JUDICIAL NOTICE IN ABUSE, NEGLECT, DEPENDENCY, AND TPR CASES

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Judicial Notice

- In a TPR case, the DSS attorney asks that you take judicial notice of **all** of the prior proceedings in the abuse, neglect, and dependency case, including orders, reports to the courts, and other matters in the file.
- The attorney for the parent objects to your taking judicial notice of **any** of the materials.
- **Your response?**

Don't worry, be happy

You are presumed
to disregard
any incompetent evidence

If you really want to be happy, ask . . .

▫ What are the different aspects of prior proceedings that potentially could be considered?

▫ What are the applicable legal principles for each aspect?

▫ What is the impact of the prior information in the current proceeding?

What is a proper
subject of judicial notice?

A fact "not subject to reasonable dispute."
N.C. Evid. R. 201(b)

The Four Components of Prior Proceedings

▫ Orders and other record entries

▫ Findings of fact and conclusions of law
  ▪ and also stipulations

▫ Documentary evidence
  ▪ including court reports

▫ Testimony

Orders and Other Record Entries

Prior orders and other record entries
ARE
subject to judicial notice
BECAUSE
they are not subject to reasonable
dispute and require no further proof

Findings and Conclusions

Prior findings and conclusions
ARE
admissible and binding
ONLY IF
collateral estoppel applies

Findings and Conclusions
(cont'd)

Prior findings and conclusions that
do not meet c/e standards
ARE
generally inadmissible
BECAUSE
they are a form of hearsay

Findings and Conclusions
(cont'd one more time)

Prior stipulations and concessions
ARE
generally admissible and binding

Documentary Evidence

Prior documentary evidence
IS
admissible (but not binding)
ONLY IF
the evidence is admissible under the
rules of evidence

Testimony

Prior testimony
IS
admissible (but not binding)
ONLY IF
the testimony is admissible under
an exception to the hearsay rule