

Abuse, Neglect, and Dependency (A/N/D) Petitions: Sign and Verify

Who signs an A/N/D/ petition and whether it is properly verified determines if the court has subject matter jurisdiction over the proceeding. Without subject matter jurisdiction, the court has no authority to act and any judgment entered is void. [In re T.R.P.](#), 360 N.C. 588 (2006). Because subject matter jurisdiction can be raised at any time, even for the first time on appeal, and it cannot be waived or consented to, a county could discover weeks, months, or years after the action is commenced that all its orders in the action are void. This is problematic for many reasons.

The New Pre-adjudication Hearing Law

As of October 1, 2014, a district court must consider at a pre-adjudication hearing “whether the petition has been properly verified and invokes jurisdiction.” G.S. 7B-800.1(5a). Although the required inquiry is new, the need for a verified petition is not. This new provision in the statute codifies the 2007 suggestion of the court of appeals that trial judges check to make sure the A/N/D petition is signed and verified before proceeding with adjudication. [In re D.D.F.](#), 187 N.C. App. 388 (2007).

Who Can Sign?

An A/N/D action is commenced by the filing of a petition [[G.S. 7B-401\(a\)](#)], a task that must be done by the director of a county department of social services. [G.S. 7B-401.1\(a\)](#). A director includes a “representative as authorized in G.S. 108A-14.” [G.S. 7B-101\(10\)](#). The director must sign a petition alleging sufficient facts to invoke the court’s jurisdiction. [G.S. 7B-302\(d\)](#). The petition must be verified before an official who is authorized to administer oaths. [G.S. 7B-403\(a\)](#).

Only the director (or his or her authorized representative) of a county department of social services may sign a petition alleging a child is abused, neglected, or dependent. Although it is optimal for the person who signs the petition to identify his or her role as director or authorized representative, it is not a fatal jurisdictional defect if the role is not designated so long as the petition contains sufficient information for the court to determine the signor is the director or authorized representative. [In re Dj.L.](#), 184 N.C. App. 76 (2007). Because [G.S. 108A-14](#) authorizes a director to delegate his/her statutory duties, which includes assessing reports of suspected abuse and neglect and taking appropriate protective action, it is sufficient for a case worker to identify herself as the worker assigned to the case and list the department’s mailing address on the petition. [In re D.D.F.](#), 187 N.C. App. 388 (2007).

In contrast, it is jurisdictionally fatal if a DSS employee signs someone else’s name, even if that employee is authorized to do so. For example, a DSS case worker cannot sign the director’s name and note it was made “by [the individual]” who signed the petition on behalf of the director. In order to have a proper signature and verification, the appropriate DSS employee must sign the petition in

his or her own capacity and must personally appear before the person who verifies the oath. [In re A.J.H.-R.](#), 184 N.C. App. 177 (2007); [In re S.E.P.](#), 184 N.C.App. 481 (2007).

What is a Verification?

A verification vouches for the validity of the allegations in and content of the petition. [In re T.R.P.](#) Verification is addressed by [G.S. 1A-1, Rule 11](#), which requires a statement that the contents of the pleading verified are true, or believed to be true, to the knowledge of the person making the verification. The language, “sworn and subscribed to,” without more is insufficient, and therefore, a notarization without an oath or affirmation will not satisfy the verification requirement. [In re Triscari](#), 109 N.C. App. 285 (1993).

The court of appeals discussed the requirements for a verification in [In re Dj.L.](#) and looked to both [G.S. 1A-1, Rule 11](#) and [G.S. 10B-40\(d\)](#). The form of a verification is set forth in [G.S. 10B-40\(d\)](#), which requires:

- the name of the principal who appeared in person,
- that the notary has personal knowledge or satisfactory evidence of the signatory’s identity,
- that the principal who appeared in person before the notary signed and certified under oath or by affirmation as to the truth of the matters stated in the record,
- the date of the oath/affirmation, and
- the signature of the notary with the seal/stamp and date the commission expires.

Rule 11 requires a verification be made by affidavit of the party, which “...is ‘(a) written or printed declaration or statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before an officer having authority to administer such oath.’” [Schoolfield v. Collins](#), 281 N.C. 604, 612, 189 S.E.2d 208, 213 (1972), *citations omitted*. Although the [AOC form](#) petition does not include “magistrate” as a check box option for who verified the petition, a magistrate is authorized to administer oaths and to take affidavits for the verification of pleadings. [G.S. 7A-292\(1\), \(5\)](#); [G.S. 7B-404\(a\)](#).

Why Does It Matter?

Subject matter jurisdiction for all of the stages of an A/N/D proceeding is established when the action is commenced by the filing of a properly verified petition. [In re T.R.P.](#) The lack of subject matter jurisdiction in an A/N/D action returns the parties, including the child, to pre-petition status regarding custody [[G.S. 7B-201\(b\)](#)], which is likely to be contrary to a child’s best interests. In addition, without a valid court order, the child may never have been eligible for federal IV-E assistance. 42 USC §672; 45 C.F.R. 1356.21. As a result, the IV-E dollars expended for that child may need to be repaid by the county.