

One Potato, Two Potato: The Rules of Civil Procedure in A/N/D and TPR Proceedings

**This post was amended on January 29, 2016 to add Rule 45 (subpoena) and on February 22, 2017 to specifically reference Rule 12(b)(3)*

Have you ever felt like you're playing a game of one potato, two potato when figuring out if a Rule of Civil Procedure applies to your abuse, neglect, dependency, or termination of parental rights action? Let me provide you with a guide instead.

The first place to look for both substantive and procedural law in A/N/D and TPR actions is Subchapter I of the NC Juvenile Code (hereinafter "[G.S. 7B](#)"). NC appellate courts have long recognized the purposes of both Subchapter I generally, "to provide procedures for the hearing of juvenile cases" [[G.S. 7B-100\(1\)](#)] and Article 11 (Termination of Parental Rights), "to provide judicial procedures for terminating the legal relationship between a juvenile and the juvenile's biological or legal parents...." [G.S. 7B-1100\(1\)](#). Case law is clear that G.S. 7B sets forth the exclusive procedure governing juvenile proceedings, and a particular rule of civil procedure only applies if it fills a procedural gap and advances the purposes of the Juvenile Code. [In re E.H.](#), 742 S.E. 2d 844 (2013).

What Rules Are Specifically Referenced in the Juvenile Code?

- **Rule 4 service** applies to:
 - a *summons and petition* for interference [[G.S. 7B-303\(c\)](#)], abuse, neglect or dependency, [[G.S. 7B-406](#) and [-407](#)], and termination of parental rights [[G.S. 7B-1106\(a\)](#)];
 - a *motion to TPR* filed in an existing A/N/D proceeding if in that underlying A/N/D action
 - the respondent parent was not originally served with a summons,
 - the service was made by publication and did not include language that upon proper notice and hearing, the parent's rights may be terminated,
 - it has been at least two years since the commencement of the A/N/D action, or
 - the court orders Rule 4 service. [G.S. 7B-1102\(b\)](#); and
 - a *court order* of service by publication on an unknown parent in a TPR action pursuant to [G.S. 7B-1105\(d\)](#). Rule (4j1) is also referenced in [G.S. 7B-1107](#), which addresses a parent's failure to answer or respond to a TPR petition or motion.
- **Rule 5 service** applies to:
 - motions for *discovery* [[G.S. 7B-700\(c\)](#)];
 - a *motion to TPR* (versus a petition) filed in an existing A/N/D action that does not meet the statutory requirements for Rule 4 service (described above) [[G.S.](#)

- [7B-1102\(b\)](#)]; and
 - service of a *copy of “pleadings and other papers required to be served”* in a TPR proceeding on (1) a juvenile’s GAL or attorney advocate and (2) a parent’s attorney, if she was appointed and not relieved of her obligations in the underlying A/N/D action [G.S. [7B-1106\(a1\)](#), [\(a2\)](#)].
- **Rule 17** applies to require the appointment of a GAL for **a respondent parent** if the parent is:
 - an unmarried and unemancipated minor parent [G.S. [7B-602\(b\)](#), [-1101.1\(b\)](#)], or
 - an adult the court has determined is incompetent [G.S. [7B-602\(c\)](#), [-1101.1\(c\)](#)].
- **Rule 17** applies to require the appointment of a GAL for **a juvenile who appeals** and is not represented by a G.S. 7B-601 GAL [G.S. [7B-1002](#)].
- **Rule 42 consolidation** applies when a TPR is filed in the same district as a pending A/N/D action for the juvenile. G.S. [7B-1102\(c\)](#). Although not specifically referencing Rule 42, a juvenile court may consolidate an A/N/D proceeding with a civil custody action or claim [[G.S. 7B-200\(c\)](#), [\(d\)](#)].
- **Rule 58** entry of judgment is specifically identified at G.S. [7B-1001\(b\)](#). In addition, several references to the entry of an order are made throughout G.S. 7B, including -303(d) (interference), -323(d) (Responsible Individual List), -506(d) (continued nonsecure custody order), -700(d) (protective order regarding discovery), -800.1(c) (consent order), -807(b) (A/N/D adjudication), -900.1(c), (f) (post-adjudication change of venue), -905(a) (dispositional order), -906.1(h), (l), (m) (review and permanency planning hearings), -911(b), (c) (civil custody order), -1109(e) (TPR adjudication), -1110(a) (TPR disposition), and -1114(i)(1), (l) (reinstatement of parental rights).

What Other Rules Apply?

- **Rule 7(b)(1)**: a motion requires that grounds are stated with particularity, and the motion must include a request for relief. [In re McKinny](#), 158 N.C. App. 441 (2003).
- **Rule 8**: construe juvenile pleadings so as to do substantial justice. [In re Dj.L.](#), 184 N.C. App. 76 (2007).
- **Rule 11(b)**: requirements for verification of a pleading. *In re Triscare Children*, 109 N.C. App. 285 (1993). Verification is required for an interference petition [[S. 7B-303\(a\)](#)], A/N/D petition [[G.S. 7B-403\(a\)](#)], and TPR petition or motion [[G.S. 7B-1104](#)].
- **Rule 12(b)**: defenses, including a motion to dismiss [*In re Quevedo*, 106 N.C. App. 574 (1992)] and improper venue [[In re J.L.K.](#), 165 N.C. App. 311 (2004)].
- **Rule 41(a)(1)(i)***: DSS’s voluntarily dismissal of an A/N/D petition prior to the adjudicatory hearing. [In re E.H.](#), 742 S.E. 2d 844 (2013).
- **Rule 43**: there must be some oral testimony for an adjudication. [In re A.M.](#), 192 N.C. App. 538 (2008).
- **Rule 45**: subpoena. Note that the authority to issue a subpoena is implied in the following opinions: [A Child’s Hope LLC v. Doe](#), 178 N.C. App. 96 (2006); [In re Dj.L.](#), 184 N.C. App. 76 (2007); [In re S.M.](#), ___ N.C.App. ___, 761 S.E. 2d 764 (2014)(unpublished).

- **Rule 52:** findings of fact and conclusions of law. [In re E.N.S.](#), 164 N.C. App. 146 (2004). Note, various statutes throughout G.S. 7B require the court to make specific findings.
- **Rule 60:** motion for relief from judgment. [In re E.H.](#), 742 S.E. 2d 844 (2013).
- **Rule 61:** harmless error. [In re T.M.](#), 187 N.C. App. 694 (2007).

What Rules Do Not Apply?

- **Rule 12(c):** judgment on the pleadings, [In re I.D.](#), 769 S.E. 2d 846 (2015).
- **Rule 13:** counterclaim, [In re S.D.W.](#), 187 N.C. App. 416 (2007); *In re Pierce*, 53 N.C. App. 373 (1981).
- **Rule 15:** amendment of pleading
 - Amendment of an **A/N/D petition** is governed by G.S. 7B-800. Note, case law limiting the amendment of a petition has been superseded by changes to the language of G.S. 7B-800.
 - There is no statutory language regarding amending a petition in a **TPR action**. [In re B.L.H.](#), 190 N.C. App. 142 *aff'd per curiam*, 362 N.C. 674 (2008) holds a TPR petition/motion may not be amended to conform to the evidence. [In re M.M.](#), 200 N.C. App. 248 (2009) explains an amendment to a TPR petition that names a previously unknown father is not required and is instead governed by G.S. 7B-1105 and not Rule 15.
- **Rule 24:** intervention is governed by G.S. 7B-401.1(h). Note, the holding allowing for intervention in a juvenile proceeding in *In re T.H.*, 753 S.E. 2d 207 (2014) was superseded by the creation of G.S. 7B-401.1(h).
- **Rule 41(a)(1)*:** dismissal which then precludes the filing of a second petition, *In re L.O.K.*, 174 N.C. App. 426 (2005).
- **Rule 55:** default, [In re I.D.](#) (2015). See also G.S. 7B-1107, which requires the court to order a hearing on the petition or motion.
- **Rule 56:** summary judgment, [In re J.N.S.](#), 165 N.C. App. 536 (2004).

*One provision of Rule 41(a)(1) applies, and one does not.

Discovery: Are You Still Playing One Potato?

Discovery is specifically provided for in [G.S. 7B-700](#) and is referenced in [-803](#) and [-1109\(d\)](#), authorizing the court to continue an A/N/D or TPR adjudication hearing “to allow the parties to conduct expeditious discovery.” Although G.S. 7B-700 is silent as to what procedures may be used, cases have mentioned specific discovery Rules as if their application in a juvenile proceeding is permitted:

- **Rules 30 and 32** - depositions, [In re K.D.L.](#), 176 N.C. App. 261 (2006); [In re K.H.H.](#), 175 N.C. App. 420 (2006) (unpublished),
- **Rules 33 and 34** - interrogatories and request for production of documents, [In re Clayton](#),

159 N.C. App. 228 (2003) (unpublished), and

- **Rule 35** - mental examination of a juvenile, [In re Williams](#), 149 N.C. App. 951 (2002)].

Protective orders are governed by G.S. 7B-700(d), and a court may need to look to G.S. [7B-302\(a1\)](#) and [-2901\(b\)](#) regarding confidentiality of records, including the identity of the reporter.

If you know of other Rules, please share in the comments below.