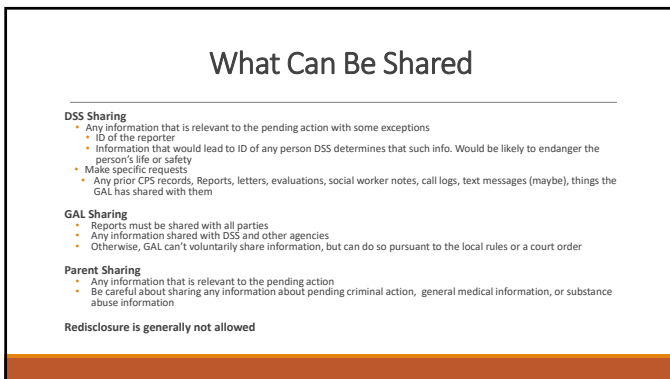




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3

**Use of
Discovery**



Determine if DSS can prove their case

Develop a theory for your case

Develop a strategy for your case

- Including whether to consent, enter stipulations, or to have a hearing

Determine witnesses including experts

Determine the existent of other documents and evidence

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Authority that Governs Discovery

NC Rules of Civil Procedure Chapter 1A

7B-700 Sharing of Information; discovery

- Remember the Juvenile Code supersedes with any provisions that differ from the NC. Rules of Civ. Procedure

Local Rules

- Juvenile Code encourages voluntary information sharing
- 7B-700 (b) "The chief district court judge may adopt local rules or enter an administrative order addressing the sharing of information among parties and the use of discovery"

Voluntary Request


- Contact the Attorney for the party first
- Put it in writing

Service of motion

- Required Rule 5 (NC Rules of Civil Procedure) service
- Serve all parties

Hearing on the motion

- Must take place within 10 business days of the date of filing
- Can be shortened by local rules



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Motion for Discovery

***File the motion and obtain order as soon as possible**

***Serve all parties with a copy**

***Contents of Motion**

- Specific description of the information you seek and
- A statement of the reasonable efforts you made to obtain the information or that you could not obtain via voluntary discovery or other methods per your local rules or other administrative orders

NOTE: COMES [name], Respondent [mother/father], by and through counsel, and moves this Court pursuant to G.S. § 7B-700(a) for an Order of Discovery and respectfully shows unto the Court the following:

- The Respondent, [name], is the [mother/father], of the minor child [name].
- In the Petition, it is alleged by the [name] County Department of Social Services (DSS) that [name of child] is an [abused/neglected/dependent].
- In order to effectively represent the Respondent [mother/father], it is necessary for the undersigned attorney to inspect and copy the [name] County Department of Social Services' record pertaining to the above named children.
- The Movant concedes that the [name] County Department of Social Services may take whatever steps necessary to protect the identity of the reporter or attorney work product.
- The Movant has made the following efforts to obtain the information through voluntary disclosure pursuant to G.S. § 7B-700(a) (general efforts):

Wherefore the Movant prays of the Court that it issue an Order allowing the Movant, [name], attorney for the Respondent [mother/father], to inspect and receive copies of the Department of Social Services pertaining to the above named

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Motion and Order to Produce & Examine DSS Records

- File the motion and obtain order as soon as possible
- Serve all parties with a copy
- Speak with DSS to arrange how you will get the records
- Know what to look for
 - Prior CPS history and records
 - CPS investigation records
 - Report made to DSS
 - Police reports
 - SW Dictation notes
 - Safety plans
 - RIL records
 - Any medical records or evaluations and substance abuse records
 - School records for the children



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Request for Production of Documents

- Rule 34 of the NC Rules of Civil Procedure
- Can be served on any other party
- Used to inspect or copy designated documents
 - Writings, drawings, photos, phone records (and other types)
- Party has 30 days to comply
- Request must contain:
 - The items to be inspected by individual item or category
 - A description of each item and category with reasonable particularity
 - The time, place, and manner of the inspection or copying



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Motion for Protective Order

- NC Rule 26 (c)
- Look to Local Rules also
- Must show good cause the order is necessary to protect a party or person from unreasonable annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:
 - that the discovery not be had;
 - that the discovery may be had only on specified terms and conditions, including a designation of the time or place;
 - that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;
 - that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;
 - that discovery be conducted with no one present except persons designated by the court;
 - that a deposition after being sealed be opened only by order of the court;
 - that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way;
 - that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.
- Mostly used with Substance Abuse and Mental Health Records

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Motion for Identification of Experts

NC Rule 26 (b) (4)

- Used to discover
 1. the identification of Experts and
 2. the facts known and opinions held by them
- Information given in written report
 - i. A complete statement of all opinions the witness will express and the basis and reasons for them.
 - ii. The facts or data considered by the witness in forming them.
 - iii. Any exhibits that will be used to summarize or support them.
 - iv. The witness' qualifications, including a list of all publications authored in the previous 10 years.
 - v. A list of all other cases in which, during the previous four years, the witness testified as an expert at trial or by deposition.
 - vi. A statement of the compensation to be paid for the study and testimony in the case.
- If no report, then include in interrogatory or include in a witness list with a statement of subject matter and the substance of the facts or opinions to which the expert is expected to testify and a summary of the grounds for each opinion
- File well in advance of the hearing
- Object to the expert testifying if this disclosure does not take place



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Other Discovery Devices

Interrogatories

- Rule 33 of the NC Rules of Civil Procedure
- Limited to serving on other parties only
- Limited to 50 questions without leave of the Court
- Are made under oath and can be used to impeach a witness



Requests for Admission

- Rule 36 of the NC Rules of Civil Procedure
- Limited to serving on other parties only
- Limited to 50 requests



Depositions

- Rule 30 of NC Rules of Civil Procedure
- Not limited to who you can depose
- Is sworn testimony and can be used to impeach a witness or as substantive evidence
- Check IDS policy on fees and procedures beforehand



Subpoena and Subpoena Duces Tecum

- Rule 45 of NC Rules of Civil Procedure
 - Be sure to serve a copy of the certificate of service on all parties
- <http://www.nccourts.org/Forms/Documents/556.pdf>

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Other Motions to Consider



MOTION

- Motion to Change Venue
 - 7B-400 Before Adjudication
 - 7B-900.1(a) After Adjudication
- Motion for Increased Visits
- Motion for Home Study
- Motion for ICPC
- Motion for Contempt
- ❖ State the facts clearly of what is the current state of things
- ❖ Be specific in your requests
- ❖ Always include best interest of the child facts and argument

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