to 9:00 | Welcome and Program Overview
<i>Timothy Heinle, Teaching Assistant Professor</i>
UNC School of Government, Chapel Hill, NC |
| 9:00 to 9:45 | Evaluating and Challenging Pleadings
<i>Annick Lenoir-Peek, Deputy Parent Defender</i>
Office of Indigent Defense Services, Durham, NC |
| 9:45 to 10:30 | The First Seven Days as a Parent Defender
<i>Timothy Heinle, Teaching Assistant Professor</i>
UNC School of Government, Chapel Hill, NC |
| 10:30 to 10:45 | <i>Break</i> |
| 10:45 to 12:15 | A/N/D Overview: The Early Stages
<i>Sara DePasquale, Associate Professor of Public Law and Government</i>
UNC School of Government, Chapel Hill, NC |
| 12:15 to 1:15 | <i>Lunch</i> |
| 1:15 to 2:30 | Hearsay Evidence at Adjudication
<i>Timothy Heinle, Teaching Assistant Professor</i>
UNC School of Government, Chapel Hill, NC |
| 2:30 to 2:45 | <i>Break</i> |
| 2:45 to 3:45 | Breakout #1 |
| 3:45 to 4:15 | Special Issues Related to DSS Records
<i>Timothy Heinle, Teaching Assistant Professor</i>
UNC School of Government, Chapel Hill, NC |
| 4:15 | <i>Adjourn</i> |



Friday, March 10

Disposition, Reviews, and Permanency Planning

9:00 to 10:15	A/N/D Overview: Later Stages <i>Sara DePasquale, Associate Professor of Public Law and Government</i> UNC School of Government, Chapel Hill, NC
10:15: to 11:15	Tactics for Later Hearings <i>Lyana Hunter, Assistant Public Defender</i> District 5, New Hanover County, NC
11:15 to 11:30	<i>Break</i>
11:30 to 12:15	Breakout #2
12:15 to 1:15	<i>Lunch</i>
1:15 to 1:30	Update from the Office of the Parent Defender <i>Wendy Sotolongo, Chief Parent Defender</i> Office of Indigent Defense Services, Durham, NC
1:30 to 2:30	Evidence at Later Hearings <i>Timothy Heinle, Teaching Assistant Professor</i> UNC School of Government, Chapel Hill, NC
2:30 to 3:30	What to do When Reunification Stalls <i>Darice Good, Attorney, and S. Colleen Puckett, Parent Mentor</i> Good Legal Firm, LLC, Atlanta, GA
3:30	<i>Adjourn</i>

Estimated 11 hours of CLE, pending bar approval.



**SCHOOL OF
GOVERNMENT**

PUBLIC DEFENSE EDUCATION INFORMATION & UPDATES

If your e-mail address is *not* included on an IDS listserv and you would like to receive information and updates about Public Defense Education trainings, manuals, and other resources, please visit the School of Government's Public Defense Education site at:

www.sog.unc.edu/resources/microsites/public-defense-education

(Click Sign Up for Program Information and Updates)

Your e-mail address will not be provided to entities outside of the School of Government.




(Public Defense Education)

&

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twitter



(twitter.com/NCIDE)




EVALUATING AND
CHALLENGING PLEADINGS

Amick Lenoir-Peck
Deputy Parent Defender

1

GETTING THE CASE



2

READING THE PETITION



3

THE PETITION

What are we checking for?

- ☐ § 78-402 Requirements
 - ☐ Name, address, facts
- ☐ Chapter 50 (UCCJE) Requirements
 - ☐ Other state involvement
- ☐ Verification
 - ☐ Social worker or director
- ☐ § 78-401.1 Identification of Parties
 - ☐ Caretaker
- ☐ Relief requested

4

VERIFICATION

Being first duly sworn, I say that I have read this Petition and that the same is true to my own knowledge, except as to those matters alleged upon information and belief, and as to those, I believe it to be true.

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME

Name And Address Of Petitioner

Date _____ Signature Of Person Authorized To Administer Oaths

☐ Deputy CSC ☐ Clerk Of Superior Court ☐ District Court Judge ☐ Assistant CSC ☐ Magistrate

Signature Of Petitioner

☐ Notary Date My Commission Expires _____ Telephone No. _____

SEAL County Where Notarized _____ Director _____ Authorized Representative Of Director _____ County Department of Social Services

5

STATE OF NORTH CAROLINA

County _____ File No. _____

In The General Court Of Justice
District Court Division

IN THE MATTER OF

Name And Address Of Juvenile _____

**JUVENILE PETITION
(ABUSE/NEGLECT/DEPENDENCY)**

Juvenile's Date Of Birth _____ Age _____ Race _____ Sex _____

Name Of Petitioner _____ Condition Alleged ☐ Abused ☐ Neglected ☐ Dependent

G.S. 78-101 - 400, 402

I have sufficient knowledge or information to believe that a case has arisen that invokes the juvenile jurisdiction of the court, and therefore allege that:

- The juvenile named above resides in the district at the address shown above, was found in the district as alleged herein, or venue exists pursuant to G.S. 78-400(a) or (b).
- The information required by G.S. 80A-209 is set out in the Affidavit As To Status Of Minor Child (AOC-CV-609), which is attached hereto and incorporated herein by reference.
- The names, addresses, and telephone numbers of the juvenile's parents, guardian, custodian, or caretaker are as follows:

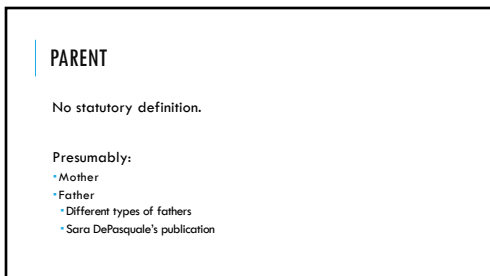
6



7



8



9

GUARDIAN OR CUSTODIAN

CUSTODIAN: 7B-101(8)

The person or agency that has been awarded legal custody of a juvenile by a court.

GUARDIAN: 7B-600

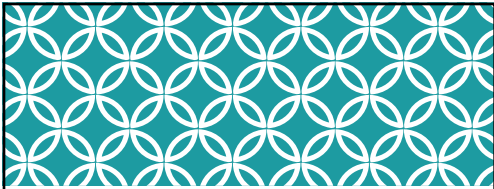
The guardian shall have the care, custody, and control of the juvenile or may arrange a suitable placement for the juvenile and may represent the juvenile in legal actions before any court. The guardian may consent to certain actions on the part of the juvenile in place of the parent including (i) marriage, (ii) enlisting in the Armed Forces of the United States, and (iii) enrollment in school. The guardian may also consent to any necessary remedial, psychological, medical, or surgical treatment for the juvenile. The authority of the guardian shall continue until the guardianship is terminated by court order, until the juvenile is emancipated pursuant to Article 35 of Subchapter IV of this Chapter, or until the juvenile reaches the age of majority.

10

CARETAKER: 7B-101(3)

Any person other than a parent, guardian, or custodian who has responsibility for the health and welfare of a juvenile in a residential setting. A person **responsible** for a juvenile's health and welfare means a stepparent; foster parent; an adult member of the juvenile's household; an **adult entrusted with the juvenile's care**; a potential adoptive parent during a visit or trial placement with a juvenile in the custody of a department; [plus others not generally applicable to us].

11



DEPENDENCY

12

REPEAT AFTER ME:

DEPENDENCY
IS NOT
A LESSER INCLUDED OFFENSE
OF NEGLECT
AGAIN
DEPENDENCY
IS NOT
A LESSER INCLUDED OFFENSE
OF NEGLECT!

13

☐ C. The juvenile is a **DEPENDENT JUVENILE**, in that:

☐ 1. the juvenile needs assistance or placement because the juvenile has no parent, guardian, or custodian responsible for the juvenile's care or supervision.

☐ 2. the juvenile's parent, guardian, or custodian is unable to provide for the juvenile's care or supervision and lacks an appropriate alternative child care arrangement.

Specifically, on or about date or time period _____; (State facts supporting allegations that the juvenile is a neglected juvenile as indicated above. Attach additional pages if necessary.)

14

DEPENDENCY

1. Who
2. What
3. Where
4. When
5. Why
6. How

15

WHAT IS NOT DEPENDENCY?

BAD PARENTING!!!!



16

ABUSE

17

4. The juvenile is an abused juvenile, neglected juvenile, or dependent juvenile, as alleged more specifically below: (Check only the blocks that apply.)

☐ A. The juvenile is an **ABUSED JUVENILE**, in that:

- ☐ 1. the juvenile's parent, guardian, custodian, or caretaker has inflicted or allowed to be inflicted on the juvenile a serious physical injury by other than accidental means.
- ☐ 2. the juvenile's parent, guardian, custodian, or caretaker has created or allowed to be created a substantial risk of serious physical injury to the juvenile by other than accidental means.
- ☐ 3. the juvenile's parent, guardian, custodian, or caretaker has used or allowed to be used upon the juvenile cruel or grossly inappropriate devices or procedures to modify behavior.
- ☐ 4. the juvenile's parent, guardian, custodian, or caretaker has committed, permitted, or encouraged the commission of a sex or pornography offense by, with, or upon the juvenile in violation of the criminal law.
- ☐ 5. the juvenile's parent, guardian, custodian, or caretaker has created or allowed to be created serious emotional damage to the juvenile.
- ☐ 6. the juvenile's parent, guardian, custodian, or caretaker has encouraged, directed, or approved of delinquent acts involving moral turpitude committed by the juvenile.
- ☐ 7. the juvenile is a minor victim of human trafficking under G.S. 14-43.15.

18

ABUSE

1. Who
2. What
3. Where
4. When
5. Why
6. How

19


WHAT IS NOT ABUSE?

- *Providing alcohol or a joint to your kid
- *Spanking
- *Emotional abuse

20




21



NEGLECT

22



☐ B. The juvenile is a **NEGLECTED JUVENILE**, in that the juvenile:

☐ 1. does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker.
☐ 2. has been abandoned.
☐ 3. is not provided necessary medical care.
☐ 4. is not provided necessary remedial care.
☐ 5. lives in an environment injurious to the juvenile's welfare.
☐ 6. has had his/her custody unlawfully transferred under G.S. 14-321.2.
☐ 7. has been placed for care or adoption in violation of law.
☐ 8. is a minor victim of human trafficking under G.S. 14-43.15.

Specifically, on or about (date or time period) _____, (State facts supporting allegations that the juvenile is a neglected juvenile as indicated above. Attach additional pages if necessary.)

23

NEGLECT

1. Who

2. What

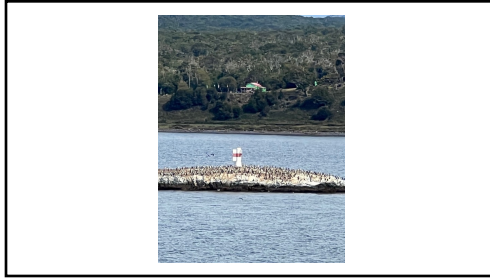
3. Where

4. When

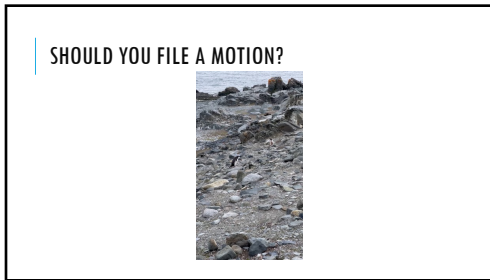
5. Why

6. How

24



25



26




27

CAN YOU DO THIS?



28

YOUR TAKE AWAY:



29



ANNICK LENOIR-PEEK | annick.lenoir-peek@seaworthy.org
(919) 354-7230

30

EVALUATING AND CHALLENGING PLEADINGS

Annick Lenoir-Peek

Deputy Parent Defender

Annick.Lenoir-Peek@nccourts.org

(919) 354-7230

RESOURCES:

- Legislative website (statutes)
<https://www.ncleg.net/>
- Abuse, Neglect, Dependency and Termination of Parental Rights Manual by SOG
<https://www.sog.unc.edu/resources/microsites/abuse-neglect-dependency-and-termination-parental-rights>
- On the Civil Side Blog by SOG
<https://civil.sog.unc.edu/>
- Office of the Parent Defender Website
<http://www.ncids.org/ParentRepresentation/index.html>
- Child Welfare Case Compendium
<https://www.sog.unc.edu/cwcc>
- Parent Counsel Listserv
Email: Kathryn.E.Warren@nccourts.org



Adjudication Checklist

Prior to Any Hearing Being Held

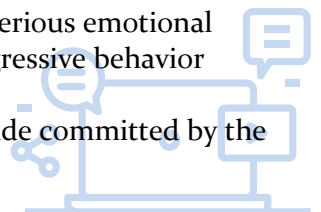
- ☐ Petition verified [7B-403(a)] [AOC-J-130]
- ☐ Summons issued to all parties [7B-406] [AOC-J-142]
- ☐ Summons served on your client [7B-407]
- ☐ Affidavit of Status of the Child attached [7B-402(b), can be contained in petition] [AOC-C-609]
 - ☐ UCCJEA (Uniform Child Custody Jurisdiction Enforcement Act)
- ☐ Servicemembers' Affidavit attached [50 USC 3901-4043] [AOC-G-250]
- ☐ Petition requests relief [G.S. 1A-1, Rule 7(b)(1)]
- ☐ Allegations rise to need for State intervention [7B-402(a)]
- ☐ Child in NC
- ☐ Parents in NC
 - ☐ ICWA (Indian Child Welfare Act)
- ☐ Other court/jurisdiction already involved [7B-200(c), 50A-13.5(f), 50A-201 *et seq.*]
 - ☐ UCCJEA (Uniform Child Custody Jurisdiction Enforcement Act)

Non-Secure Custody

- ☐ Non-secure custody order issued and served [7B-504]
- ☐ Non-secure custody order issued by authorized person (judge) [7B-502]
- ☐ Criteria for non-secure custody alleged [7B-503]
- ☐ Non-secure custody hearing held within 7 days [7B-506]
- ☐ Non-secure custody hearings held while service pending [7B-506(h)]
- ☐ Non-secure custody hearings reflect search for relatives? [7B-506(h)]
- ☐ Non-secure custody hearings reflect establishment of paternity? [7B-506(h)]

Pre-Adjudication/Motions

- ☐ Check box on petition coincides with allegations
- ☐ Allegations meet definition of Abuse/Neglect/Dependency [7B-101(1), (9), (15)]
- ☐ Abuse
 - ☐ A. Inflicts or allows to be inflicted upon the juvenile a serious physical injury by other than accidental means;
 - ☐ B. Creates or allows to be created a substantial risk of serious physical injury to the juvenile by other than accidental means;
 - ☐ C. Uses or allows to be used upon the juvenile cruel or grossly inappropriate procedures or cruel or grossly inappropriate devices to modify behavior;
[When Parental Discipline Goes Too Far, It's Abuse](#)
 - ☐ D. Sex crimes
 - ☐ E. Creates or allows to be created serious emotional damage to the juvenile; serious emotional damage is evidenced by a juvenile's severe anxiety, depression, withdrawal, or aggressive behavior toward himself or others;
 - ☐ F. Encourages, directs, or approves of delinquent acts involving moral turpitude committed by the juvenile.



☐ Neglect

Any juvenile less than 18 years of age

- ☐ (i) who is found to be a minor victim of human trafficking under G.S. 14-43.15 or
- ☐ (ii) whose parent, guardian, custodian, or caretaker does not provide proper care, supervision, or discipline; or
 - ☐ who has been abandoned; or
 - ☐ who is not provided necessary medical care; or
 - ☐ who is not provided necessary remedial care; or
 - ☐ who lives in an environment injurious to the juvenile's welfare; or
 - ☐ the custody of whom has been unlawfully transferred under G.S. 14-321.2; or
 - ☐ who has been placed for care or adoption in violation of law.
- ☐ In determining whether a juvenile is a neglected juvenile, it is relevant whether that juvenile lives in a home where another juvenile has died as a result of suspected abuse or neglect or lives in a home where another juvenile has been subjected to abuse or neglect by an adult who regularly lives in the home.

☐ Dependency

A juvenile in need of assistance or placement because

- ☐ (i) the juvenile has no parent, guardian, or custodian responsible for the juvenile's care or supervision or
- ☐ (ii) the juvenile's parent, guardian, or custodian is unable to provide for the juvenile's care or supervision **and** lacks an appropriate alternative child care arrangement.
 - ☐ *In re H.H. and R.H.*, No. COA14-650 (N.C. Ct. App. Dec. 2, 2014) (if parent available, then not dependency)
- ☐ Allegations result from actions of "parent, guardian, custodian or caretaker" [7B-101(3), (8)]
- ☐ Continued beyond 60 days from filing [7B-801(c), 7B-803]
- ☐ Discovery turned over as requested [7B-700]
- ☐ Petition amended [7B-800]
- ☐ Petition too generic (allegations don't seem to indicate which child A/N/D or why the others are in harms' way)

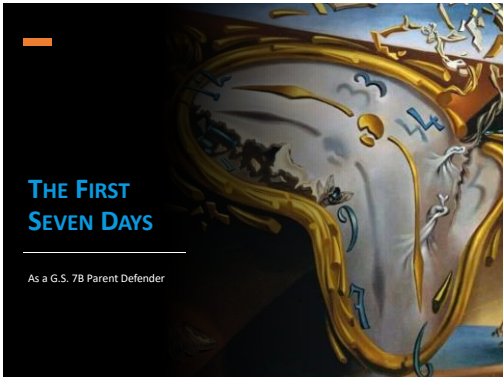
Adjudication

- ☐ Hearing held (must be some testimony by DSS unless by stipulation/consent) [7B-801]
 - ☐ No summary judgment allowed.
- ☐ Rules of evidence apply [7B-804]
 - ☐ Objections to inadmissible testimony.
 - ☐ Offer of proof made if judge does not allow a witness to testify.
- ☐ Burden kept on DSS to prove A/N/D [7B-805]
- ☐ Standard of proof – clear and convincing [7B-805]
- ☐ Objection to commingling of disposition evidence [7B-808]
- ☐ Petition amended to conform to the evidence
- ☐ Review order for accuracy [7B-807(b)]
 - ☐ Submit amendment/changes.
 - ☐ Schedule for entry of judgment to be heard on alterations.
- ☐ Order filed within 30 days [7B-807(b)]
 - ☐ Schedule for entry of judgment if not.
- ☐ Cannot appeal until the disposition order is entered!





1



2



3



The First
Seven Days:
Parent
Defender

THE
FIRST [48]



- Review the filings
 - What is left unsaid?




Double-check the
notice of hearing!

4

The First
Seven Days:
Parent
Defender

THE
FIRST [48]




- Review the filings
 - Compliance with procedural requirements

5

The First
Seven Days:
Parent
Defender

THE
FIRST [48]



- Review the filings
 - The players involved

6

THE FIRST

48

The First Seven Days: Parent Defender

- Review the filings
- Create a file
 - Develop office filing system
 - Case-File Insert template

7

Case-File Insert Template

Case-File Insert

Key Case Information

File number	
Client's name	
Client's address	
Client's telephone	
Client's date of birth	
Work address name and contact	
Emergency address name and contact	
Emergency address	

Client Notes (e.g., diagnosis, medications, service providers)

Quick Time Tracker

Date	Time spent	Work performed

Parent

Other Relative

Client

Children with Partner A

Children with Partner B

8

THE FIRST

48

The First Seven Days: Parent Defender

- Review the filings
- Create a file
 - Develop office filing system
 - Case-File Insert template
 - Calendar case dates

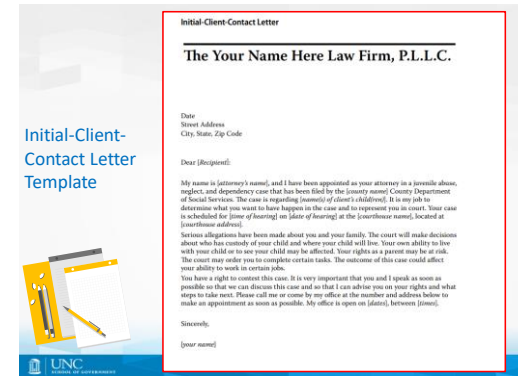
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10



11



12

The Next Five Days as a Parent Defender

- Initial client contact
- Prepare for client interview

13

Initial-Client-Contact Letter Template

14


The Next Five Days

Moving the case forward using the initial client meeting.

- ✓ Provide a roadmap
- ✓ Sign releases

15

Client
and
Records
Requests



Attorney's Request for Records

The Your Name Here Law Firm, P.L.L.C.

Date
Street Address
City, State, Zip Code

Dear [Recipient]:

My name is [attorney's name], and I am the attorney for [client's name]. My client is requesting that your office release all records, including those that contain otherwise protected health information, in accordance with the enclosed authorization signed by my client.

Please do not hesitate to contact me if you have any questions or if I can help in any way.

Sincerely,

[your name]



The Next Five Days as a Parent Defender

- Initial client contact
- Prepare for client interview
- Move the case forward
- Begin gathering information

19

The Next Five Days as a Parent Defender

Criminal records: many available through public access computers at NC courthouses. For information on types, certified results, and costs, see:
<https://www.nccourts.gov/help-topics/court-records/criminal-background-check>.

Civil background checks, including prior restraining orders and other red flags, use Civil Case Processing System, VCAP:
<https://www.nccourts.gov/services/remote-public-access-program>

Check social media

20

The Next Five Days as a Parent Defender

- Initial client contact
- Prepare for client interview
- Move the case forward
- Begin gathering information
- Consider motions

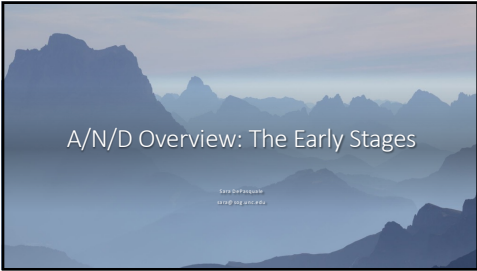
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The First
Seven
Days:
Parent
Defender

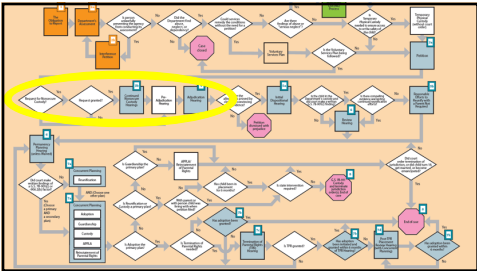


Timothy Heinle
Heinle@sog.unc.edu

22



1



2

Two Kinds of Nonsecure Custody Orders

Initial (Removal)

Continued

STATE OF NORTH CAROLINA	
County	
In the General Court of Justice District Court Division	
IN THE MATTER OF	
ORDER FOR NONSECURE CUSTODY (ABUSE/NEGLECT/DEPENDENCY)	
Case No.	Date
Date and Address of Petitioner's Residence	

STATE OF NORTH CAROLINA	
County	
In the General Court of Justice District Court Division	
IN THE MATTER OF	
ORDER ON NEED FOR CONTINUED NONSECURE CUSTODY (ABUSE/NEGLECT/DEPENDENCY)	
Case No.	Date
Date and Address of Petitioner's Residence	

3

Petition Must Be Filed First!



Clerk's Office Is Open Clerk's Office Is Closed

4

Request for
Nonsecure
Custody

Statute Does Not Specify

- who
- how
- time period

5

Ex parte but...

- Telephone notice
- Limited situations

6

The Statutes G.S. 7B-

- -502 (Authority, ex parte/notice)
- -503 (Criteria)
- -504 (Initial order, take physical custody)
- -505 (Placement)
- -505.1 (Medical consent/CME)
- -506 (Con't nonsecure)
- -507 (Findings, services)
- -508 (Telephone)
- -302(c), (d) (Assessment, immediate removal)
- -403 (verified petition)
- -404 (clerks office closed)
- -405 (commencement of an action)
- -905.1 (visitation)
- -3800 (ICPC)

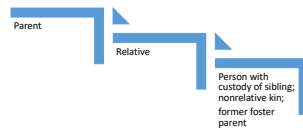
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Specific criteria in G.S. 7B-503

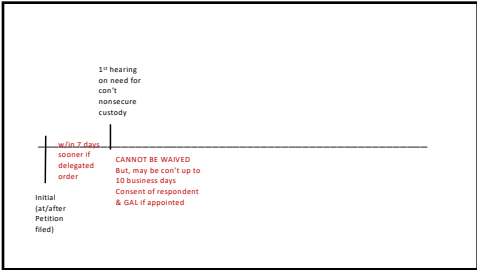
- Based upon the verified petition, this Court has jurisdiction over the subject matter of this proceeding and of the person of the juvenile.
1. As grounds for the issuance of this Order, the Court finds that there is a reasonable factual basis to believe that the matter...
- Except as the petition may state that there is no other reasonable means available to protect the juvenile, and unless one or more:
- ☐ a. the juvenile has been abandoned.
 - ☐ b. the juvenile has suffered physical injury or sexual abuse.
 - ☐ c. the juvenile is exposed to a substantial risk of physical injury or sexual abuse because the parent, guardian, custodian, or caretaker has created conditions likely to cause injury or abuse or has failed to provide, or is unable to provide, adequate supervision or protection.
 - ☐ d. the juvenile is in need of medical treatment to cure, alleviate, or prevent suffering serious physical harm which may result in death, disfigurement, or substantial impairment of bodily functions, and the juvenile's parent, guardian, custodian, or caretaker is unwilling or unable to provide or consent to the medical treatment.
 - ☐ e. the parent, guardian, custodian, or caretaker consents to the nonsecure custody order.
 - ☐ f. the juvenile is a runaway and consents to nonsecure custody.

8

Placement Priorities



9

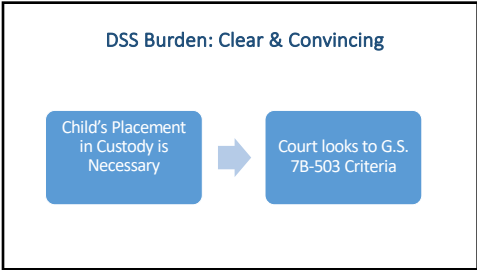


10

What's happening from parent's perspective?

A collage of five images. Top left: A parent holding a child. Top middle: A speaker icon. Top right: A man in a suit. Bottom left: A man looking at a document. Bottom right: A man in a suit. In the center, there is a logo for 'MILDCES COUNTY'.

11



12

Not an adjudication on the merits

Cannot order dismissal to dispose of action



13

Other Requirements

Both

- Sibling placed together
- Order DSS notice relatives & other persons w/ legal custody of sibling(s)
- ICWA
- MH Eval of alleged abuse w/ violent history*
- May order notice to state tribe

Continued

- Inquiry/findings missing parent & paternity
- Inquiry re: other juveniles in the home
- Non-emergency/non-routine medical
- Visitation

14

Adjudicatory Hearing



Formal



Adversarial


Burden on DSS



Rules of Evidence

Clear Convincing

15



Timing

- 60 days
- Continuance disfavored

16

What's Being Decided

Status of the Child

- Abused
- Neglected
- Dependent

17

Read the Definitions

- Very Specific
- Remember the WHO
 - Exception: Human Trafficking Victim

18

Child's Status

- Does not require determination of fault by a parent, guardian, custodian, or caretaker
- Adjudication is not "as to" a particular respondent
- Adjudication may occur if service on one parent*

19

STATE OF NORTH CAROLINA

County

In The General Court Of Justice
District Court Division

IN THE MATTER OF:

Name And Address Of Juvenile

JUVENILE PETITION
(ABUSE/NEGLECT/DEPENDENCY)

Gender

Age

Race

Sex

☐ Abused

☐ Neglected

☐ Dependent

DSS Burden by clear and convincing evidence of proving the allegations in the petition

G.S. 7B-805, -807(a)

Note: Cannot amend petition to conform to the evidence

20

2 Procedural Paths for Adjudication

Hearing

Consent

21

A consent order is

- An agreement of the parties
- Their decree
- Entered on the record
- With the sanction of the court

22

Required Procedure

G.S. 7B-801(b1)

- All parties or authorized counsel are present
- Juvenile represented by counsel
- Court makes sufficient findings of fact

23

Practices referred to by the COA

- Draft of a proposed consent order
- Statement by parties/attorneys of proposed consent
- Findings that parties are consenting
- Court informed parties of intent to enter adjudication order based on consent

24

Hearing
G.S. 7B-802

A judicial process to adjudicate the existence or nonexistence of any of the conditions alleged in the petition

The court shall protect the rights of the child and parents to assure due process

Requires a hearing

25


Relevant
Time Period

- What is DSS required to prove?
 - Truth or falsity of the allegations
- So what is the relevant time period?

26

Adjudication:
Post-Petition
Evidence

Adjudicatory Hearing



Petition

27

§ 7B-802. Conduct of hearing.
The adjudicatory hearing shall be a judicial process designed to adjudicate the existence or nonexistence of any of the conditions alleged in a petition. In the adjudicatory hearing, the court shall protect the rights of the juvenile and the juvenile's parent to assure due process of law. (1979, c. 815, s. 1; 1998-202, s. 6; 1999-456, s. 60.)

28

Dependency
In re L.N.H.

Report Assessment Petition	Considered Evidence at Time of petition	Reversed Should have considered evidence at time of hearing	Reverse CDA, determination of A/N/D is fixed at time of filing of petition
DSS	District Court	Appeal to COA	NC Supreme Court

29

Plain Language

§ 7B-802. Conduct of hearing.
The adjudicatory hearing shall be a judicial process designed to adjudicate the existence or nonexistence of any of the conditions alleged in a petition. In the adjudicatory hearing, the court shall protect the rights of the juvenile and the juvenile's parent to assure due process of law. (1979, c. 815, s. 1; 1998-202, s. 6; 1999-456, s. 60.)

conditions underlying determination of whether a juvenile is an abused, neglected, or dependent juvenile are fixed at the time of the filing of the petition. This inquiry focuses on the status of the child at the time the petition is filed, not the post-petition actions of a party.

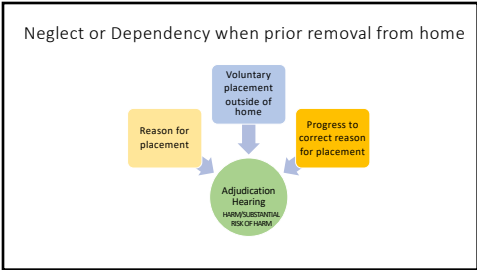
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COA
Exceptions

Fixed and ongoing circumstance,
not discrete event or one-time occurrence

- Paternity
- Mental Health

31



32



Do the
exceptions
still apply?

33

Stipulations

- Judicial admissions
- Binding on the party who agrees to them

34

Stipulate to

Facts

Conclusion of law

"Stipulations as to questions of law are generally held invalid and determinative of the merits of a trial on appeal are reversed."
Abuse, Neglect, Dependency
appellate courts. 1998, 12-3

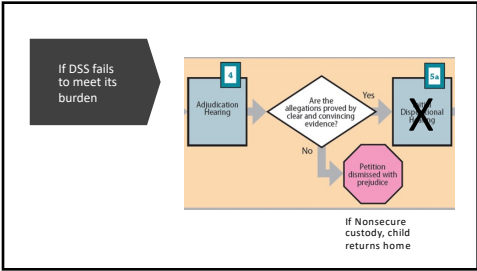
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Stipulations

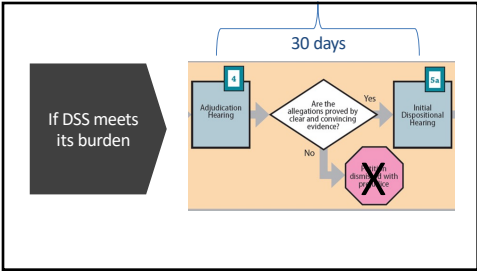
G.S. 7B-807(a)

- In writing, signed by each party, submitted to the court
- Read into record with oral statement of agreement from each party stipulating

36



37



38

Timing of Entry of Juvenile Orders

30 days

If not, court response

- Clerk shall schedule a subsequent hearing...
- Shall be entered within 10 days of subsequent hearing

39

Remedy?


File for a Writ of Mandamus

"The appropriate remedy for a trial court's failure to enter a timely order is mandamus, not a new hearing."
In re T.H.T., 362 N.C. 446 (2008)

40

Appeal

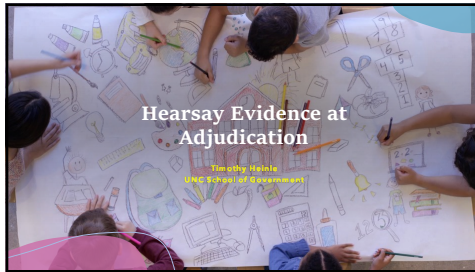
- When can adjudication order be appealed?
- After initial dispositional order entered



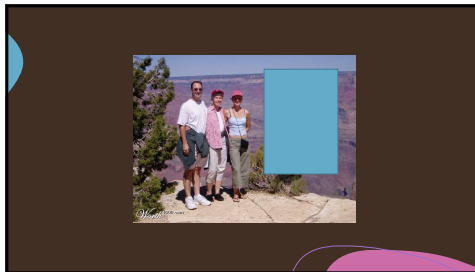
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Advocate

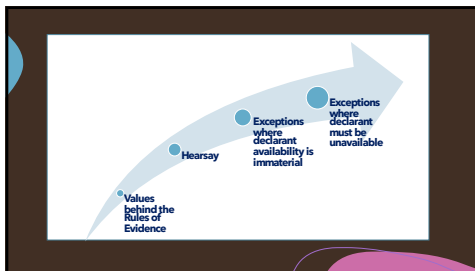
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1



2



3

Values, Not Just Rules

- Avoid unreliable evidence
 - Rules re personal knowledge, hearsay, opinion, competency
- Minimize prejudicial distractions
 - Rules re relevance
- Promote social policies
 - Rules re privilege
- Ensure fairness
 - Predictability and notice

4

Now I get it!

Hearsay is an out-of-court statement offered to prove the truth of the matter asserted.



5

For the Truth

Out-of-court statement
+ Offered to prove the truth of what was said

The value of the evidence depends on the credibility of the out-of-court declarant.

To test the declarant's credibility,

- the declarant must be subject to cross-examination, or
- the statement must satisfy a hearsay exception.

6

"The father's drug counselor told dad that as part of his case plan, he must submit to screens."

Social Worker

7

Not for the Truth

Out-of-court statement
+ Offered for reasons other than the truth

The value of the evidence usually depends on the credibility of the in-court witness.

An in-court witness' credibility is tested by being subject to cross-examination.

8

"The father's drug counselor told dad that as part of his case plan, he must submit to screens."

Social Worker

9

Hearsay Exceptions

Category 1:
Declarant Availability Irrelevant



Category 2:
Declarant Must Be Unavailable



10

Hearsay Exceptions

Category 1: Declarant Availability Irrelevant

Remember the values behind the Rules. These statements are admissible because they carry inference of **reliability** or **sincerity**.

Common exceptions in child welfare cases

- Business and public records
- Medical diagnosis or treatment
- Excited utterance
- Residual hearsay

11

Business and Public Records

Is it a
business?

Business

Production

Association

Profession

Occupation

(And calling of every kind.

Whether or not conducted for profit

N.C. Gen. Stat. § 8C-1, R. 803(a)

12

Business and Public Records

Is it a business record?

- A memorandum, report, record, or data compilation
- In any form
- Of acts, events, conditions, opinions, or diagnoses
- Made at or near the time
- By or from information transmitted by
- A person with knowledge

N.C. Gen. Stat. § 85C-1, R. 603(a)

13

Business and Public Records

Advanced Notice Required!

Exception applies to records that satisfy the requirements concerning both

1. the method and circumstances of preparation, and
2. the contents of the records.

14

Rule 602

"A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that he has personal knowledge of the matter."

15



Reconceptualizing Business and Public Records

The record must be competent to testify.

To determine competency, we look at how the records were prepared.

If the record is competent to testify, then we analyze the admissibility of individual statements within the records.

16

Business and Public Records



Determining if the Records are Competent

- Prepared in the ordinary course of business
- At or near the time of the event being described
- By someone with knowledge (or based on information transmitted by someone with knowledge)

17

Business and Public Records



Tip!

R. 803(6) was amended to allow business records with an attached affidavit of nonparty records custodian...

But courts can insist on live-witness testimony for critical issues.

18


Business and Public Records

Remember, just because a record is admitted under this exception does not necessarily mean that every statement contained within the record is admitted. Must analyze.

Example: medical records with proper affidavit of records custodian attached. Records contain a written note from a nurse that "Jonny told me his dad did this."

19

Business and Public Records



How is this exception consistent with the values behind the Rules?


The idea is that the "business environment encourages the making of accurate records by those with a duty to the enterprise". BRANDIS & BROUN § 225, at 911 n.451.

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Medical Diagnosis or Treatment Exception

Applies when the statements are

- made with the declarant understanding they would lead to medical diagnosis or treatment, and
- reasonably pertinent to diagnosis and treatment.



21

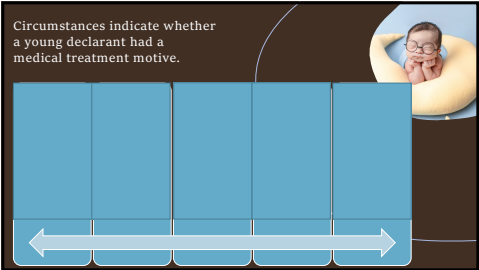
Medical Diagnosis or Treatment Exception

Requirements include that the declarant made the statements *understanding* they would lead to medical diagnosis or treatment.



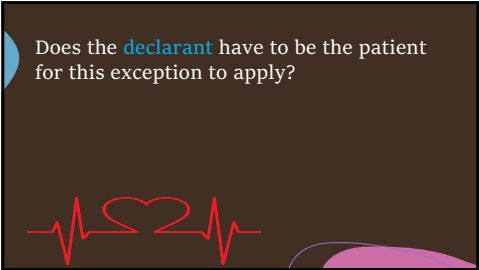
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Circumstances indicate whether a young declarant had a medical treatment motive.



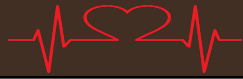
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Does the *declarant* have to be the patient for this exception to apply?

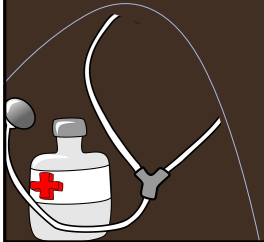


24

Does the **listener** have to be the medical provider for this exception to apply?



25



Medical Diagnosis or Treatment Exception

How is this exception consistent with the values behind the rules?

26

Other Hearsay Exceptions under Rule 803

Present Sense Impression Rule 803(1)	"Hello, 911? A red Ferrari just hit another car."
Excited Utterance Rule 803(2)	"Oh no, you just hit another car!"
Mental, Emotional, or Physical Condition Rule 803(3)	"I cannot believe I have to drive home; I am exhausted."
Reputation as to Character Rule 803(21)	"He is known around town for being dishonest."
Records of Vital Statistics Rule 803(9)	E.g., certificates of birth, death, or marriage.

27

Hearsay Exceptions
Category **12**: Declarant Availability Irrelevant

Another value: **fairness**.

28

Admission of “Party-Opponent”

- Declarant availability irrelevant
- Rule 801(d) - not Rule 803
- Basic elements:
 - Declared or endorsed
 - By party-opponent
 - Offered against that party

X Any statement made or endorsed by any party to this case can come in for any purpose?

29

What if...

“Your Honor, I saw Father 1 at the grocery store recently. He said, ‘I just know that the kids’ mom is using cocaine.’”

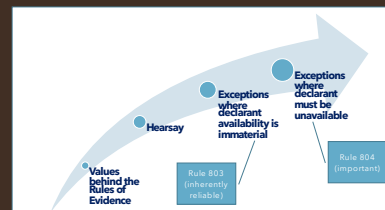
X Admissible in adjudication hearing in proceeding brought by DSS involving both juveniles?

30

Admission of "Party-Opponent"

- Statements of parent ✓
- Statements of DSS worker, law enforcement officers, and other government agents ✓
- What about statements of child?

31



32

Hearsay Exceptions under Rule 804

Unavailable means the declarant is

- precluded from testifying,
- refusing to testify despite a court order to do so,
- claiming, under oath, to have a lack of memory about the statement,
- unable to testify because of a physical or mental illness, or death, or is
- absent and reasonable means to procure the declarant have been unsuccessful.

33

Hearsay Exceptions under Rule 804

Former Testimony
Rule 804(b)(1)

Declarant testified in this proceeding, or another proceeding where a party had similar interests as a party in the current proceeding.

Impending Death
Rule 804(b)(2)

At issue is whether Dan hit a woman with his red Ferrari. The victim's son testifies that he came out of the store and found his mom on the ground, in pain. He testifies that when he asked his mom who did this, she "pointed at Dan as he drove away." She died before the ambulance could get to the scene.

34

EXTRA! EXTRA!

Residual Hearsay

Required Showing	Rule 803(24)	Rule 804(b)(5)
Circumstantial guarantees of trustworthiness exist	✓	✓
Statement offered as evidence of a material fact	✓	✓
More probative than other reasonably available evidence	✓	✓
Purpose (value) of Rules and interests of justice served by admission	✓	✓
Witness is unavailable	?	✓
Advanced notice was given	✓	✓

For more, see A/N/D Manual, Ch. 11, Section II, beginning on page 11-46.

35

EXTRA! EXTRA!

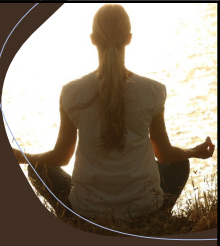
Residual Hearsay

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Don't Panic

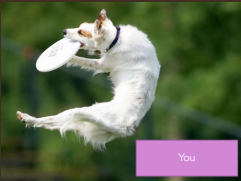
If the correct rule comes to you immediately, great. If not:

- Is it hearsay? (out-of-court + offered for truth)
- Whose credibility matters? (hearsay = out-of-court declarant; non-hearsay = usually in-court witness)
- What values are in play? How is proposed evidence consistent or not with those values?
- Answers should guide your arguments on admissibility.
- Ask for time to research issue (particularly in lengthy trial and if critical issue).



37

Timothy Heide
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You

38

Special Issues Related to DSS Records

Timothy Heinle
UNC School of Government

1

Poll Time

POLL EVERYWHERE

Or you can open a browser and respond at [Polls.com/timothyheinle](https://polls.com/timothyheinle)

2

Where do you represent parents? (Click all that apply)

NORTH CAROLINA

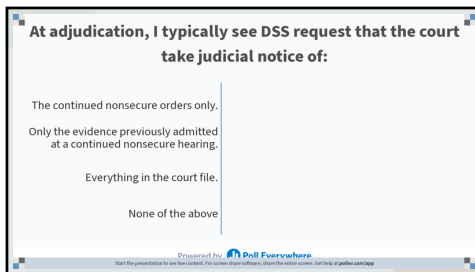
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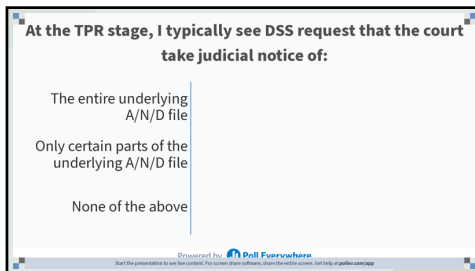
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4



5



6

I have seen the court rule against a request by DSS to take judicial notice of a prior order or previously admitted evidence.

True False Super false

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7

As for DSS' own file,

I have seen DSS offer its file at adjudication.

I have seen DSS offer its file at a non-adjudicatory hearing.

I have seen DSS offer its file at both adjudication and other hearings.

I have never seen DSS seek to admit its file.

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8

Finally, what word or phrase comes to mind when you think of the nature of your objection(s) to judicial notice in A/N/D proceedings and to the admission of DSS' file?

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9

Grandma's Famous Judicial Notice Recipe

- 2 parts Judicial Notice
- 1 part Collateral Estoppel
- 1 part Res Adjudicata
- Equal parts confusion, smooch bench and bar




10



11

Judicial notice of prior entered orders

YOU'VE GOT TO FIGHT FOR YOUR RIGHT TO ~~OWN~~ ^{OWN} YOUR OBJECT




A timely request entitles you to be heard about whether the court should take judicial notice. See *State v. Anthony*, 267 N.C. App. 45 (2019) (improper where matters were not offered in evidence and were only discussed in argument).
If not notified ahead of time, a request to be heard may be made after judicial notice is taken. N.C. R. EVID. 201(e).

12

Judicial notice of prior entered orders

- At hearings where Rules of Evidence apply, object to prior findings of fact based on now-inadmissible evidence.
- Make DSS name the specific findings and conclusions the court is being asked to take notice of.
 - General objection may be insufficient
 - Big picture: practical barriers may reduce the flood
 - Cleaner record on appeal
- Offer contradictory evidence.
- Admissibility vs effect.




13

Judicial notice of previously admitted evidence

In re L.N.H., 382 N.C. 536 (2022)

- COA reversed trial court's dependency adjudication. NC Supreme Court granted the petition for discretionary review.
- Multi-layered case with hard facts for the parent attorney to deal with.
- NC Supreme Court examined whether it was ineffective assistance of counsel to fail to object at adjudication to the court taking notice of evidence received at continued nonsecure hearing.
- Reversed COA.



14

Judicial notice of previously admitted evidence

In re L.N.H., 382 N.C. 536 (2022)

- But!

"[Neither] this Court nor the Court of Appeals has directly addressed...whether a trial court [at adjudication may take judicial notice of] evidence that has previously been admitted [at a hearing on continued] non-secure custody...with reasonable arguments in support of and in opposition to the admissibility of this evidence having been advanced in the parties' briefs before this Court."



15

Judicial notice of previously admitted evidence

Your Argument:
Hearsay evidence admitted without objection at a nonsecure custody hearing should not be allowed as admissible evidence by judicial notice at an abuse/neglect adjudication.

16

Judicial notice of previously admitted evidence

Your Argument:
Hearsay evidence admitted without objection at a nonsecure custody hearing should not be allowed as admissible evidence by judicial notice at an abuse/neglect adjudication.

See In re J.C.M.J.C., 268 N.C. App. 47 (2019) (questioning reliance at adjudication on findings from prior nonsecure custody hearing because nonsecure custody hearing lack the procedural safeguards required in adjudications)

17

This all stresses the importance of:

Being prepared at adjudication

- Know what is already in the file.

Objections

- Strenuously object.
- Specify objections.

Keeping out FOF unsupported by competent evidence

- Review draft orders.
- Rebuttal presumption that court disregarded incompetent evidence by showing it was based on inadmissible evidence.

Reducing the effects of prior non-adjudicatory hearing findings

- Non-binding.
- Different standards of proof across hearings can affect weight of evidence.
- Courts may reject prior non-adjudicatory FOF and credit contrary testimony.


Offering evidence and proposing findings

- E.g., parent reports, family photographs.
- Get good findings (even in bad orders).

18


Judicial notice and collateral estopped can prevent DSS from relitigating allegations it lost at adjudication.


See *in re F.S.*, 268 N.C. App. 34 (2019) (DSS could not argue that mother's hospitalizations showed risk of harm to child where issue was fully litigated and court previously found no nexus of harm or substantial risk of harm.)



19

Your turn






20

Key points regarding DSS' records

- ❑ Wealth of information
- ❑ Be specific and all-encompassing when requesting access
- ❑ When DSS seeks to admit its entire file
 - ❑ May be expressly requested ("we'd like to offer our entire file") or more subtly (e.g., a social worker report that includes a reference to attaching and incorporating the file).
 - ❑ Make DSS do the legwork and be specific.
 - ❑ Remember! Business records:
 - ❑ is a two-step process (hearsay within hearsay).
 - ❑ A different social worker can lay foundation but only if knowledgeable about preparation.
 - ❑ Advanced notice is required.



21

*Special Issues Related
to DSS Records*

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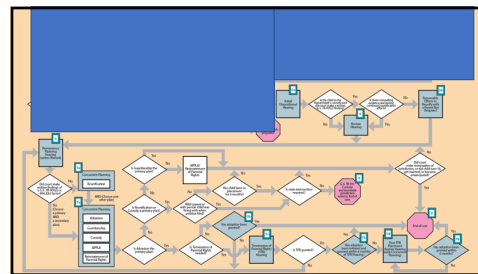
An abstract graphic consisting of numerous small, semi-transparent dots in shades of blue, green, yellow, and orange. These dots are clustered together to form a shape that resembles a map of North Carolina, with the dots being denser in the central and eastern parts of the state.

22

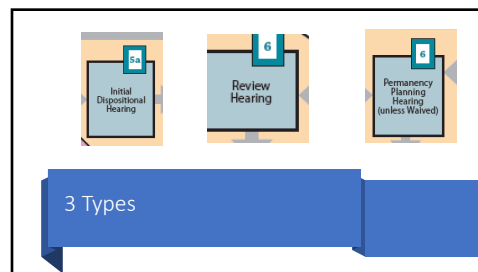
A/N/D Overview

The Later Stages

1



2



3

Purposes of Disposition

Design a plan that reflects

- consideration of facts
- child's needs and limitations
- family's strengths and weaknesses

If possible,

- keep child at home
- use appropriate community resources for care, supervision, treatment
- to strengthen home situation



4

Provides services that

1

protect the child

2

respect family autonomy

3

reflect child's needs for safety, continuity, and permanence

4

prevent unnecessary separation of child and parent

5

Protective Services

- Screen reports & perform assessments
- Casework
- Other counseling services to parents, guardians, other caretakers to
 - help prevent abuse/neglect
 - Improve quality of child care
 - Be more adequate parents
- Preserve & stabilize family life

G.S. 7B-300

6

Safe Home

A home in which the juvenile is not at substantial risk of physical or emotional abuse or neglect.

G.S. 7B-101(19)

7

Design a Plan

Services & Conditions

Continuity & Decision Making

Placement & Visitation

↓



Permanence

w/in reasonable period of time

8

At some point, in all of the dispositional hearings

Considering reasonable efforts & reunification...

9

Reasonable Efforts

In re N.L.M.

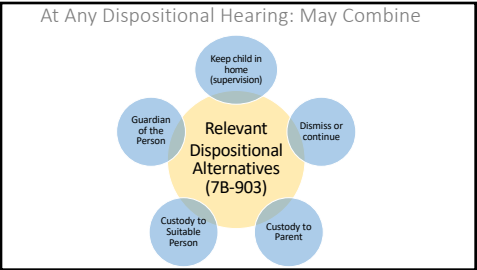
G.S. 7B-101(18): Defined

G.S. 7B-903(a3): Did DSS make reasonable efforts

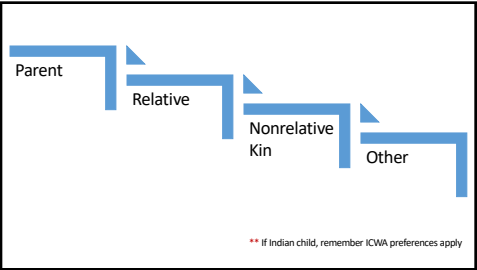
Federal regulations = Nonexhaustive list

- Crisis counseling
- Individual/family counseling
- Mental health and substance use counseling
- Services to unmarried parents
- Day care
- Emergency shelter
- Vocational Counseling
- Emergency caretaker
- Homemaker services

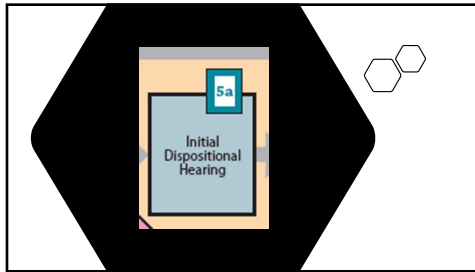
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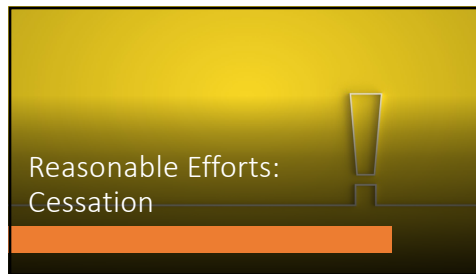
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12



13



14

7B-901(c) Factors	Aggravating Circumstances
	TPR of another child
	Parent committed (or attempted) certain felonies of juvenile or another child
	Registered sex offender

15

Cease
Reunification
Efforts
In re L.N.H.

G.S. 7B-901(c) requires written findings

Must explain "aggravating circumstances"

7B-901(c)(1) if any other act, practice, or conduct that increases the enormity or added to the injurious consequences of the abuse or neglect

16




Two Different Tracks

w/in 90 Days
of Initial Disposition


17

REVIEW ONLY



Continue in
Custody of Parent,
Guardian,
Custodian,
Caretaker*

PPH ONLY



Removed from
Custody of Parent,
Guardian, or
Custodian

18

Review Hearing: 7B-906.1(d)(1a), (d1), (d2)

Continuation	Appropriateness of continuation in home of parent, guardian, or custodian (Removal can occur)
--------------	--

19

Review Hearing: 7B-906.1(d)(1a), (d1), (d2)

Completion	Absent extraordinary circumstances, when P, G, or C completes court-ordered services and juvenile in safe home, court may waive further hearings or termination its jurisdiction
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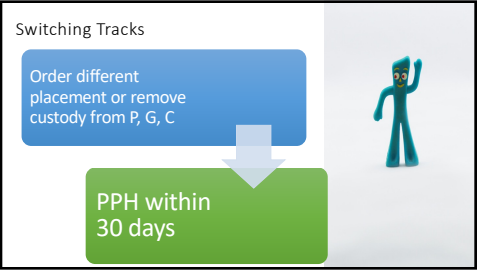
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Shall not waive or refuse to conduct reviews if

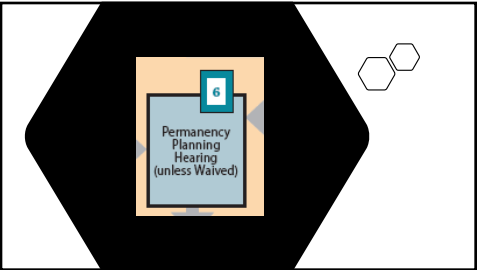
Party files a motion for review <u>and</u>	Alleges a significant fact
--	----------------------------

7B-906.1(k1)

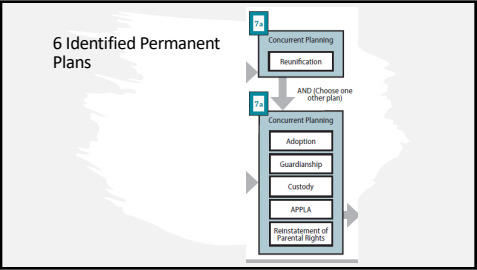
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24

PPH: Reasonable Efforts

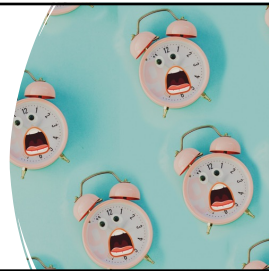
The court shall order department to make efforts to finalize each plan

The court may specify efforts that are reasonable and timely to achieve permanence

25

Reasonable Efforts and Reasonable Accommodations

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

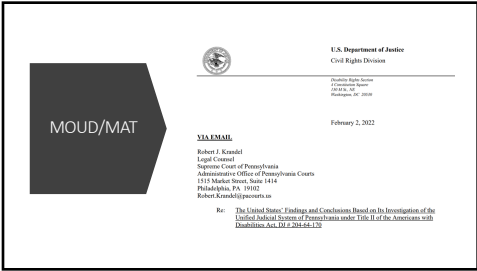


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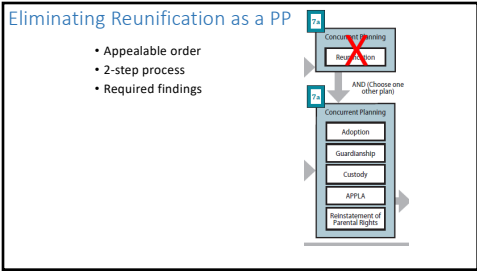
When comply with MAT,
not violating conditions or
terms of court order requiring
SUD treatment

G.S. 7B-904(c1)

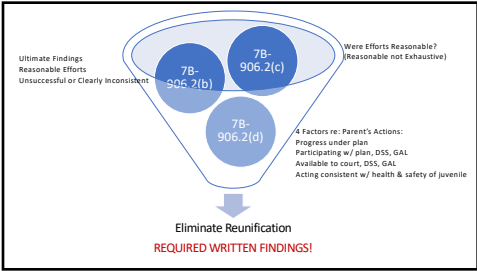
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30

Findings required re: parent's



What statute requires these findings?

31

Findings before conclusion



32

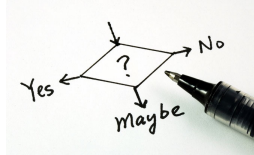
When Are These Findings Required?

Non-Parent	Timing	Waivable?
<ul style="list-style-type: none">• Custody• Guardianship	<ul style="list-style-type: none">• Permanent order (PPH)• BUT, In re S.J.T.H.	YES

33

Guardianship & Custody

Inclusive of decision-making



34

7B-906.1(e)(2)

- Consider and if relevant make findings on
 - Legal guardianship/custody and
 - Rights & responsibilities that should remain with the parents
- If none specified in order, rights (except for visitation) are lost
 - *In re M.B.*, 253 N.C. App. 437 (2017)

35



36

Reunification: Rylan's Law

- Return physical custody to removal P, G, C, C
 - If in DSS custody, must have hearing w/ finding proper care and supervision in a safe home
- Before DSS recommends return of physical custody, DSS observe 2 visits

37

G.S. 7B-101(18b): Reunification!

38

Status of Court Case

TERMINATE JURISDICTION

- G.S. 7B-201: terminate by court order
- G.S. 7B-911
- Adoption
- Emancipation

RETAIN JURISDICTION

- Hold regular PPH
- Waive regular PPH
 - G.S. 7B-906.1(k), (n)

39



40



41

TACTICS FOR LATER
HEARINGS

REPRESENTING PARENTS AFTER ADJUDICATION

USANA HUNTER
ASSISTANT PUBLIC DEFENDER, WILMINGTON, NC

1

AGENDA

- Definitions
- Tactics
- Initial PPH
- PPH - Approaching a year
- PPH - Recommended plan change
- Wrap up

2

DEFINITIONS

Case Plan

Reasonable Efforts

Permanency Planning Hearings

Motion for Review

3

CASE PLAN (AKA PERMANENCY PLANNING FAMILY SERVICES AGREEMENT)

10A NCAC 70G .0504 OUT-OF-HOME FAMILY SERVICES AGREEMENT FOR CHILDREN RECEIVING FAMILY FOSTER CARE SERVICES

- (a) The agency shall develop a written out-of-home family services agreement within 30 days of admission of a child in a family foster home.
- The out-of-home family services agreement ~~shall be developed in cooperation with~~ parents, guardian or legal custodian, and, when possible, the child and foster parents.
- The out-of-home family services agreement shall be based upon an assessment of the ~~needs~~ of the child, parents or guardian.

4

CASE PLAN (CONTINUED)

- The out of home family services agreement shall include goals stated in ~~specific, realistic, and measurable terms and plans~~ that are ~~action oriented~~, including responsibilities of staff, parents or guardian, other family members, legal custodian, foster parents, and the child.
- The agreement shall address the following services to be provided or arranged:
 - (1) the visitation plan designed to maintain links with the family;
 - (2) the expectations of the family, agency, placement provider, and community members;
 - (3) target dates; and
 - (4) expected outcomes.

5

REASONABLE EFFORTS

N.C. Gen. Stat. § 7B-101 - Definition

- The ~~diligent~~ use of preventive or reunification services by a department of social services when a juvenile's remaining at home or returning home is consistent with achieving a safe, permanent home for the juvenile within a reasonable period of time.
- If a court of competent jurisdiction determines that the juvenile is not to be returned home, then reasonable efforts means the diligent and timely use of permanency planning services by a department of social services to develop and implement a permanent plan for the juvenile.

6

PERMANENCY PLANNING HEARINGS

§ 7B-906.1. Review and Permanency planning hearings

KEY TAKEAWAYS FOR PPH

- Initial hearing within 90 days of Dispositional hearing
- After the initial PPH - 6 months - can be shorter - ask for shorter
- Court will hear from DSS, GAL, parents, caregivers
- Hearsay evidence can be considered → relevant, reliable & necessary → court reports
 - We can and should admit evidence when possible

7

PERMANENCY PLANNING HEARINGS (CONTINUED)

• COURT MUST CONSIDER THESE FACTORS:

- Services offered for reunification
 - Visitation update - modification? Expansion?
- Whether efforts to reunite the juvenile with either parent clearly would be unsuccessful or inconsistent with the juvenile's health or safety and need for a safe, permanent home within a reasonable period of time.
- Reports on juvenile's placement - appropriateness, goals of foster care plan - role of foster parent in planning
 - 16, 17 yr. olds - Independent Living Assessment - Independent Living Plan
- Anything else

8

MOTION FOR REVIEW/MODIFICATION

§ 7B-1000. Authority to modify

- (a) Upon motion in the cause or petition, and after notice, the court may conduct a modification hearing to...
- determine whether the order of the court is in the best interests of the juvenile.
- The court may modify the order in light of changes in circumstances or the needs of the juvenile and address the issues raised in the motion that do not require a review or permanency planning hearing *pursuant to G.S. 7B-906.1*.

9

OVERVIEW OF TACTICS

Review Petition

Get signed releases from client

Reach out to providers directly

Request updated SW notes, other docs from DSS

Request drugs screens

Include pictures

Talk about family placements

Encourage client to continue to parent

Use Adjudication/disposition order as roadmap

10

REVIEW PETITION

- Are the services ordered related to the reasons why the child was removed
 - Curate your client's plan – link them up to personalize it to your client/family
 - Listen to client concerns/challenges with ordered services
- You get parenting classes, YOU get parenting classes...it is necessary
 - Group classes vs. one on one
- Judge may have ordered over your objection at disposition → object again
- Let's prioritize – substance abuse main issue – let's get that under control and reassess
- Can some services be combined – therapist can provide anger management/empowerment – just try it – DVOP is 6 mos

11

GET SIGNED RELEASES FROM CLIENT

- Don't just rely on DSS records – why?
- Get the complete record → at the same time, **DSS doesn't need the entire record**
 - Ask the court to limit DSS access to provider records to:
 - Initial Assessment/Diagnosis
 - Treatment plan/Compliance
 - Drug Screen results
 - Successful Completion?
- Paint the whole picture – Court report – “client experiencing cravings” → provide context
 - Talking to medical doctor who is monitoring/prescribing medication

12

REACH OUT TO PROVIDERS DIRECTLY

- Client signed release
 - Parenting – how did client do, praises/concerns, observe interaction with children, feedback from SW's – could be a letter, could be a witness
 - Substance Abuse – level of engagement, growth, consistency
 - Mental Health – compliant with medication management; if no meds – why, what's the plan; level of engagement; consistency; stability/progress – what does that look like for YOUR client
 - Domestic Violence – level of engagement, safety plan in place, group involvement

13

REQUEST UPDATED SW NOTES, OTHER DOCS FROM DSS

- Especially when reunification seems to be stalled
- What's in there?
 - Conversations with FP, provider conversations, visitation notes, referral information, client interaction with social worker, conversations with family members
- Identify concerns – even if they're not being directly communicated with client – ex. Vists are terrible → do notes reflect that?
 - The absence of information is still information → no concerns noted but concerns referenced in report?
- CFT notes (should get from client or attend yourself)
- Vendor agreements, referrals – time frame for both

14

REQUEST DRUG SCREENS

- Why? DSS documents the results in reports
- DSS makes mistakes!
- Is the testing reliable? If you have questions call the lab!!!
- Look at the levels – especially hair screens (levels decreasing?)
- How frequently are they requested?
 - If not frequently requested – DSS can't be too concerned with use – let's move forward
- Client missing drug screens – why? → challenge reports that don't provide explanations for missed screens

15

INCLUDE PICTURES

- Why?
- Judge may have never seen the child
- Pictures humanize both parents and children
- Reminds everyone why we are here – this is a family
- Positive evidence to have in the record

16

TALK ABOUT FAMILY PLACEMENTS

- Discuss early with clients – even if they can't take kids → visitation resource
- Family placement is statutory preference/edict
- Even if they don't love their family – start having discussions about placement
- At initial PPH – parent not engaged → don't delay
- ICPC Home studies can take a long time
- Make sure that it's clear to the court that there are potential family members – (provide family members with info about process)

17

ENCOURAGE CLIENT TO CONTINUE TO PARENT

- Go to doctor appointments
- Go to school appointments
- If they can't go – why not? Get updates – ask regularly
- Remind the parents that these are their kids – they know them best
- REMIND THE JUDGE/DSS/GAL OF THIS FACT
- Especially in cases with complicated medical issues → parents have to know how to care for their child/don't want it used as excuse to delay reunification

18

USE ADJUDICATION/DISPOSITION ORDER AS ROADMAP

- The order should outline the judge's expectations
- Hold DSS responsible for connecting client to services
- Has DSS made timely referrals?
- Having a release signed by client is helpful here → get independent documentation from provider
 - Request referral/fax from DSS – actual paperwork → nail down dates
- Punch to face – no psych eval needed!!

19

INITIAL PPH - PREPARATION

- Talk to your client (read report)
- Reach out to DSS – can we expand? Issues?
- What is your client's progress?
 - Client has disappeared – SW NOTES COULD SHED LIGHT
 - Client visiting – nothing else – SW NOTES, FAMILY PLACEMENT – COMMUNITY VISITS?
 - CLIENT IS KILLING IT! – HOW CAN WE EXPAND VISITS

20

INITIAL PPH – PREPARATION (CONTINUED)

- Why are you struggling – what are barriers → Address with court
 - TRANSPORTATION
 - ANXIETY IN GROUP SETTING
 - WORKING – CAN'T MAKE DRUG SCREENS/VISITS
- Have candid conversation with client – explain what is at stake
- Make sure client understands court expectations
- Look at age of child – how can we expand – what are the needs?
 - PUSH AS MUCH VISITATION AS POSSIBLE RIGHT FROM THE START – use visitation resources – family/friends

21

INITIAL PPH – APPLY TACTICS

- Review Petition – ARE CLIENT'S NEEDS BEING ADDRESSED
 - ARE THOSE PARENTING CLASSES NECESSARY; PRIORITIZE – no cookie cutter services
 - Revisit order – are all services necessary?!
- Get signed releases from client – DEFINITELY HELPFUL
- Reach out to providers directly – DEPENDS ON CASE PROGRESS, LETTERS CAN BE ADMITTED, DISPUTE W DSS?
 - DOES CLIENT NEED AN ACCOMMODATION
- Request updated SW notes, other docs from DSS – DEPENDS ON PROGRESS

22

INITIAL PPH – APPLY TACTICS (CONTINUED)

- Request drugs screens – ALWAYS HELPFUL TO HAVE UPDATED SCREENS – ADMIT NEGATIVE SCREENS!!
 - TROUBLE GETTING TO SCREENS – REASONABLE EFFORTS MEANS THAT DSS NEEDS TO IDENTIFY A PLACE FOR AFTER HOUR DRUG SCREENS
- Include pictures – NOT A NOTEBOOK – A FEW
- Talk about family placements – LIST POTENTIAL FAMILY PLACEMENTS/VISITATION RESOURCES – HAVE THEM PRESENT IF POSSIBLE
- Encourage client to continue to parent – ASK THE COURT'S ASSISTANCE TO EMPOWER CLIENT
- Use Adjudication/disposition order as roadmap – IDENTIFY REFERRALS/SERVICES CLIENT IS WAITING ON – HOUSING/EMPLOYMENT ISSUES → IDENTIFY SUPPORTS

23

PPH – APPROACHING A YEAR - PREPARATION

- Talk/Meet with client (read report) – we need to move the needle
 - Client has disappeared
 - Client visiting – nothing else (barely anything else)
 - CLIENT IS KILLING IT! – HOW CAN WE EXPAND VISITS/NEXT STEPS
- ADDRESSING GOALS
 - SAOP
 - Parenting
 - Empowerment
 - Therapy
 - Visiting regularly – visits going well → EXHIBITION – use relatives, unsupervised

24

PPH – APPROACHING A YEAR – PREPARATION (CONTINUED)

- Visits stalled - file a motion - reach out to DSS
 - Creative ways to expand
- Candid conversation with client – if i was talking to the SW what would they tell me?
- ICPC home studies? Judge doesn't have to send kids immediately

25

PPH – APPROACHING A YEAR – APPLY TACTICS

- Review Petition – ARE WE FOCUSED ON ISSUES
- Get signed releases from client – GET UPDATED INFORMATION
- Reach out to providers directly – ANY EVIDENCE TO PROVIDE TO COURT?
- Request updated SW notes, other docs from DSS
 - COMPLETED SERVICES - EMPHASIZE VISITS GOING WELL - MORE TIME
- Request drugs screens – ADMIT MORE NEGATIVE SCREENS

26

PPH – APPROACHING A YEAR – APPLY TACTICS (CONTINUED)

- Include pictures – VISITS IN COMMUNITY – CLIENT'S HOME
- Talk about family placements – VISITS, STATUS OF HOME STUDIES
- Encourage client to continue to parent – ATTENDING APPTMTS – Issues with that?
PROVIDER FEEDBACK – HAVE CLIENT SIGN RELEASE/GET FROM DSS
 - Could be helpful notes/feedback in the notes of the children's provider
- Use Adjudication/disposition order as roadmap (prior PPH orders too) – ALL REFERRALS MADE, SERVICES OUTSTANDING? ADDRESS WITH COURT IF DSS IS RESPONSIBLE

27

PPH – RECOMMENDED PLAN CHANGE - PREPARATION

- Client has disappeared
- Client visiting – Inmate else
- CLIENT IS KILLING IT!
- Meet/talk to client
- Have candid/difficult conversation with client
- Review court expectations again
- Discuss progress – barriers to progress
 - Address barriers with judge if appropriate
- Explain to client potential outcomes, including the possibility that a primary plan can change back to reunification with progress
- Permanent placement identified?

28

PPH – RECOMMENDED PLAN CHANGE – APPLY TACTICS

- Review Petition – PROGRESS ON ISSUES FROM PETITION – ARGUE IMPROVEMENTS
- Get signed releases from client – UPDATED RECORDS – CLIENT'S PROGRESS DOCUMENTED
- Reach out to providers directly – INPUT FROM PROFESSIONALS – WITNESSES!
 - A YEAR IS NOT ENOUGH TIME. STRUGGLES WITH MH/SA ARE NOT "FIXED" IN ANY CERTAIN PERIOD OF TIME
- Request updated SV notes, other docs from DSS – REASONING OF PLAN CHANGE. IDENTIFY ALL POTENTIAL CAUSES FOR CHANGE OF PLAN

29

PPH – RECOMMENDED PLAN CHANGE – APPLY TACTICS (CONTINUED)

- Request drugs screens – ADMIT NEGATIVES
- Include pictures – MORE IMPORTANT THAN EVER
- Talk about family placements – GO FULL FORCE- PLACEMENT NEEDS TO BE MADE
- Encourage client to continue to parent – CONTINUE TO PARENT – DON'T GET DISCOURAGED
- Use Adjudication/disposition order as roadmap – DID DSS DO EVERYTHING THEY WERE SUPPOSED TO DO – WE NEED RECEIPTS!
- Closing argument – POINT OUT PROGRESS, REUNIF POSSIBLE IN 6 MONTHS, PARENT/CHILD BOND, FOCUS ON POSITIVES, LOSS OF FAMILY CONNECTION, DSS FAILURES, PLACEMENT ISSUES

30

WRAP UP

Lyana Hunter

910-343-5423

Lyana.g.hunter@nccourts.org

- Keep the identified goals/services of the disposition order in the forefront
- Continue to get updated records from DSS and from your client's providers directly
- Share pictures of the family with the judge
- Provide relative placement option ASAP
- Remind parents to participate in all services regarding their kids and ask for updates
- Candid but kind conversations are essential with our clients
- Hold DSS accountable for reunification along with your client

31

Office of the
Parent Defender

Wendy C. Sotolongo
Parent Defender
Indigent Defense Services
[Wendy.C.Sotolongo@dcba.ny.us](#) 3/10/2023

1

OPD

The Office of the Parent Defender provides and promotes high quality legal representation for parents affected by the child welfare system (DSS) and parents facing contempt in child support and other civil proceedings.

Wendy C. Sotolongo	Parent Defender
Annick Lenoir-Peek	Deputy Parent Defender
J. Lee Gilliam	Senior Assistant Parent Defender
Jacky L. Brammer	Assistant Parent Defender
Kate Warren	Administrative Assistant
Shari Neal	Contracts Administrator
Sharice Zachary	Interdisciplinary Representation Program Manager

2

FY 18-FY22 AND/TPR Appeals

Fiscal Year	All cases	TPR cases	Non-TPR
FY 18	180	140	40
FY 19	190	130	60
FY 20	180	120	60
FY 21	170	110	60
FY 22	210	150	60

Appeals

In FY22, OPD made assignments in 211 AND/TPR appeals.

OPD appellate attorneys received 59 of these appeals. The remaining assignments went to one of our 25 appellate roster attorneys.

3

Resources

Appellate Attorneys:

➤ Training

- Boot Camp-OPD
- Annual Appellate Advocacy-SOG

➤ Mentoring

- Brief bank
- Moots for oral arguments
- Consultations
- Listserv

Trial Attorneys:

➤ Training

- Annual Parent Attorney Conference-SOG
- Biannual Intensive Parent Defender-SOG
- Biannual Contempt CLE-SOG
- Local Districts-OPD

➤ Case consultations

➤ Research and sample motions

➤ Listserv

4

OPD News

➤ OPD was instrumental in creating a Child Welfare Specialty within the NC State Bar

- The exam has been offered 2x
- 10 parent attorneys are certified
- Application process going on now

➤ OPD continues to increase the number of attorneys under contract to do parent representation

➤ OPD is accessing new money through IV-E reimbursement from the Children's Bureau, an agency within the U.S. Department of Health and Human Services

➤ OPD is working with State DSS and other stakeholders on a legislative bill

5

Contracts-MAC system

Managed Assigned Counsel (MAC) contracts are unique, attorney centered and allow IDS to better track outcomes for the clients as well as needs for the attorneys. These are the highlights.

1. IDS pays attorneys every month for the hours billed the previous month. Attorneys do not have to wait for a disposition in the case to be paid.

2. Attorneys determine their own caseload and may take a break from new case assignments simply upon request.

3. Expenses for out-of-county travel, copies and in-house paralegal administrative time are reimbursed monthly.

4. Expert assistance requests by contracting attorneys for drug analysis and testimony are approved by IDS, not the courts.

5. Consults and trial assistance by OPD and free and reduced costs for CLEs.

6

2

IV-E Funds

Rate Increase. The cost of the \$10 rate increase for attorneys representing parents will be transferred from the IV-E reimbursement fund to the PAC fund each month.
Example: IDS paid \$65,000 at \$65/hour to parent attorneys in February 2023. In March, IDS will transfer \$10,000 from the IV-E fund to the PAC fund.

Interdisciplinary Representation Program (IRP). NC will develop a model of parent representation in which the attorney and a social worker are an interdisciplinary team whose objectives include:

- promoting parent engagement, and
- ensuring families receive meaningful services that lead to lasting reunifications

Implement strategies to recruit and retain highly qualified parent attorneys. IDS will explore higher rates for Child Welfare Specialists, paid internships and fellowships for law students and recent law school graduates, mentoring programs, and creating regional parent defender positions.

7

Legislative Session

➤ Continued rate restoration-increase hourly rate for indigent defense

➤ Child support

7/2022 New policy from the Children's Bureau calls for states to end automatic referrals to child support (and generally eliminate referrals in any case where the plan is reunification)

[Joint Letter Regarding the Assignment of Risks to Child Support for Children in Foster Care.pdf](#)

➤ Changes to TPR statute based on failure to pay child support

➤ Post adoption contact

8



Questions?

9



1



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3



4

Evidentiary Standard After Adjudication



The court may consider any evidence, including hearsay...or testimony or evidence from any person that is a party, that the court finds to be **relevant, reliable, and necessary** to determine the needs of the juvenile and the most appropriate disposition.

G.S. 7B-901(a), -906.1(c).

Relevant evidence is evidence that tends to make the existence of a fact of consequence to the action more or less probable.

G.S. 8C-1, R. 401.

5

Examples of Excluded Evidence at Later Hearings

In re K.G.W., 250 N.C. App. 62 (2016)

- Dispositional hearing.
- Trial court determined clinical psychology expert's testimony would not assist the court's role as trier of fact, because the expert
 - had never met with, observed, or tested the juvenile,
 - was not involved in the case otherwise, and
 - lacked familiarity with juvenile proceedings more broadly.
- COA: Trial courts get to determine evidentiary credibility and weight.

6

Examples of Excluded Evidence at Later Hearings

In re J.N.S., 207 N.C. App. 670, 679 (2010)

- Trial court at disposition received DSS and GAL reports.
- Judge addressed parties and family members, none of whom were placed under oath.
- COA:
 - Unsworn statements were not competent evidence.
 - Findings based solely upon unsworn testimony were thus improper.
 - The informal nature of a disposition hearing does not "excuse[] the necessity of having evidence which is based upon sworn testimony if the trial court chooses to rely on information from individuals" in addition to reports.

7

Examples of Excluded Evidence at Later Hearings

In re P.O., 207 N.C. App. 35, 39-41 (2010)

- Trial court at PPH barred documents purportedly created by treatment providers.
- Letters contradicted other evidence and other parties were unaware of existence of documents and identities of some of the authors.
- COA:
 - Trial court did not abuse its discretion where:
 - (1) Proponent failed to explain why providers were not present to testify.
 - (2) Proponent failed to "offer any support for [the] contention that the documents were reliable."
 - (3) DSS' "strenuous objections to the documents based on a lack of authenticity and reliability" and desire to cross-examine on critical issue.
 - Trial courts may consider hearsay evidence. That "permissible language" makes it clear trial court can include or exclude hearsay at PPH.

8



9

The time to fight over credibility is at trial.

IN RE A.C., 247 N.C. APP. 528, FN. 8 (2016)

Testifying therapist struggled to recall dates and other important information.

On appeal, Respondent Mother challenged therapist's testimony as unreliable.

COA: "The trial court's credibility determinations are not a viable basis for relief on appeal."

ELLIOTT V. MUEHLBACH, 173 N.C. APP. 709, 714 (2005)

Evidence lacking objective measurements, an absence of impartial witnesses, or a party's "exaggerated" testimony, are all factors that "relate to the credibility and weight to be afforded the testimony."

"Such questions must be resolved by the trial court and are not a basis for overturning a finding of fact."

10



When is Live Testimony Required?

11

When is Live Testimony Required?



Disposition

- Trial court relied only on written reports and adjudication findings. *In re K.W.*, 272 N.C. App. 487 (2020).
- A.D.J. + Disp. = two-step hearing process (formal/adversarial → inquisitive).
- Testimony at disposition is:
 - Not required if reports and Adj. findings sufficiently support the order.
 - Required if order relies on information from people who address the court.

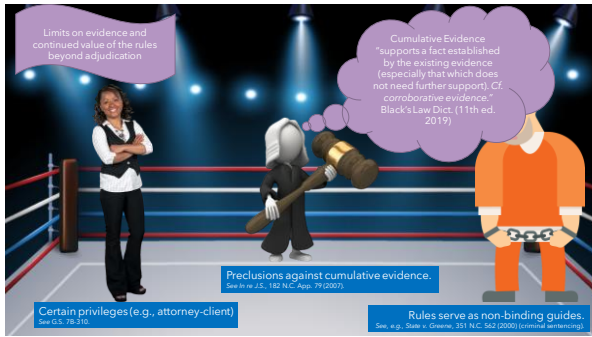
Permanency Planning

- Live testimony is required. Otherwise, COL are made in error. *In re S.P.*, 367 N.C. App. 533 (2019).
- Attorney arguments are not testimony *id.* See also *In re J.T.*, 252 N.C. App. 19 (2017).
- Reliance on prior orders no substitute for competent evidence at PPH. *In re D.V.*, 202 N.C. App. 160 (2019).

Review

- Governed by same evidentiary standard as PPH. G.S. 7B-906.1(c).
- Appellate holdings on evidentiary standards likely apply.

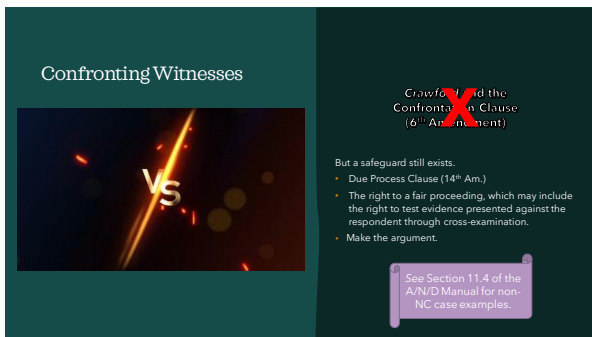
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16



Child Testimony

Respondent subpoenas a child for testimony.

GAL moves to quash on the ground that testifying would be harmful to the child.

Question: What is the legal standard for determining whether a child may testify?

17

The Rules for Child Testimony

The legal standard is competency.

- Not unavailability or harm.*
- No *Crawford* but remember Due Process.

Rule 601. General rule of competency; disqualification of witness.

(a) General rule. – Every person is competent to be a witness except as otherwise provided in these rules.

(b) Disqualification of witness in general. – A person is disqualified to testify as a witness when the court determines that the person is (1) incapable of expressing himself or herself concerning the matter as to be understood, either directly or through interpretation by one who can understand him or her, or (2) incapable of understanding the duty of a witness to tell the truth.

18

The Rules for Child Testimony

Cases suggest that harm must be oppressive and unreasonable to be considered.

- See *In re A.H.*, 250 N.C. App. 546 (2016) (strong evidence of severe mental health and distress).
- See also *In re W.H.*, 261 N.C. App. 24 (2018). (record and order reflected thorough inquiry and strong evidence that testifying would traumatize the girls and would cause them confusion, guilt, and fear to the point there was a risk of dishonest testimony).



19


How does the court determine whether the child is competent to testify?



Observe child.



Voire dire.
But see *Spaugh*, 321 N.C. 550 (1988) (voire dire not required where judge observes child).



Testimony of others
Roberts, 18 NC COA 388 (1973) (helpful but not required).

20

Mechanisms for Taking Child Testimony

Testimony in courtroom

- Excluding bystanders. See, e.g., G.S. 7B-801.
- Excluding other witnesses from court. See G.S. 8C-1, R. 615.
- Leading questions. See *State v. Higginbottom*, 312 N.C. 760 (1985) (difficulty understanding because of age, immaturity, or ignorance of subject matter).
- Positioning and location of child. See *State v. Reeves*, 337 N.C. 700 (1994).
- Frequent recesses to allow child breaks. See *Higginbottom*, 312 N.C. 760 (1985).

21

Mechanisms for Taking Child Testimony

Remote
testimony

Request through AOC
(1 and 2-way testimony options).

In camera
testimony with
judge only?

Raises concerns re: fairness and the
converting of a judge into an evaluator.

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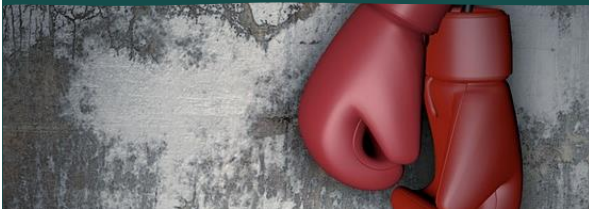
Evidence at Later Hearings



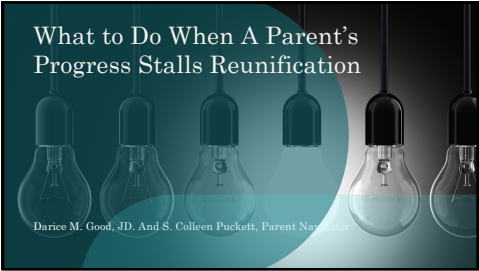
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Evidence at Later Hearings

Timothy Heinle
Heinle@sog.unc.edu



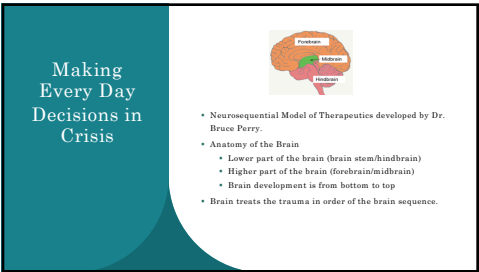
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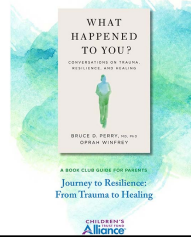
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Communicating With Clients In Crisis

- Regulate
- Relate
- Reason

4

Resource



5

Identifying Signs that a Parent's Progress is Stalling

- Attendance
- Communication
- Defensiveness
- Negative Statements

6

Negative Statements Parents Say

- I give up
- I can't go through this again
- I can't go through this anymore
- They are better off without me
- Why even try when it doesn't make a difference?
- Fine, if they don't want to be with me then I don't care anymore!
- I'm done with all of this!
- What have you heard parents say?

7

Negative Statements Parents Hear

- He/she is a bad mother/father
- The children are doing better in foster care than with the parent
- The foster parent is better than the birth parent
- He/she doesn't know how to care for their child
- There is no bond
- You aren't doing anything right
- What have you heard stated about parents in a negative manner?

8

Identify the Underlying Causes of a Parent's Stalled Progress

- Court hearing
- Outside stressors
- Visitation/Family Time
- Services
- Representation
- Case Manager
- Parent's Schedule
- Relapse
- Family Traditions
- Resource Parent (Foster Parent)

9

Identify Steps to Renew a Parent's Progress Towards Reunification

- Successes and celebrations
- Frequent positive-encouragement
- Check-in's
- Validation
- Requests and Concerns Addressed
- Meaningful Children Updates
- Help Scheduling
- Make Appropriate Services
- Meaningful Family Time/Visitations
- Partnership Parenting
- Colleen's 3 C's: Connect, Contact, Compassion

10

Have You Experienced a Parent's Progress Stall?

Were you able to identify the cause of the parent's stalled progress?

What did you do to help to renew the parent's movement towards reunification?

What was the outcome?



11

Resources
(feel free to take a picture)

Children's Trust Fund Alliance Book Club:

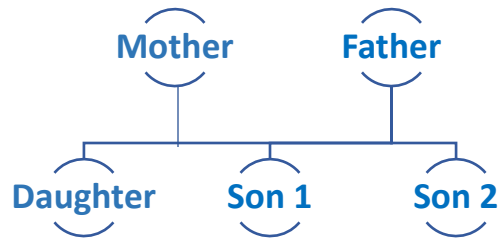
- <https://ctfalliance.org/partnering-with-parents/book-club/>

Birth and Foster Parent Partnership Tools:

- <https://ctfalliance.org/partnering-with-parents/bfpp/>

12

Breakout #1 Materials
Adjudication Evidence: Hearsay



Mother and Father have a four-year-old, Daughter, and two-year-old twins, Son 1 and Son 2. DSS received an anonymous report alleging that Son 2 “is always crying” and was recently seen “covered in tiny blisters and burns.” Reporter alleged that Father is exhausted and “seems like he is about to snap.”

As part of the DSS assessment, Social Worker interviewed the parents and their neighbor, Karen. Per Social Worker’s notes:

- Mother was asked about the reported blisters and burns on Son 2. Father interrupted, saying “He probably just screamed himself red. That boy never shuts up.”
- Per Karen, “Father is always stressed. He drinks a ton.”
- Per Karen, “Daughter was walking with a limp and wincing in pain.”

Social Worker has since retired and moved out of state.

One month after receiving the report, DSS arranged for Daughter to be seen at Child Advocacy Center. The interview took place in a playroom filled with toys, with colorfully decorated walls and furniture. The interviewer introduced herself to Daughter, and the two played games together. After about ten minutes, the interviewer asked, “So, what happened to your leg?” Daughter responded, “I hurt it. It is my parents’ fault.” Nothing else substantive was discussed. The session was recorded.

DSS arranged for all three juveniles to be examined by Dr. Brayboy at WakeMed. Dr. Brayboy’s report, which is part of the medical records, contain his observations of Son 2 (“2nd degree burns on chest. 1st degree burns on arms, neck, and face. Different stages of healing.”). Son 2 is noted as having responded, “Daddy mad,” when asked what happened to him. Dr. Brayboy concluded that Son 2’s burns are “nonaccidental, consistent with having been sprayed with very hot water.”

The WakeMed records contain a handwritten note by Nurse Jackie which reads, “I introduced myself to Daughter and told her I am here to make her feel better. Said it is important to tell the truth. Asked her how her leg is and what happened. Daughter said she woke up from a nap home alone. She looked for her parents outside and fell on railroad tracks. Said she cried but did not tell anyone. No one hurt her.” Nurse Jackie’s notes also indicate that Social Worker said, “Leaving a kid this young home alone is neglect.” A notarized affidavit signed by the WakeMed records custodian is attached.

DSS has filed petitions alleging Son 2 is abused and that all three juveniles are neglected, based on Son 2 and Daughter’s injuries, the parents’ failure to obtain necessary medical care, and that all three juveniles live in an injurious environment without proper supervision.

Breakout #1 Materials
Adjudication Evidence: Hearsay

For each statement listed below, consider:

- Possible grounds for admission, including hearsay exceptions.
- Objections as to admissibility and arguments as to weight.
- The relevance, probative value, and prejudicial effect of each.

1. Statements made by the anonymous reporter.

2. Records prepared by retired Social Worker, generally.

3. Father's interruption of Mother, stating that Son 2 "probably just screamed himself red."

4. Karen's statement that Father is stressed and is drinking "a ton."

5. Karen's statement that Daughter was walking with a limp and wincing in pain.

Breakout #1 Materials
Adjudication Evidence: Hearsay

6. Video of Child Advocacy Center interview and Daughter's statement, "I hurt it. It is my parents' fault."

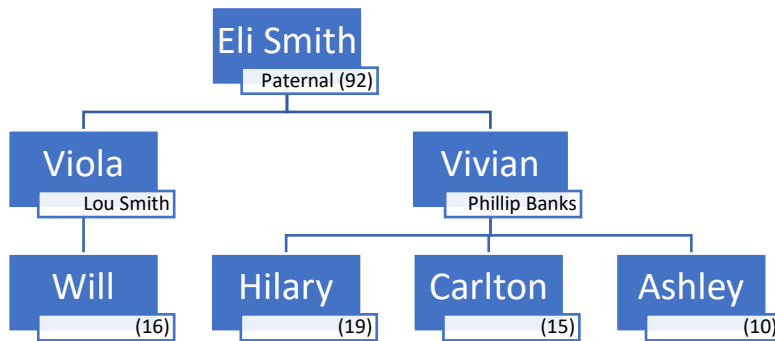
7. WakeMed records, generally, and Dr. Brayboy's observations and conclusions, specifically.

8. Son 2's response of "Daddy mad" when Dr. Brayboy asked what happened.

9. Daughter's description of the events surrounding her injury, as told to Nurse Jackie.

10. Social Worker's statement that "[l]eaving a kid this young home alone is neglect."

Breakout #2 Materials
Issues and Tactics for Later Stages



Part 1

Viola Smith has never had it easy. Born and raised in West Philadelphia, she spent most of her days raising her three sisters while her dad worked to support the family. They were poor, the schools were bad, and life was hard. It was her freshman year of high school when she met Lou Smith and the two began dating. A year later, Will was born. Viola dropped out of school to care for him.

For the next few years, Viola and Lou were mostly happy. Tired, but happy. Then Lou lost his job. The family was already barely making ends meet, as Viola had stayed home to raise Will because they could not afford daycare. Without Lou's income, things soon fell apart. Lou began staying out late and drinking more. When he was home, Lou and Viola fought constantly. A few times, the fights got physical—fights that were witnessed by then five-year-old Will. Lou moved out, and when he did, he disappeared completely. Lou has not called or visited Will a single time since.

As the years pressed on, so has Viola. Viola works what jobs she can, but there are not many opportunities in her neighborhood and the family does not have reliable transportation. The nearest city bus stop is a mile walk from the family's apartment. Speaking of their apartment, Viola is behind on rent. She has one month to get current on rent or move out. Viola comes home at night exhausted from her second shift. Many nights, she uses unprescribed oxycodone to cope with chronic back pain.

Will (who is now 16) has struggled in recent years. Will is a nice person who loves his mom, but he is often in trouble. Will's grades are poor, and he has been suspended multiple times for fighting at school. Those fights have gotten worse, as Will has made enemies with a few area gang members. Most recently, Will was caught with oxycodone at school. Crying, he told the principal that the pills belonged to his mom, who, on the rare occasion she is home, is blacked out.

After receiving a child protective services report, DSS conducted an assessment and ultimately substantiated for neglect and dependency. DSS sent the family to In-Home Services. DSS also immediately filed a petition in juvenile court. Last week, the petition was granted, and Will was adjudicated neglected and dependent. An initial disposition hearing has been noticed for next month. You are appointed to represent Viola.

Breakout #2 Materials
Issues and Tactics for Later Stages

1. What are the underlying themes to Viola and Will's story? What words would you use to describe their family and their lives?

2. At disposition, what do you anticipate DSS will ask the court to order Viola to complete?

3. How will you ask the court to tailor the dispositional plan to benefit your client and her son, and to be achievable?

4. Viola's sister, Vivian, lives in Beverly Hills, California with her husband and three children. How will you discuss the possibility of a home study with Viola? What are the benefits for asking the court at initial disposition to order a home study on Vivian and Phillip? What are the risks?

5. What other specific efforts could the court order of DSS? How may these efforts benefit your client?

Breakout #2 Materials

Issues and Tactics for Later Stages

6. DSS plans to ask the court to place Will in DSS custody at the initial disposition hearing, and to be relieved of reunification efforts. What do you anticipate DSS' bases for wanting to be relieved of reunification at this stage are? What are your counterarguments? (For your reference, a copy of G.S. 7B-901(c) is included in these materials.)

[illegible]

7. If DSS does receive custody of Will, what will you ask the court to order as it relates to visits, child support, or other issues?

[illegible]

Breakout #2 Materials
Issues and Tactics for Later Stages

Part 2 (Three months later)

The court declined to place Will in DSS custody or to cease reunification efforts at initial disposition. (Good job!) Since then, Viola obtained employment (she gets home around 9:00 p.m. most nights) and has bought a used car. She lost the apartment, but fortunately a coworker allowed Viola and Will to move into the coworker's home until things improve. Viola has not participated in court-ordered drug treatment. Viola tells you that she has called her social worker twice to try to find out where she is supposed to go but no one called her back. Viola admits that she is still using unprescribed opiates. In your interactions, you have grown increasingly convinced that Viola may have learning disabilities. Will has continued to get in trouble at school, and his fights with other students are getting worse.

1. What types of records likely contained in the DSS file are you interested in reviewing now? How can you obtain access to those records?

2. You learn that despite the court's disposition order, DSS has not initiated the ICPC home study on Vivian and Phillip's home. The social worker has also not helped Viola locate drug treatment counseling services. What will you do as a result?

3. Considering the developments of the last three months, what new and additional services or other recommendations will you request that the court order?

§ 7B-901. Initial dispositional hearing.

(a) The dispositional hearing shall take place immediately following the adjudicatory hearing and shall be concluded within 30 days of the conclusion of the adjudicatory hearing. The dispositional hearing may be informal and the court may consider written reports or other evidence concerning the needs of the juvenile. The juvenile and the juvenile's parent, guardian, or custodian shall have the right to present evidence, and they may advise the court concerning the disposition they believe to be in the best interests of the juvenile. The court may consider any evidence, including hearsay evidence as defined in G.S. 8C-1, Rule 801, including testimony or evidence from any person who is not a party, that the court finds to be relevant, reliable, and necessary to determine the needs of the juvenile and the most appropriate disposition.

(b) At the dispositional hearing, the court shall inquire as to the identity and location of any missing parent and whether paternity is at issue. The court shall include findings of the efforts undertaken to locate the missing parent and to serve that parent and efforts undertaken to establish paternity when paternity is an issue. The order may provide for specific efforts in determining the identity and location of any missing parent and specific efforts in establishing paternity. The court shall also inquire about efforts made to identify and notify relatives, parents, or other persons with legal custody of a sibling of the juvenile, as potential resources for placement or support.

(c) If the disposition order places a juvenile in the custody of a county department of social services, the court shall direct that reasonable efforts for reunification as defined in G.S. 7B-101 shall not be required if the court makes written findings of fact pertaining to any of the following, unless the court concludes that there is compelling evidence warranting continued reunification efforts:

- (1) A court of competent jurisdiction determines or has determined that aggravated circumstances exist because the parent has committed or encouraged the commission of, or allowed the continuation of, any of the following upon the juvenile:
 - a. Sexual abuse.
 - b. Chronic physical or emotional abuse.
 - c. Torture.
 - d. Abandonment.
 - e. Chronic or toxic exposure to alcohol or controlled substances that causes impairment of or addiction in the juvenile.
 - f. Any other act, practice, or conduct that increased the enormity or added to the injurious consequences of the abuse or neglect.
- (2) A court of competent jurisdiction has terminated involuntarily the parental rights of the parent to another child of the parent.
- (3) A court of competent jurisdiction determines or has determined that (i) the parent has committed murder or voluntary manslaughter of another child of the parent; (ii) has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child or another child of the parent; (iii) has committed a felony assault resulting in serious bodily injury to the child or another child of the parent; (iv) has committed sexual abuse against the child or another child of the parent; or (v) has been required to register as a sex offender on any government-administered registry.

STATUTORY DEFINITIONS 2021

§ 7B-101. Definitions.

As used in this Subchapter, unless the context clearly requires otherwise, the following words have the listed meanings:

- (1) Abused juveniles. – Any juvenile less than 18 years of age (i) who is found to be a minor victim of human trafficking under G.S. 14-43.15 or (ii) whose parent, guardian, custodian, or caretaker:
 - a. Inflicts or allows to be inflicted upon the juvenile a serious physical injury by other than accidental means;
 - b. Creates or allows to be created a substantial risk of serious physical injury to the juvenile by other than accidental means;
 - c. Uses or allows to be used upon the juvenile cruel or grossly inappropriate procedures or cruel or grossly inappropriate devices to modify behavior;
 - d. Commits, permits, or encourages the commission of a violation of the following laws by, with, or upon the juvenile: first-degree forcible rape, as provided in G.S. 14-27.21; second-degree forcible rape as provided in G.S. 14-27.22; statutory rape of a child by an adult as provided in G.S. 14-27.23; first-degree statutory rape as provided in G.S. 14-27.24; first-degree forcible sex offense as provided in G.S. 14-27.26; second-degree forcible sex offense as provided in G.S. 14-27.27; statutory sexual offense with a child by an adult as provided in G.S. 14-27.28; first-degree statutory sexual offense as provided in G.S. 14-27.29; sexual activity by a substitute parent or custodian as provided in G.S. 14-27.31; sexual activity with a student as provided in G.S. 14-27.32; unlawful sale, surrender, or purchase of a minor, as provided in G.S. 14-43.14; crime against nature, as provided in G.S. 14-177; incest, as provided in G.S. 14-178; preparation of obscene photographs, slides, or motion pictures of the juvenile, as provided in G.S. 14-190.5; employing or permitting the juvenile to assist in a violation of the obscenity laws as provided in G.S. 14-190.6; dissemination of obscene material to the juvenile as provided in G.S. 14-190.7 and G.S. 14-190.8; displaying or disseminating material harmful to the juvenile as provided in G.S. 14-190.14 and G.S. 14-190.15; first and second degree sexual exploitation of the juvenile as provided in G.S. 14-190.16 and G.S. 14-190.17; promoting the prostitution of the juvenile as provided in G.S. 14-205.3(b); and taking indecent liberties with the juvenile, as provided in G.S. 14-202.1;
 - e. Creates or allows to be created serious emotional damage to the juvenile; serious emotional damage is evidenced by a juvenile's severe anxiety, depression, withdrawal, or aggressive behavior toward himself or others;

- f. Encourages, directs, or approves of delinquent acts involving moral turpitude committed by the juvenile; or
- g. Commits or allows to be committed an offense under G.S. 14-43.11 (human trafficking), G.S. 14-43.12 (involuntary servitude), or G.S. 14-43.13 (sexual servitude) against the child.

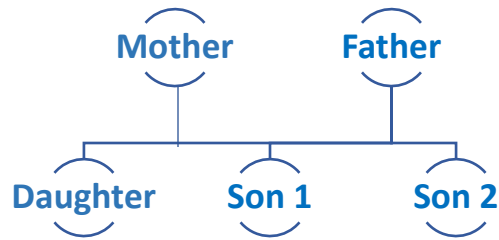
- (15) Neglected juvenile. – Any juvenile less than 18 years of age (i) who is found to be a minor victim of human trafficking under G.S. 14-43.15 or (ii) whose parent, guardian, custodian, or caretaker does not provide proper care, supervision, or discipline; or who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; or who lives in an environment injurious to the juvenile's welfare; or the custody of whom has been unlawfully transferred under G.S. 14-321.2; or who has been placed for care or adoption in violation of law. In determining whether a juvenile is a neglected juvenile, it is relevant whether that juvenile lives in a home where another juvenile has died as a result of suspected abuse or neglect or lives in a home where another juvenile has been subjected to abuse or neglect by an adult who regularly lives in the home
- (9) Dependent juvenile. – A juvenile in need of assistance or placement because (i) the juvenile has no parent, guardian, or custodian responsible for the juvenile's care or supervision or (ii) the juvenile's parent, guardian, or custodian is unable to provide for the juvenile's care or supervision and lacks an appropriate alternative child care arrangement.
- (3) Caretaker. – Any person other than a parent, guardian, or custodian who has responsibility for the health and welfare of a juvenile in a residential setting. A person responsible for a juvenile's health and welfare means a stepparent; foster parent; an adult member of the juvenile's household; an adult entrusted with the juvenile's care; a potential adoptive parent during a visit or trial placement with a juvenile in the custody of a department; any person such as a house parent or cottage parent who has primary responsibility for supervising a juvenile's health and welfare in a residential child care facility or residential educational facility; or any employee or volunteer of a division, institution, or school operated by the Department of Health and Human Services. Nothing in this subdivision shall be construed to impose a legal duty of support under Chapter 50 or Chapter 110 of the General Statutes. The duty imposed upon a caretaker as defined in this subdivision shall be for the purpose of this Subchapter only.

- (8) Custodian. – The person or agency that has been awarded legal custody of a juvenile by a court.

Guardian (of the person) – defined in N.C.G.S. 7B-600

The guardian shall operate under the supervision of the court with or without bond and shall file only such reports as the court shall require. The guardian shall have the care, custody, and control of the juvenile or may arrange a suitable placement for the juvenile and may represent the juvenile in legal actions before any court. The guardian may consent to certain actions on the part of the juvenile in place of the parent including (i) marriage, (ii) enlisting in the Armed Forces of the United States, and (iii) enrollment in school. The guardian may also consent to any necessary remedial, psychological, medical, or surgical treatment for the juvenile. The authority of the guardian shall continue until the guardianship is terminated by court order, until the juvenile is emancipated pursuant to Article 35 of Subchapter IV of this Chapter, or until the juvenile reaches the age of majority.

Breakout #1 Materials
Adjudication Evidence: Hearsay



Mother and Father have a four-year-old, Daughter, and two-year-old twins, Son 1 and Son 2. DSS received an anonymous report alleging that Son 2 “is always crying” and was recently seen “covered in tiny blisters and burns.” Reporter alleged that Father is exhausted and “seems like he is about to snap.”

As part of the DSS assessment, Social Worker interviewed the parents and their neighbor, Karen. Per Social Worker’s notes:

- Mother was asked about the reported blisters and burns on Son 2. Father interrupted, saying “He probably just screamed himself red. That boy never shuts up.”
- Per Karen, “Father is always stressed. He drinks a ton.”
- Per Karen, “Daughter was walking with a limp and wincing in pain.”

Social Worker has since retired and moved out of state.

One month after receiving the report, DSS arranged for Daughter to be seen at Child Advocacy Center. The interview took place in a playroom filled with toys, with colorfully decorated walls and furniture. The interviewer introduced herself to Daughter, and the two played games together. After about ten minutes, the interviewer asked, “So, what happened to your leg?” Daughter responded, “I hurt it. It is my parents’ fault.” Nothing else substantive was discussed. The session was recorded.

DSS arranged for all three juveniles to be examined by Dr. Brayboy at WakeMed. Dr. Brayboy’s report, which is part of the medical records, contain his observations of Son 2 (“2nd degree burns on chest. 1st degree burns on arms, neck, and face. Different stages of healing.”). Son 2 is noted as having responded, “Daddy mad,” when asked what happened to him. Dr. Brayboy concluded that Son 2’s burns are “nonaccidental, consistent with having been sprayed with very hot water.”

The WakeMed records contain a handwritten note by Nurse Jackie which reads, “I introduced myself to Daughter and told her I am here to make her feel better. Said it is important to tell the truth. Asked her how her leg is and what happened. Daughter said she woke up from a nap home alone. She looked for her parents outside and fell on railroad tracks. Said she cried but did not tell anyone. No one hurt her.” Nurse Jackie’s notes also indicate that Social Worker said, “Leaving a kid this young home alone is neglect.” A notarized affidavit signed by the WakeMed records custodian is attached.

DSS has filed petitions alleging Son 2 is abused and that all three juveniles are neglected, based on Son 2 and Daughter’s injuries, the parents’ failure to obtain necessary medical care, and that all three juveniles live in an injurious environment without proper supervision.

Breakout #1 Materials
Adjudication Evidence: Hearsay

For each statement listed below, consider:

- Possible grounds for admission, including hearsay exceptions.
- Objections as to admissibility and arguments as to weight.
- The relevance, probative value, and prejudicial effect of each.

1. Statements made by the anonymous reporter.

2. Records prepared by retired Social Worker, generally.

3. Father's interruption of Mother, stating that Son 2 "probably just screamed himself red."

4. Karen's statement that Father is stressed and is drinking "a ton."

5. Karen's statement that Daughter was walking with a limp and wincing in pain.

Breakout #1 Materials
Adjudication Evidence: Hearsay

6. Video of Child Advocacy Center interview and Daughter's statement, "I hurt it. It is my parents' fault."

7. WakeMed records, generally, and Dr. Brayboy's observations and conclusions, specifically.

8. Son 2's response of "Daddy mad" when Dr. Brayboy asked what happened.

9. Daughter's description of the events surrounding her injury, as told to Nurse Jackie.

10. Social Worker's statement that "[l]eaving a kid this young home alone is neglect."

§ 7B-901. Initial dispositional hearing.

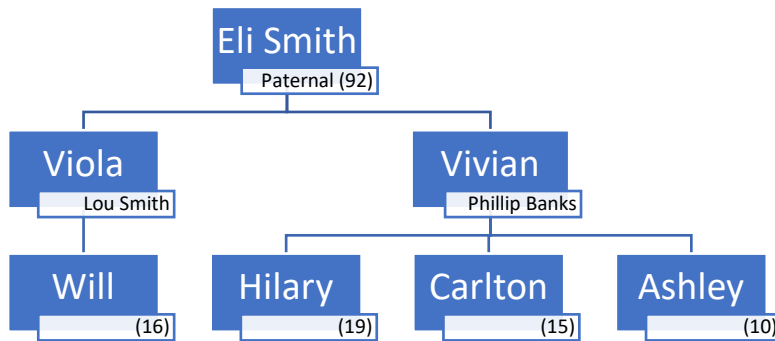
(a) The dispositional hearing shall take place immediately following the adjudicatory hearing and shall be concluded within 30 days of the conclusion of the adjudicatory hearing. The dispositional hearing may be informal and the court may consider written reports or other evidence concerning the needs of the juvenile. The juvenile and the juvenile's parent, guardian, or custodian shall have the right to present evidence, and they may advise the court concerning the disposition they believe to be in the best interests of the juvenile. The court may consider any evidence, including hearsay evidence as defined in G.S. 8C-1, Rule 801, including testimony or evidence from any person who is not a party, that the court finds to be relevant, reliable, and necessary to determine the needs of the juvenile and the most appropriate disposition.

(b) At the dispositional hearing, the court shall inquire as to the identity and location of any missing parent and whether paternity is at issue. The court shall include findings of the efforts undertaken to locate the missing parent and to serve that parent and efforts undertaken to establish paternity when paternity is an issue. The order may provide for specific efforts in determining the identity and location of any missing parent and specific efforts in establishing paternity. The court shall also inquire about efforts made to identify and notify relatives, parents, or other persons with legal custody of a sibling of the juvenile, as potential resources for placement or support.

(c) If the disposition order places a juvenile in the custody of a county department of social services, the court shall direct that reasonable efforts for reunification as defined in G.S. 7B-101 shall not be required if the court makes written findings of fact pertaining to any of the following, unless the court concludes that there is compelling evidence warranting continued reunification efforts:

- (1) A court of competent jurisdiction determines or has determined that aggravated circumstances exist because the parent has committed or encouraged the commission of, or allowed the continuation of, any of the following upon the juvenile:
 - a. Sexual abuse.
 - b. Chronic physical or emotional abuse.
 - c. Torture.
 - d. Abandonment.
 - e. Chronic or toxic exposure to alcohol or controlled substances that causes impairment of or addiction in the juvenile.
 - f. Any other act, practice, or conduct that increased the enormity or added to the injurious consequences of the abuse or neglect.
- (2) A court of competent jurisdiction has terminated involuntarily the parental rights of the parent to another child of the parent.
- (3) A court of competent jurisdiction determines or has determined that (i) the parent has committed murder or voluntary manslaughter of another child of the parent; (ii) has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child or another child of the parent; (iii) has committed a felony assault resulting in serious bodily injury to the child or another child of the parent; (iv) has committed sexual abuse against the child or another child of the parent; or (v) has been required to register as a sex offender on any government-administered registry.

Breakout #2 Materials
Issues and Tactics for Later Stages



Part 1

Viola Smith has never had it easy. Born and raised in West Philadelphia, she spent most of her days raising her three sisters while her dad worked to support the family. They were poor, the schools were bad, and life was hard. It was her freshman year of high school when she met Lou Smith and the two began dating. A year later, Will was born. Viola dropped out of school to care for him.

For the next few years, Viola and Lou were mostly happy. Tired, but happy. Then Lou lost his job. The family was already barely making ends meet, as Viola had stayed home to raise Will because they could not afford daycare. Without Lou's income, things soon fell apart. Lou began staying out late and drinking more. When he was home, Lou and Viola fought constantly. A few times, the fights got physical—fights that were witnessed by then five-year-old Will. Lou moved out, and when he did, he disappeared completely. Lou has not called or visited Will a single time since.

As the years pressed on, so has Viola. Viola works what jobs she can, but there are not many opportunities in her neighborhood and the family does not have reliable transportation. The nearest city bus stop is a mile walk from the family's apartment. Speaking of their apartment, Viola is behind on rent. She has one month to get current on rent or move out. Viola comes home at night exhausted from her second shift. Many nights, she uses unprescribed oxycodone to cope with chronic back pain.

Will (who is now 16) has struggled in recent years. Will is a nice person who loves his mom, but he is often in trouble. Will's grades are poor, and he has been suspended multiple times for fighting at school. Those fights have gotten worse, as Will has made enemies with a few area gang members. Most recently, Will was caught with oxycodone at school. Crying, he told the principal that the pills belonged to his mom, who, on the rare occasion she is home, is blacked out.

After receiving a child protective services report, DSS conducted an assessment and ultimately substantiated for neglect and dependency. DSS sent the family to In-Home Services. DSS also immediately filed a petition in juvenile court. Last week, the petition was granted, and Will was adjudicated neglected and dependent. An initial disposition hearing has been noticed for next month. You are appointed to represent Viola.

Breakout #2 Materials
Issues and Tactics for Later Stages

1. What are the underlying themes to Viola and Will's story? What words would you use to describe their family and their lives?

2. At disposition, what do you anticipate DSS will ask the court to order Viola to complete?

3. How will you ask the court to tailor the dispositional plan to benefit your client and her son, and to be achievable?

4. Viola's sister, Vivian, lives in Beverly Hills, California with her husband and three children. How will you discuss the possibility of a home study with Viola? What are the benefits for asking the court at initial disposition to order a home study on Vivian and Phillip? What are the risks?

5. What other specific efforts could the court order of DSS? How may these efforts benefit your client?

Breakout #2 Materials

Issues and Tactics for Later Stages

6. DSS plans to ask the court to place Will in DSS custody at the initial disposition hearing, and to be relieved of reunification efforts. What do you anticipate DSS' bases for wanting to be relieved of reunification at this stage are? What are your counterarguments? (For your reference, a copy of G.S. 7B-901(c) is included in these materials.)

[illegible]

7. If DSS does receive custody of Will, what will you ask the court to order as it relates to visits, child support, or other issues?

[illegible]

Breakout #2 Materials
Issues and Tactics for Later Stages

Part 2 (Three months later)

The court declined to place Will in DSS custody or to cease reunification efforts at initial disposition. (Good job!) Since then, Viola obtained employment (she gets home around 9:00 p.m. most nights) and has bought a used car. She lost the apartment, but fortunately a coworker allowed Viola and Will to move into the coworker's home until things improve. Viola has not participated in court-ordered drug treatment. Viola tells you that she has called her social worker twice to try to find out where she is supposed to go but no one called her back. Viola admits that she is still using unprescribed opiates. In your interactions, you have grown increasingly convinced that Viola may have learning disabilities. Will has continued to get in trouble at school, and his fights with other students are getting worse.

1. What types of records likely contained in the DSS file are you interested in reviewing now? How can you obtain access to those records?

2. You learn that despite the court's disposition order, DSS has not initiated the ICPC home study on Vivian and Phillip's home. The social worker has also not helped Viola locate drug treatment counseling services. What will you do as a result?

3. Considering the developments of the last three months, what new and additional services or other recommendations will you request that the court order?

STATUTORY DEFINITIONS 2021

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 - b. Creates or allows to be created a substantial risk of serious physical injury to the juvenile by other than accidental means;
 - c. Uses or allows to be used upon the juvenile cruel or grossly inappropriate procedures or cruel or grossly inappropriate devices to modify behavior;
 - d. Commits, permits, or encourages the commission of a violation of the following laws by, with, or upon the juvenile: first-degree forcible rape, as provided in G.S. 14-27.21; second-degree forcible rape as provided in G.S. 14-27.22; statutory rape of a child by an adult as provided in G.S. 14-27.23; first-degree statutory rape as provided in G.S. 14-27.24; first-degree forcible sex offense as provided in G.S. 14-27.26; second-degree forcible sex offense as provided in G.S. 14-27.27; statutory sexual offense with a child by an adult as provided in G.S. 14-27.28; first-degree statutory sexual offense as provided in G.S. 14-27.29; sexual activity by a substitute parent or custodian as provided in G.S. 14-27.31; sexual activity with a student as provided in G.S. 14-27.32; unlawful sale, surrender, or purchase of a minor, as provided in G.S. 14-43.14; crime against nature, as provided in G.S. 14-177; incest, as provided in G.S. 14-178; preparation of obscene photographs, slides, or motion pictures of the juvenile, as provided in G.S. 14-190.5; employing or permitting the juvenile to assist in a violation of the obscenity laws as provided in G.S. 14-190.6; dissemination of obscene material to the juvenile as provided in G.S. 14-190.7 and G.S. 14-190.8; displaying or disseminating material harmful to the juvenile as provided in G.S. 14-190.14 and G.S. 14-190.15; first and second degree sexual exploitation of the juvenile as provided in G.S. 14-190.16 and G.S. 14-190.17; promoting the prostitution of the juvenile as provided in G.S. 14-205.3(b); and taking indecent liberties with the juvenile, as provided in G.S. 14-202.1;
 - e. Creates or allows to be created serious emotional damage to the juvenile; serious emotional damage is evidenced by a juvenile's severe anxiety, depression, withdrawal, or aggressive behavior toward himself or others;

- f. Encourages, directs, or approves of delinquent acts involving moral turpitude committed by the juvenile; or
- g. Commits or allows to be committed an offense under G.S. 14-43.11 (human trafficking), G.S. 14-43.12 (involuntary servitude), or G.S. 14-43.13 (sexual servitude) against the child.

- (15) Neglected juvenile. – Any juvenile less than 18 years of age (i) who is found to be a minor victim of human trafficking under G.S. 14-43.15 or (ii) whose parent, guardian, custodian, or caretaker does not provide proper care, supervision, or discipline; or who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; or who lives in an environment injurious to the juvenile's welfare; or the custody of whom has been unlawfully transferred under G.S. 14-321.2; or who has been placed for care or adoption in violation of law. In determining whether a juvenile is a neglected juvenile, it is relevant whether that juvenile lives in a home where another juvenile has died as a result of suspected abuse or neglect or lives in a home where another juvenile has been subjected to abuse or neglect by an adult who regularly lives in the home
- (9) Dependent juvenile. – A juvenile in need of assistance or placement because (i) the juvenile has no parent, guardian, or custodian responsible for the juvenile's care or supervision or (ii) the juvenile's parent, guardian, or custodian is unable to provide for the juvenile's care or supervision and lacks an appropriate alternative child care arrangement.
- (3) Caretaker. – Any person other than a parent, guardian, or custodian who has responsibility for the health and welfare of a juvenile in a residential setting. A person responsible for a juvenile's health and welfare means a stepparent; foster parent; an adult member of the juvenile's household; an adult entrusted with the juvenile's care; a potential adoptive parent during a visit or trial placement with a juvenile in the custody of a department; any person such as a house parent or cottage parent who has primary responsibility for supervising a juvenile's health and welfare in a residential child care facility or residential educational facility; or any employee or volunteer of a division, institution, or school operated by the Department of Health and Human Services. Nothing in this subdivision shall be construed to impose a legal duty of support under Chapter 50 or Chapter 110 of the General Statutes. The duty imposed upon a caretaker as defined in this subdivision shall be for the purpose of this Subchapter only.

- (8) Custodian. – The person or agency that has been awarded legal custody of a juvenile by a court.

Guardian (of the person) – defined in N.C.G.S. 7B-600

The guardian shall operate under the supervision of the court with or without bond and shall file only such reports as the court shall require. The guardian shall have the care, custody, and control of the juvenile or may arrange a suitable placement for the juvenile and may represent the juvenile in legal actions before any court. The guardian may consent to certain actions on the part of the juvenile in place of the parent including (i) marriage, (ii) enlisting in the Armed Forces of the United States, and (iii) enrollment in school. The guardian may also consent to any necessary remedial, psychological, medical, or surgical treatment for the juvenile. The authority of the guardian shall continue until the guardianship is terminated by court order, until the juvenile is emancipated pursuant to Article 35 of Subchapter IV of this Chapter, or until the juvenile reaches the age of majority.