



Evidence

Case law update

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Business Records Primer

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- Is it a (i) business (ii) record?
- Prepared in ordinary course of business?
- At/near the time of the event?
- Made by (or using info from) someone w/ knowledge?
- With a duty to the business to report accurately?
- Sworn to by custodian or another qualified person via
 - testimony, or
 - for nonparty records, affidavit with notice?

Rule 803(6) (Business Records)



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In re M.D., ___ N.C. App. ___ (July 1, 2026)

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Facts

- Parents take unresponsive baby to hospital
- Injuries to skull, ribs, and eye

DSS' evidence at adjudication

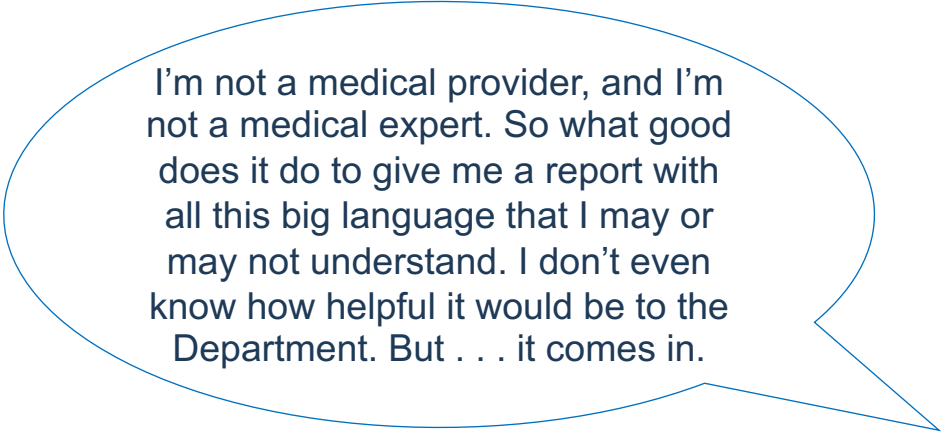
- Social worker testimony
- Parents' testimony
- Medical records (1500 pages) w/ affidavit

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In re M.D., ___ N.C. App. ___ (July 1, 2026)

Trial Court

- Admitted records but...



I'm not a medical provider, and I'm not a medical expert. So what good does it do to give me a report with all this big language that I may or may not understand. I don't even know how helpful it would be to the Department. But . . . it comes in.

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In re M.D., ___ N.C. App. ___ (July 1, 2026)

Parents' Counsel

- Highlighted the evidence in DSS' case in chief
- MOT to dismiss (Rule 41(b)) at close of DSS' evidence for failure to prove abuse or neglect

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In re M.D., ___ N.C. App. ___ (July 1, 2026)

The only thing that's been proven today is that this young infant had a medical emergency, was rushed to the hospital...and had some injuries.

The parents gave their explanations for that. Your Honor, the only actual testimony as to the cause of these injuries today in this courtroom is from the parents.

Parents' Counsel

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In re M.D., ___ N.C. App. ___ (July 1, 2026)

Where is the evidence of [abuse]? ...What they're asking you to do today is just say the injury inherently means there must have been some type of abuse and neglect. Injury, there is an explanation, they just don't like it.

T]hey could have [shown an alternative cause of the injuries]...All they had to do was get the right people here to testify. At the end of the day, they didn't.

Parents' Counsel

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In re M.D., __ N.C. App. __ (July 1, 2026)

[When DSS files a petition] that could potentially lead to [TPR], potential criminal charges, being on the [RIL]...there is a level of evidence that you must meet. It's clear, cogent and convincing.

[I]f this is such a significant case then [DSS should] have the significant witnesses here to prove that.

Parents' Counsel

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In re M.D., __ N.C. App. __ (July 1, 2026)

Trial Court

- Granted motion to dismiss

[DSS] did not offer the testimony of any medical personnel or expert to provide an explanation [for the injuries].

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In re M.D., ___ N.C. App. ___ (July 1, 2026)

Business records + live testimony

Admissibility

- Court discretion re: authentication
- Opinions within records



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In re M.D., ___ N.C. App. ___ (July 1, 2026)

Business records + live testimony

Impact on trier of fact

- Complexity
- Address key contentious issues
- Weight



Given notice → Subpoena?

Giving notice → Subpoena + standby?



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On the Civil Side

A NORTH CAROLINA CIVIL LAW BLOG

August 4, 2026

People Versus Paper: Considering the Admissibility and Weight of Business Records Containing Hearsay

Timothy Heinle

A party in a civil proceeding may offer into evidence third-party records (meaning those created by nonparties), like the records of a company, hospital, school, or bank. If the records are offered for the truth of what they say in a hearing where the Rules of Evidence apply, those records violate the general rule prohibiting hearsay. To be admissible, an exception under the Rules of Evidence or other applicable law that allows for their admission must apply. **Rule 802**. The party offering the records will often argue that the applicable exception is **Rule 803(6)**, commonly referred to as the business records exception. This exception requires that the records be properly authenticated, including through the testimony of a qualified witness or an affidavit of the records custodian. Rule 803(6).

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N.C. Rule of
Civil Pro.
Rule 45
Primer

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- Special process to protect confidentiality
- Certified copies under seal to clerk with affidavit
- Unsealed by court order
- In camera, relevance, redaction, distribution/protective order?
- No further authentication is required, but records must be otherwise admissible



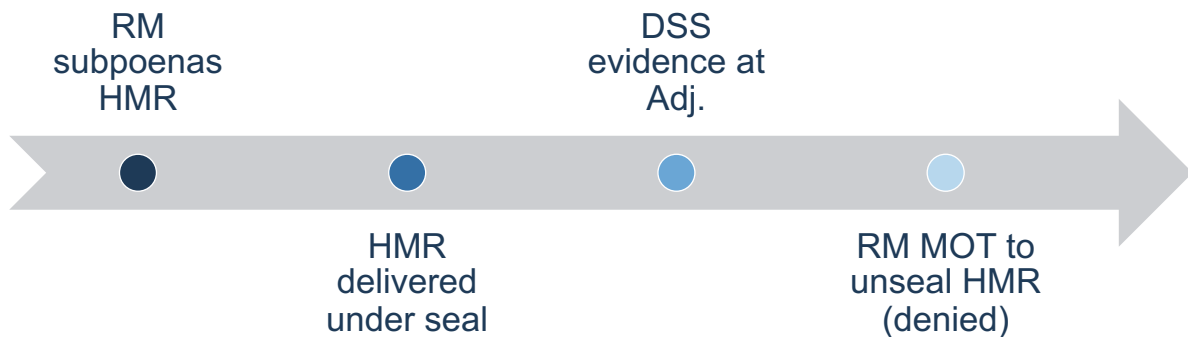
Rule 45(c)(2) (Subpoenas of hospital medical records)

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In re K.R., ___ N.C. App. ___ (May 20, 2026)

p. 6

- Newborn at hospital with breathing problems
- RM mental health issues + resisting medical advice
- Neglect + dependency petition filed



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Did the trial court abuse its discretion by excluding Mother's hospital medical records and requiring her to follow steps not found in Rule 803(6)?

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In re K.R., ___ N.C. App. ___ (May 20, 2026)

- R. of Evid. 803(6) *and* R. of Civ. Pro. 45 apply to subpoenaed hospital medical records

“Under these circumstances, where the first and only request to unseal occurred mid-trial, it was not arbitrary or unreasonable for the trial court to exclude sealed records that no party had an opportunity to review or redact.”

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In re K.R., __ N.C. App. __
(May 20, 2026)

- Pre-trial motion
 - Unseal
 - In camera, redaction, distribution
- Authenticated
 - Still must be admissible (e.g., hearsay, relevance, opinion)

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Be careful about possessing records
you do not have rightful access to.



- *Bass v. Sides*, 120 N.C. App. 485 (1995) (attorney violated Rule 45 by removing medical records from clerk's office without court approval);
- N.C. State Bar, RPC 236 (1997 opinion) (lawyer may not issue a subpoena that misrepresents lawyer's authority to obtain certain evidence);
- N.C. State Bar, Formal Ethics Opinion 2 (2010) (lawyer may not utilize records improperly received through subpoena in proceeding).

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Bird's Eye View of Post-Petition Evidence

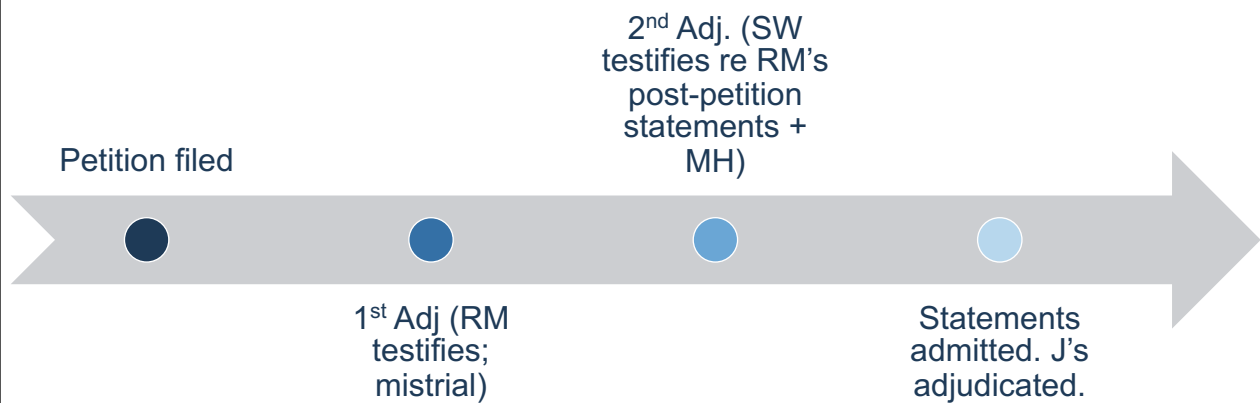
- General Rule: post-petition evidence is inadmissible at adjudication. *In re L.N.H.*, 382 N.C. 536 (2022).
- Exception: admissible to show fixed + ongoing circumstance (not discrete event or one-time occurrence). *In re G.W.*, 286 N.C. App. 587 (2022); *In re Q.M. Jr.*, 275 N.C. App. 34 (2020).

See A/N/D Manual, Ch. 6.3.B., pp 6-11 – 6-14

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In re P.G., ___ N.C. App. ___ (March 18, 2026) p. 12

- Domestic violence between parents
- RM mental health + substance abuse (texts; trespassing DSS; multiple attorneys)



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Whether certain findings of fact were unsupported by competent evidence because they relied on post-petition evidence

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In re P.G., __ N.C. App. __
(March 18, 2026)

- Court may consider post-petition evidence of fixed/ongoing circum.
- Object to other (discrete) post-petition evidence
- If offering argue (i) why exception applies, and (ii) why still good law

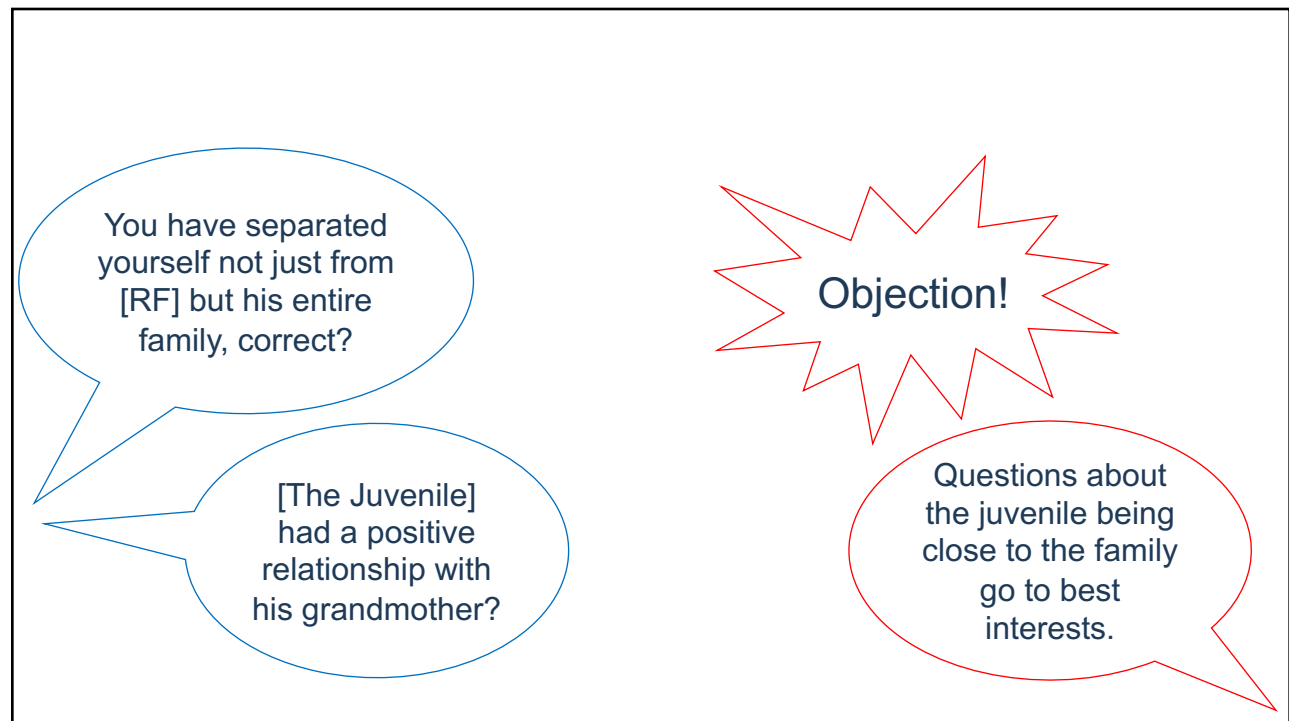
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In re L.D.W., __ N.C. App. __ (March 18, 2026)

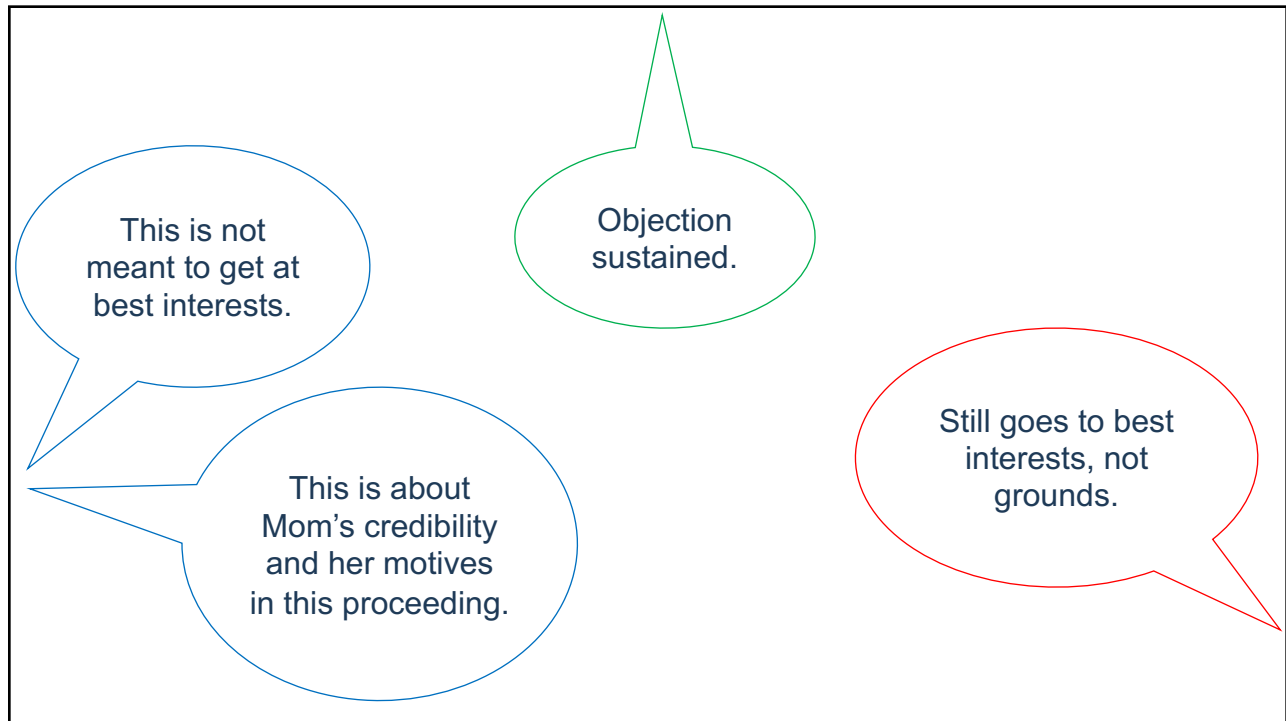
p. 35

- Private TPR against RF (violent, substance use)
- Alleged RF did not visit (willful abandonment)
- RF's attorney cross-examined Mom at adjudication

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In re L.D.W., __ N.C. App. __ (March 18, 2026)

Appeal

- RF: scope of cross improperly limited; questions meant to show Mom's hostility caused missed visits (not willful)
- COA:
 - Transcript does not show hostility argument or what other questions would have been
 - No prejudice
 - TPR affirmed

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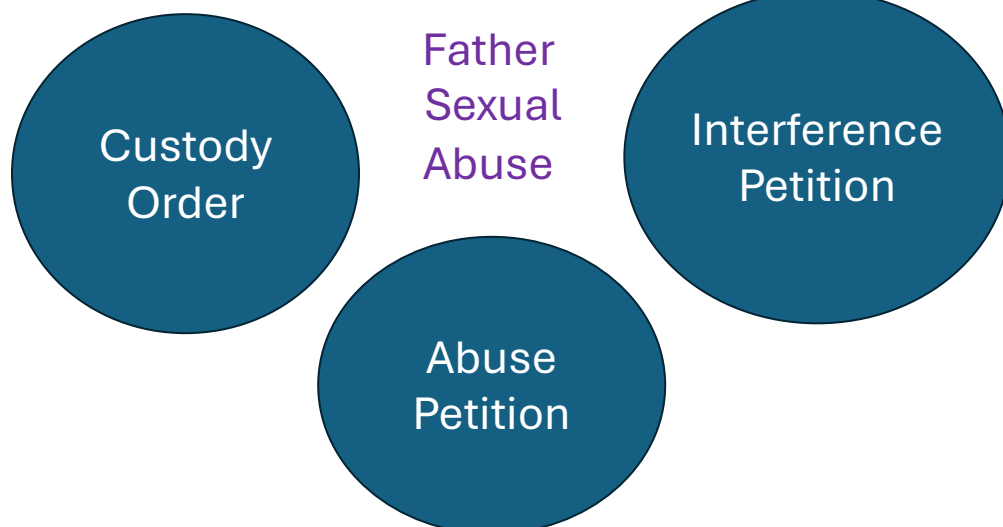
In re L.D.W., ___ N.C. App. ___
(March 18, 2026)

- Make offer of proof
- Argue due process

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Collateral Estoppel

In re A.D.H., p. 6



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Conflict of Interest

Continued
participation in the
matter is “wholly
inappropriate”

G.S. 7B-302.1

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Collateral Estoppel

Precludes relitigating
facts/questions/rights

- i. Prior final judgment
on merits;
- ii. Identical issues;
- iii. Litigated + necessary;
- iv. Determined;
- v. Party to be estopped
was party or in privity

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