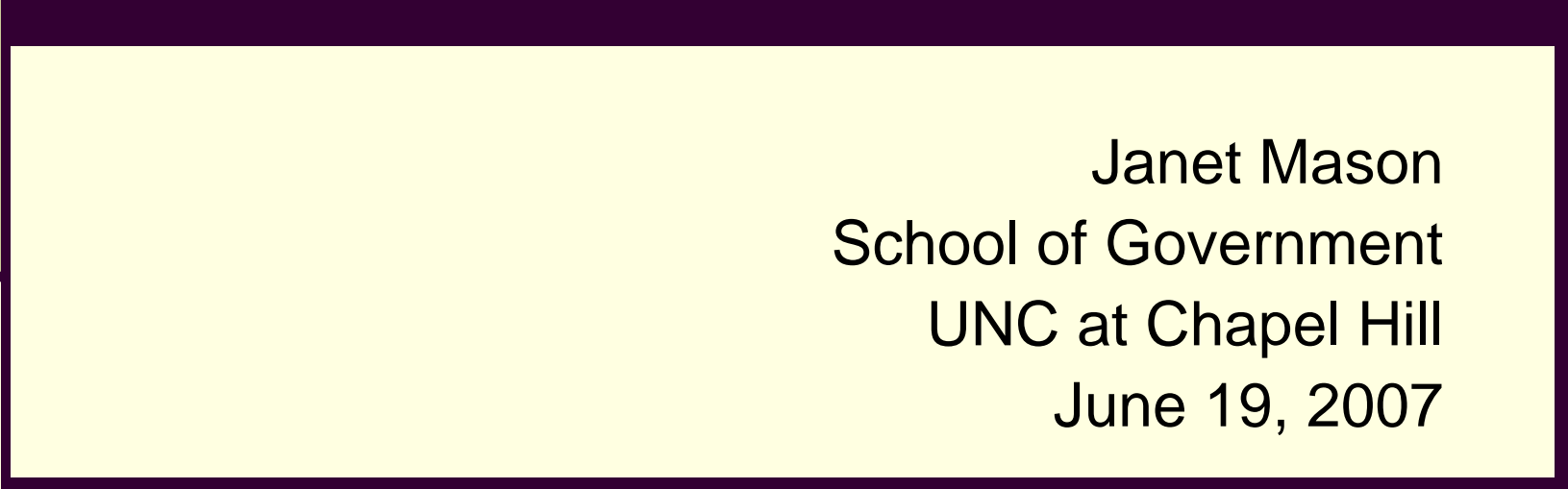





# Juvenile Law Update



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School of Government  
UNC at Chapel Hill  
June 19, 2007

# Delinquent Juveniles

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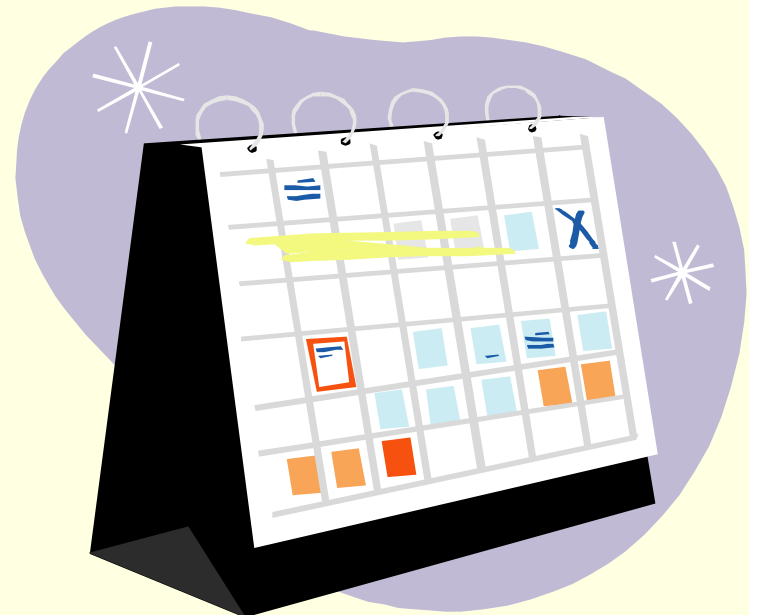
1. Jurisdiction
2. Accepting Admissions
3. Delegation
4. Discretion

# Delinquency: Jurisdiction

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- If petition is filed more than 30 days after court counselor receives complaint, court does not have subject matter jurisdiction. [M.C.]

P. 2



# Delinquency: Admissions

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- The G.S. 7B-2407 inquiry must be complete before court accepts juvenile's admission,
- even if juvenile signed a transcript of admission. [A.W.]

P. 2



# Delinquency: Admissions

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- Juvenile may withdraw admission if disposition order states longer maximum commitment period than transcript of admission.  
[D.A.F.]

P. 3



# Delinquency: Admissions

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- Inquiry under G.S. 7B-2407 is not required when juvenile admits violation of probation [D.J.M.]

P. 3



# Delinquency: Delegation

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- Court may not delegate to court counselor discretion to set terms of probation [S.R.S.]
- See GS 7B-2510(b) for conditions court may delegate.

# Delinquency: Discretion

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- Court is not required to order “least restrictive” disposition. [D.A.F.]
- Once dispositional options are identified, court has broad discretion to order “appropriate disposition.” [D.A.S.]



# Abuse, Neglect, Dependency, Termination of Parental Rights

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## 1. Jurisdiction

2. Evidence

3. Adjudication

4. Delegation

5. Timelines

6. Orders

# Jurisdiction: Petition

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- **N.C. Supreme Court:**

If the petition is not verified,  
the court does not have  
subject matter jurisdiction  
[T.R.P.]

# Jurisdiction: Petition

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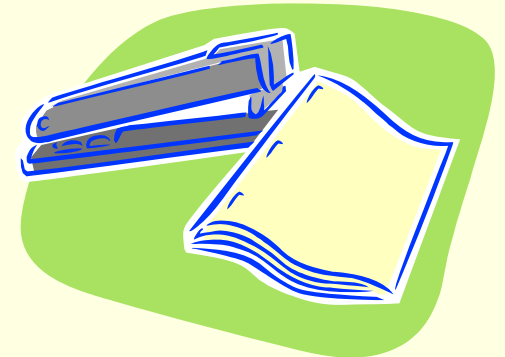
- Nonsecure custody order should not be issued before petition is filed.
- Court does not have jurisdiction until the petition is filed. [L.B.]

# Jurisdiction: Petition

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- Failing to attach
  - **affidavit of status** of child does not deprive court of jurisdiction. [D.S.A.]
  - **custody order** to tpr petition / motion does not necessarily deprive court of jurisdiction [D.J.G., T.M., H.T., W.L.M.]

PP. 7, 19, 22, 23, 24



# Jurisdiction: UCCJEA

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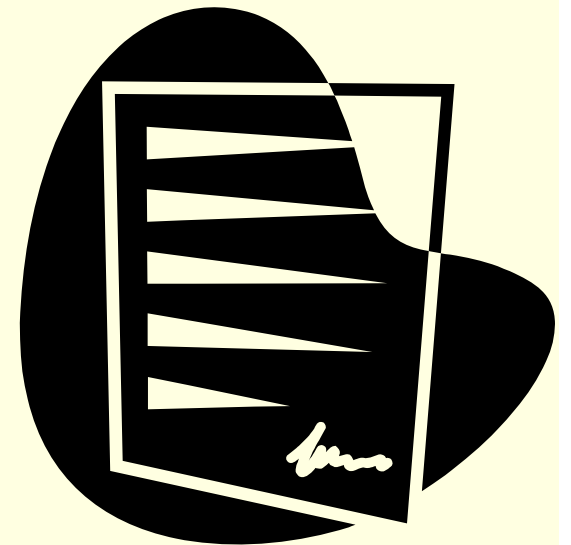
- Necessity of specific findings:
  1. Majority: Sufficient if evidence in record supports trial court's conclusion
  2. Dissent: Trial court must make statutorily mandated findings & conclusions  
[T.J.D.W.]

# Jurisdiction: Summons

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Failure to issue summons in termination of parental rights action initiated by petition deprived trial court of subject matter jurisdiction [C.T.]

P. 19



# Continuing Jurisdiction

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- Under UCCJEA:
  - at any time, court may decline to exercise jurisdiction and defer to other state it determines is more appropriate,
  - even if no action is pending in the other state. [M.E.]

# Jurisdiction During Appeal

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- During appeal of another order
  - court may not proceed in termination action filed after 10/1/05,
  - even if underlying action was filed before 10/1/05.

[Z.J.T.B.; P.P.]

Addendum



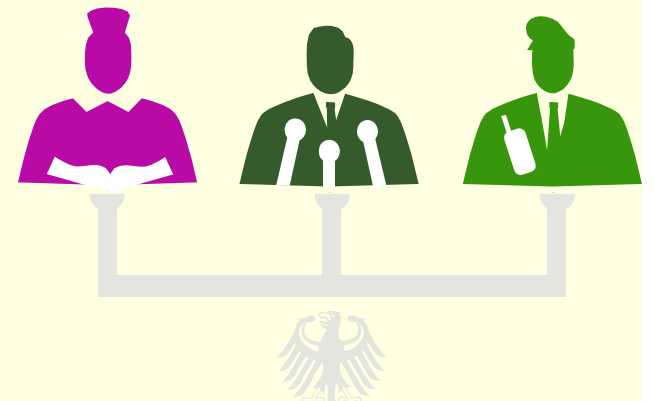


# Jurisdiction after Remand

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- After remand, trial court
  - may not conduct a hearing until opinion is certified. [T.S., III]
  - is not free to ignore appellate court's mandate. [R.A.H.; P.P.]

PP. 14, 15, Addendum



# Terminating Jurisdiction

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When order implements a permanent plan, when may / should the court

- Relieve DSS and GAL?
- “Close” the case?
- Waive review hearings?
- Enter a Ch. 50 order?
- Explicitly terminate jurisdiction?

[R.A.H., A.S., HSF, AP]

PP. 15, 16, 17, 16

# Relieve DSS and the GAL?

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- GAL appointment terminates when permanent plan is achieved and approved by court. [7B-601(a)]
- For good cause, court may reappoint GAL. [7B-601(a)]
- DSS already has been “relieved” of custody.
- What else does “relieving DSS” mean?

# “Close” the case?

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## **NEVER “CLOSE” A CASE!**

In every order it should be clear whether the court is

1. retaining jurisdiction or
2. terminating jurisdiction.

# Waive review hearings?

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- Only after finding
  1. Child has resided with relative or been in custody of other person for 1 year;
  2. Placement is stable & in child's best interest;
  3. No party's rights require reviews;
  4. Parties know they can file motion for review; and
  5. Court has designated person as guardian or permanent caretaker.

GS 7B-906(b)

# Enter a Chapter 50 order? Only:

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1. at or after disposition;
2. after findings & conclusions to support entry / modification of Ch. 50 order; and
3. after finding in separate juvenile order:
  - a. no need for continued intervention &
  - b. six months have passed since court determined this was permanent plan (except when custody is to a parent).

# Explicitly terminate jurisdiction?

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1. When also entering Ch. 50 order, or
2. When continued intervention is not necessary and
  - a. no juvenile order needs to continue in effect and
  - b. custody should either
    - I. revert to pre-petition status or
    - II. be governed by an order in another action

# Personal Jurisdiction

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1. Record must show that respondent had proper notice. [K.N.]
2. If tpr is initiated by motion, notice (not summons) is required. [D.R.S.]
3. By participating, parent waives any issue of sufficiency of service or process. [H.T.]

PP. 21, 22, 23



# Evidence: Neglect

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1. Neglect of other child was relevant. [C.M.]
2. Was there sufficient clear and convincing evidence?
  - No. [ H.M.]
  - Yes. [J.T.W.] [*Sup. Ct. reversing COA*]
  - No. [C.W.]

PP. 9, 9, 25, 28

# Evidence: Dependency

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1. Must have finding of lack of suitable alternative arrangement. [B.M.]
2. Evidence of mother's disappearance and conception resulting from statutory rape not sufficient. [J.L.]

PP. 10, 11

# Evidence: Abuse

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- 13-year-old with bruises from belt whipping did not have “serious injury” [C.B.]
- 4-year-old, who was spanked with brush, with bruise on thigh that lasted a week was abused [L.T.R.]

PP. 12, 12

# Evidence: Judicial Notice

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- Court could take judicial notice of files, documents, orders, and reports and is presumed to have ignored incompetent evidence [D.S.A., W.L.M.]
- What does “taking judicial notice” mean?

PP. 7, 24

# Evidence: Attorney Statements

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- Even at a review hearing, an attorney's statements are not evidence. [K.S.]

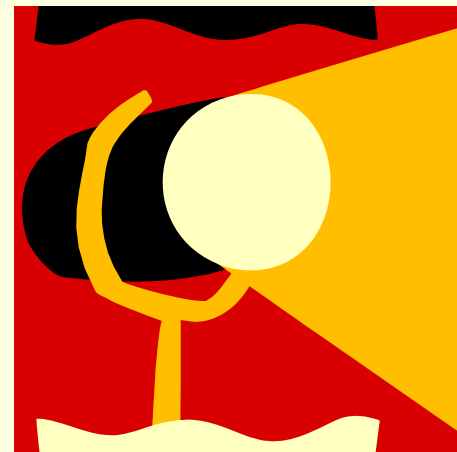
Addendum

# Adjudication

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- Adjudication that a child is abused, neglected, or dependent is about the circumstances, condition, and status of the child, not the fault or culpability of a parent [J.S., B.M.]

PP. 8, 10



# Adjudication

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- Court can adjudicate only condition(s) alleged in petition.
- Petition cannot be amended to allege a different condition.

[D.C.]

Addendum

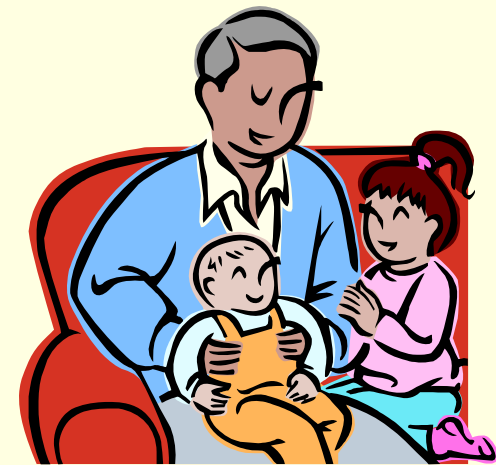


# Delegation

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Court may not delegate to DSS, guardian, or custodian determination of parent's visitation rights

- D.S.A.
- C.P.
- T.T.
- R.A.H.
- L.B.



PP. 7, 7, 14, 15, 18



# Timelines

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- Entry of tpr orders six months after the hearing was prejudicial error [J.N.S., C.L.K.]  
PP. 29-30
- In other cases, court held that appellant failed to show prejudice resulting from violation of various timelines.

PP. 9–10, 14, 17–19, 22–24, Addendum



# Court Orders

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- At disposition or review, court may order parent to pay support, but may not order parent to go to a child support enforcement agency [A.S.]

P. 13



# Court Orders

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- Termination order was deficient where it did not
  - state the standard of proof or
  - indicate ground(s) the court was adjudicating

[D.R.B.]

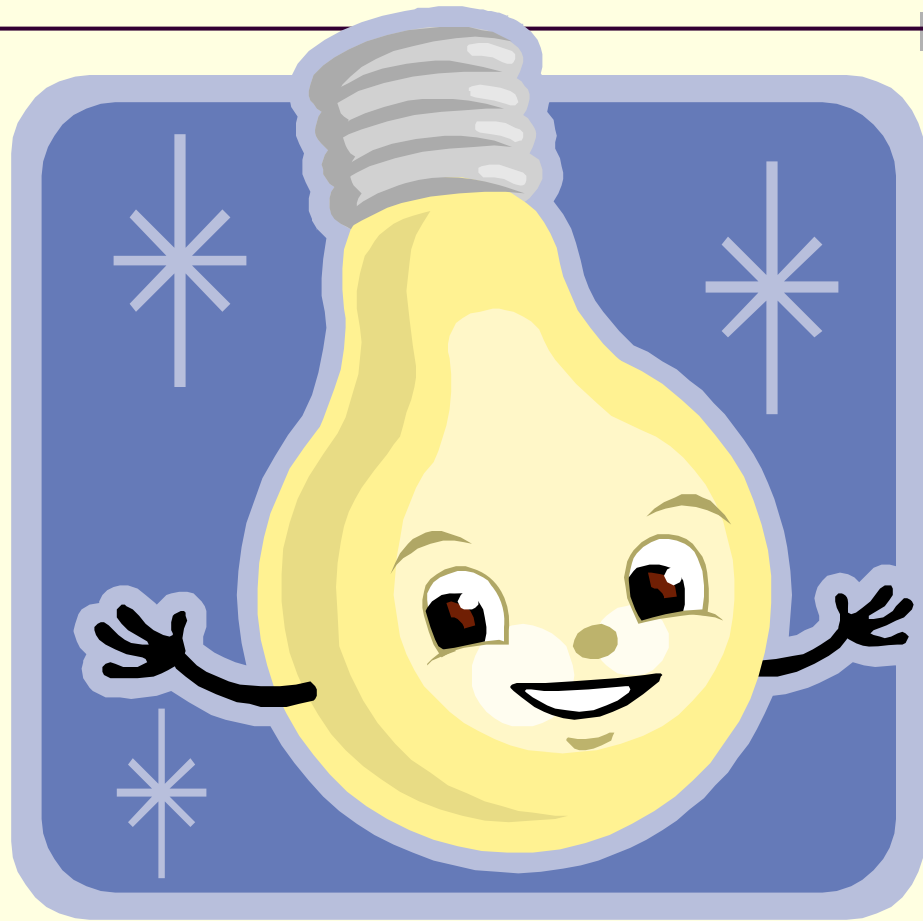
# Court Orders: Administrative

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- Chief judge's issuance & application of detailed administrative order governing discovery in all abuse, neglect, and dependency cases was not error.

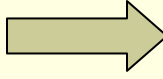
[J.S.]

P. 8

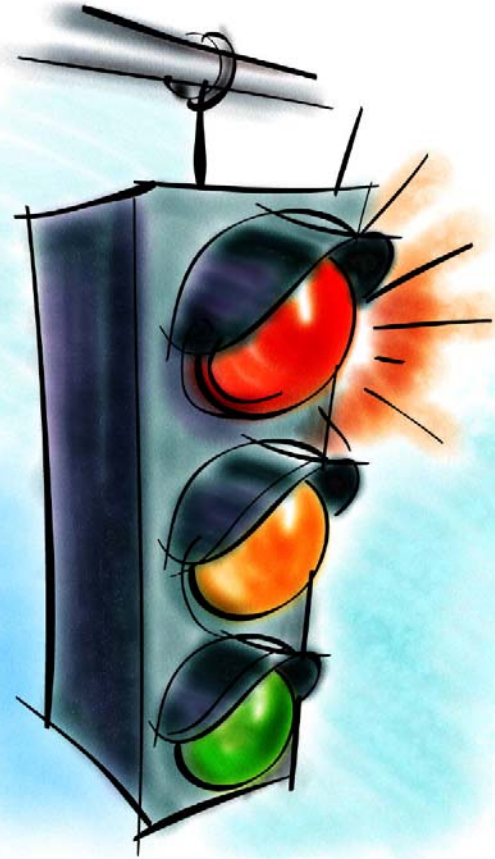


# Light Switches:

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1. Subject Matter Jurisdiction
2. Judicial Notice
3. Custody / Guardianship  Visitation
4. Relieve / Release
5. “No more review hearings”
6. Chapter 50

- 
7. Adjudication “as to” \_\_\_\_\_
  8. Close the case



7. Adjudication “as to” \_\_\_\_\_

8. Close the case