

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

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## Judicial Notice

- ❑ In a TPR case, the DSS attorney asks you to take judicial notice of all of the prior proceedings in the abuse, neglect, and dependency case.
- ❑ The attorney for the parent makes a general objection to the taking of judicial notice of the materials.
- ❑ **How should you rule?**

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**Don't worry, be happy**

You are presumed to  
disregard  
any incompetent evidence

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**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?

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What is judicial notice?

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What is a proper  
subject of judicial notice?

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

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What is the effect?

“In a civil action or proceeding,  
the court shall instruct the jury to  
**accept as conclusive**  
any fact judicially noticed.”  
N.C. R. Evid. 201(g)

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**The Four Components of  
Prior Proceedings**

- ☐ Testimony
- ☐ Documentary evidence
  - including court reports
- ☐ Orders and other record entries
- ☐ Findings of fact and conclusions of law
  - also stipulations

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**Testimony**

- ☐ At a review hearing following an adjudication of neglect, social worker Jones testifies as follows:
  - Respondent failed to attend two of six required parenting classes.
  - Respondent told social worker Jones that he had failed to attend two of six required parenting classes.
- ☐ **At a TPR adjudication, may the judge take judicial notice of the testimony?**

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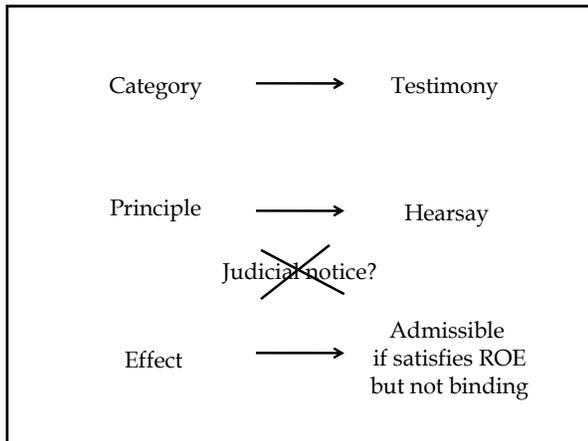
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**Documentary Evidence**

- ▣ At a review hearing following an adjudication of neglect, the judge receives into evidence a report stating that:
  - DSS determined that respondent failed to attend two of six required parenting classes.
  - Respondent told social worker Jones that he had failed to attend two of six required parenting classes.
- ▣ **At a TPR adjudication, may the judge take judicial notice of the report and its contents?**

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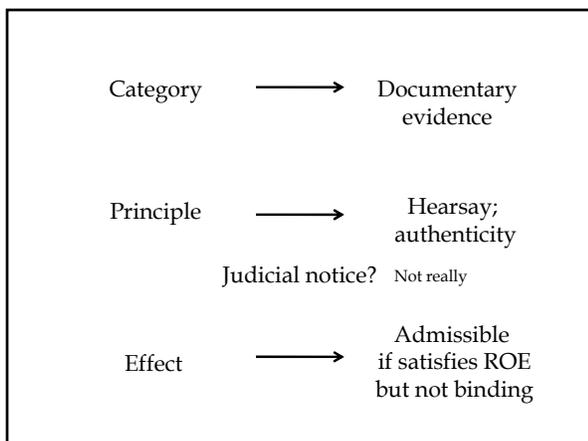
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### Orders and Other Record Entries

- ▣ At a review hearing following an adjudication of neglect, the judge ordered the respondents to take parenting classes
- ▣ At a permanency planning hearing, the judge changed the permanent plan from reunification to adoption.
- ▣ **At a TPR adjudication, may the judge take judicial notice of the above orders?**

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Category      →      Orders and other record entries

Principle      →      Judicial notice

Effect      →      Conclusive as to matters noticed

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### Findings and Conclusions from Adjudicatory Hearing

- ▣ At the adjudication hearing on neglect allegations, the judge found as follows:
  - Respondent father engaged in acts of domestic violence against respondent mother in their child's presence
  - Respondents father and mother created an injurious environment by engaging in domestic violence in their child's presence.
- ▣ **At a TPR adjudication, may the judge take judicial notice of the above?**

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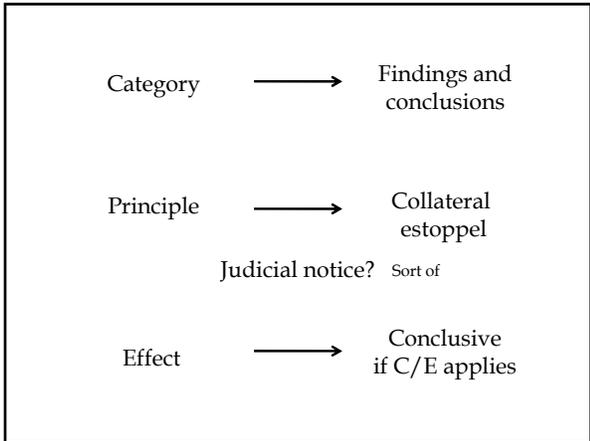
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**Findings and Conclusions from Non-Adjudicatory Hearing**

- ▣ At a review hearing following an adjudication of neglect, the judge finds based on the social worker's testimony and reports that
  - Respondent father failed to attend all required parenting classes.
  - Respondent father failed to comply with the disposition order.
- ▣ **At a TPR adjudication, may the judge take judicial notice of the above?**

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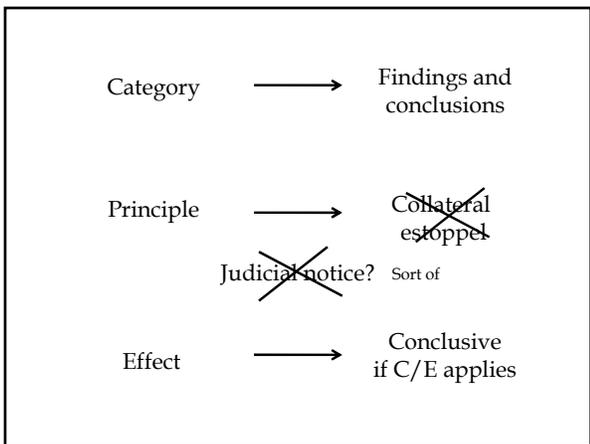
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**Findings and Conclusions from  
Non-Adjudicatory Hearings**

Prior findings and conclusions that  
do not have collateral estoppel effect

ARE  
generally inadmissible  
BECAUSE  
they are a form of hearsay

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**Findings and Conclusions  
(cont'd)**

Prior stipulations and concessions  
ARE  
generally binding in later  
proceedings

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**Summing Up**

- ☐ Prior testimony
  - must satisfy a hearsay exception, and
  - if it does, is admissible but not binding
- ☐ Documentary evidence
  - must satisfy hearsay, authenticity, and other evidence requirements, and
  - if it does, is admissible but not binding

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### Summing Up (cont'd)

- ☐ Orders and other record entries
  - are subject to judicial notice, and
  - are conclusive as to that entry
- ☐ Findings and conclusions
  - must satisfy collateral estoppel requirements, and
  - if they do, are conclusive as to that finding or conclusion

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### Summing Up (cont'd)

- ☐ Findings and conclusions that do not have collateral estoppel effect
  - must satisfy a hearsay exception (rare in juvenile cases), and
  - if they do, are admissible but not binding
- ☐ Formal stipulations and concessions
  - are judicial admissions or subject to judicial estoppel, and
  - are ordinarily binding

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Let's be careful out there

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