

**The Legal Framework for NC Social Services**

Aimee Wall  
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www.sog.unc.edu

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**Question**

What are you hoping to learn this week?



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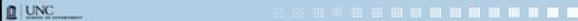
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**A Simple Plan**

- Sources of law in social services
- Reading social services laws together
- Working with the agency attorney



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# SOURCES OF LAW



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# Different Roles



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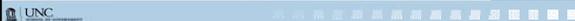
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# Federal Government



- U.S. Constitution
  - Congress may “tax & spend” to promote “general welfare”



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### Federal Role

- Federal funding with strings attached
- Drives policy development
  - Who is served?
  - What services will be provided?
- Examples?
  - Program specific
  - General



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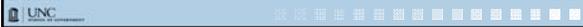
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### Case Discussion



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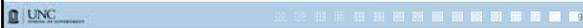
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### State Government

- **General Assembly**
  - Determines *nature & extent* of State's duty; *how* State will discharge its duty
  - Accepts federal funding
  - Establishes state agencies
  - Creates state programs
  - Appropriates state funding
  - Determines responsibility of local government



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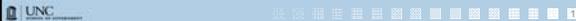
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### State Role

- General Assembly**
  - Establish policy via legislation
  - Appropriate state and federal funding
- Rulemaking Bodies**
  - Implement policy via rule (laws)
- NC DHHS**
  - Distribute funds
  - Supervise county administration
  - Audit, quality assurance, technical assistance, appeals



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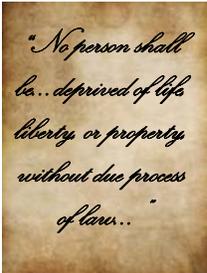
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### Principles of Due Process



- Notice (timely and adequate)
- Opportunity to be heard
- Impartial decisionmaker
- Decision supported by evidence



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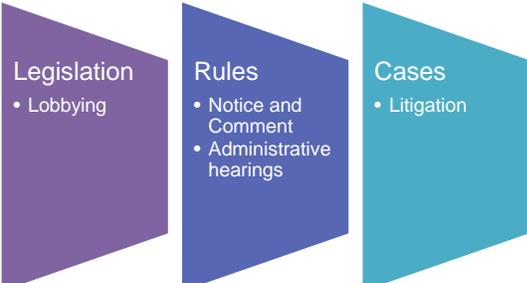
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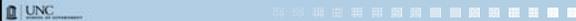
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### In Practice



- Legislation**
  - Lobbying
- Rules**
  - Notice and Comment
  - Administrative hearings
- Cases**
  - Litigation



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### NC Rulemaking Bodies QUIZ TIME!

- Who adopts state rules governing
  - Adult protective services?
  - Child protective services?
  - The Medicaid program?
  - State-County Special Assistance?
  - Food and nutrition services?
  - Child support enforcement?
  - Child care subsidy program?



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### County Role

- What is a County?
  - A political subdivision of the State
  - Derives legal authority from the State
  - Act as an agent of the State to provide State services



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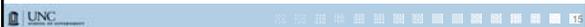
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### County Government

- State law requires that counties
  - Have county social services board or a consolidated human services board
  - Administer mandated programs
  - Provide adequate facilities for agency
  - Fund part of the cost of state programs (SA)
  - Comply with state law and policy



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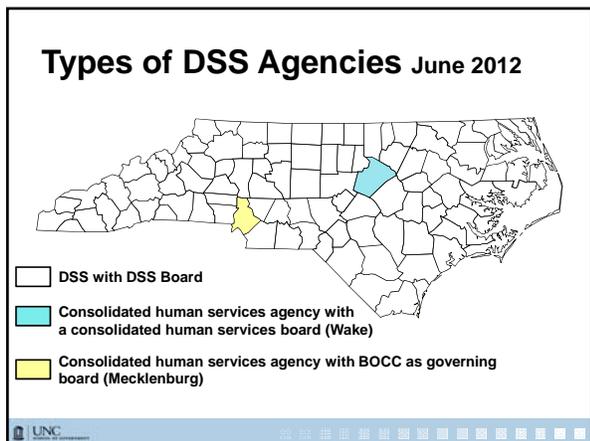
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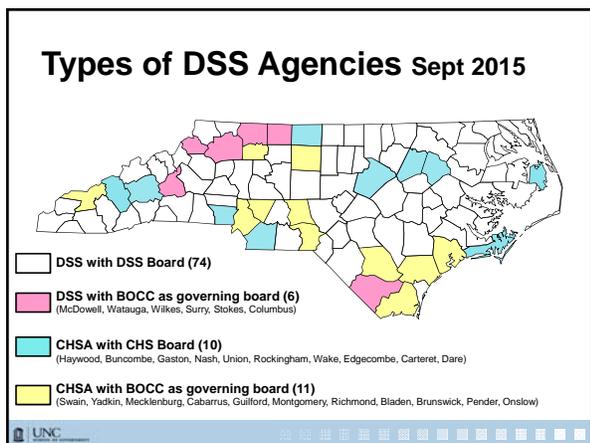
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## HOW DO I KNOW WHICH LAW APPLIES?

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### Layers - Discussion



- Confidentiality examples
  - Medicaid
  - Child welfare

Image by theboxedparty.wordpress.com

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### Hierarchy

- Try to read the laws together whenever possible
- If the laws are in conflict
  - Federal will trump state
  - Statute will trump regulation
  - Law will trump policy



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### A Few Rules of Thumb

- Plain meaning
- Later enacted
- More specific
- *In pari materia*
  - Statutes on same subject are construed together
- *Expressio unius*
  - the expression of one thing suggests the exclusion of others

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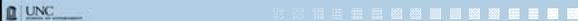
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## AGENCY ATTORNEYS



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### Models of Agency Representation



\* G.S. 108A-16



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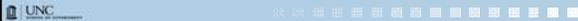
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### Responsibilities Vary

- Child Welfare
- Adult Protective Services
- Guardianship
- Child Support Enforcement
- Public Assistance Appeals
- Other



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### Standards

ABA excerpts	NC Bar
<ul style="list-style-type: none"><li>Fully understand and comply with all relevant laws</li><li>Attend and prepare for all hearings</li><li>Prepare all appropriate motions and evidentiary objections</li><li>Take reasonable steps to ensure agency complies with orders</li><li>Cooperate and communicate</li></ul>	<ul style="list-style-type: none"><li>Competent representation requires legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation</li><li>"The required attention and preparation are determined, in part, by what is at stake..."</li></ul>

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### Caseload Survey

"I feel like I am constantly shortchanging my social workers and my cases because I am pulled in so many different directions."

I am often not as prepared as I could be, and I am often surprised during trial, but things are so busy that I often have no choice..."

"I often have very little time to prepare for court, and I am left to wing it"

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### Caseload Survey

"...the emotional trauma ... has begun to take its toll on me...I often wake up in the middle of the night with thoughts of a certain child."

"I haven't had a vacation since 2008"

**50%** Have suffered from depression

**70%** Have experienced symptoms of compassion fatigue

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### Director's Role

- Awareness
  - What is the role of your attorney?
  - How much work does the attorney have?
    - Is the attorney able to reasonably meet professional obligations?
    - Does the attorney have enough support staff?
  - Does the attorney show any signs of compassion fatigue or depression?



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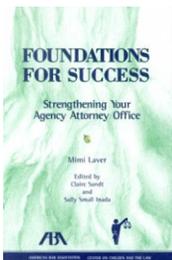
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### Resource

- Foundations for Success: Strengthening Your Agency Attorney Office
  - ABA Center on Children and the Law
  - <http://shop.americanbar.org/eBus/Store/ProductDetails.aspx?productId=215597>



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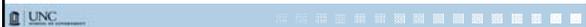
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### Questions?



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