

2009 New Parent Defender Training

EVALUATING AND CHALLENGING PLEADINGS



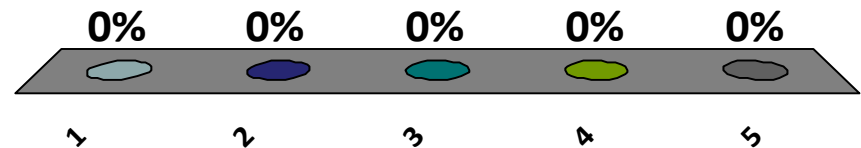
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2009 New Parent Defender
Training--Evaluating and
Challenging Pleadings

What starts a juvenile proceeding ?

1. Petition
2. Summons
3. Non-secure custody order
4. 1 & 2
5. 1, 2, & 3



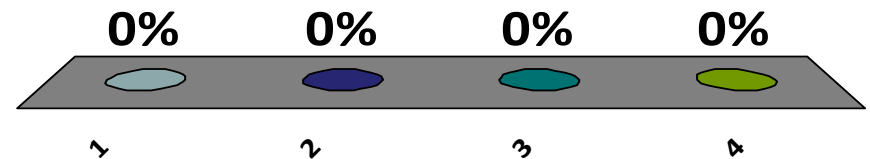
- 7B-401: Pleading is the petition
- 7B-401: Process is the summons
- 7B-405: “An action is commenced by the filing of a petition...”

Keep in mind that you can have a petition without a non-secure custody order.



Can a case start if the clerk's office is closed?

1. Yes, DSS can assume temporary custody
2. Yes, a magistrate can issue a petition
3. No, DSS has to wait for regular hours
4. 1 & 2

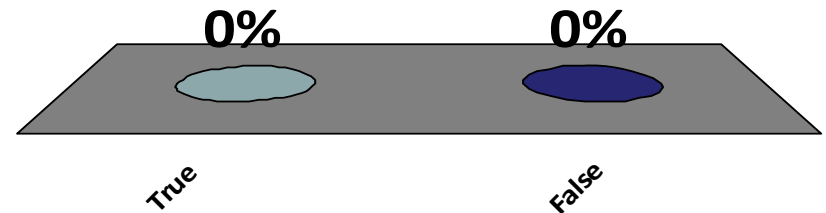


- 7B-500: Temporary custody
- 7B-404: Immediate need for petition when clerk's office is closed
- 7B-502: Any district court judge can issue non-secure custody orders. The chief district court judge may delegate by administrative order (filed with the clerk).



The district court has the power to act in all juvenile matters.

1. True
2. False



- 7B-200: The court has exclusive, original jurisdiction over any case involving a juvenile who is alleged to be abused, neglected, or dependent.
- 7B-201: Jurisdiction continues until terminated by order, the juvenile reaches age of 18 or is otherwise emancipated.



What is the difference between subject matter jurisdiction and personal jurisdiction?



True or False:

- The summons and petition must be served on all of the parties before the court can acquire jurisdiction

Answer now:

1. True
2. False

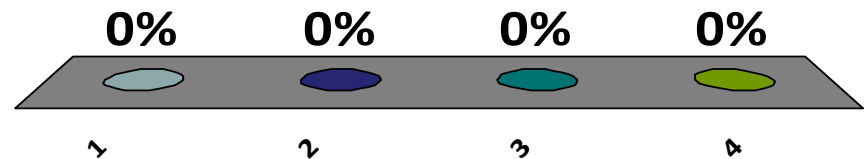


- Subject matter jurisdiction: the power to act in a certain type of case
- Specific subject matter jurisdiction: the power to act in this specific case
- Personal jurisdiction: the power to act over a party



A valid petition contains...

1. Kid's name, DOB, & address
2. Name & last known address of parent, guardian or custodian
3. Sufficient allegations of facts
4. All of the above

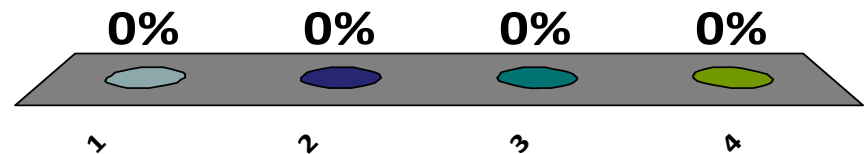


- 7B-402: Sets out specifics of what must be included.
- 7B-101: Definitions of abuse, neglect and dependency



Considering *R.R.*, which child would be abused?

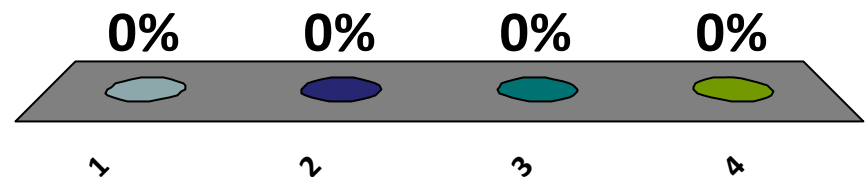
1. CeCe
2. Alec & Rowan, but
not CeCe
3. All 3
4. None of the 3



- What is the definition of abuse? 7B-101(1)
A juvenile whose parent, guardian, custodian, or caretaker inflicts or allows:
 - a. Non-accidental serious physical injury;
 - b. Non-accidental risk for serious injury;
 - c. Cruel or inappropriate discipline;
 - d. Sex act;
 - e. Serious emotional distress;
 - f. Acts of moral turpitude.

What do you do if the petition is defective?

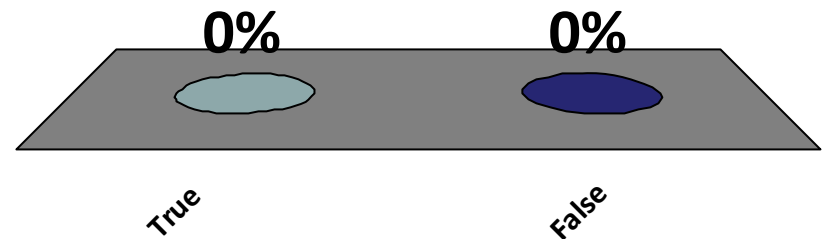
1. File an Answer denying the allegations
2. File a Motion to Dismiss
3. You'll figure something out by the hearing
4. Nothing, let the court sort it out



- N.C. Rules of Civil Procedure Rule 12(b):
Shall be made before pleading:
 - (1) Lack of jurisdiction over subject matter
 - (2) Lack of jurisdiction over person
 - (3) Improper venue or division
 - (4) Insufficiency of process
 - (5) Insufficiency of service of process
 - (6) Failure to state a claim upon which relief can be granted
 - (7) Failure to join a necessary party

A petition can be amended at any time until the court adjudicates a juvenile.

1. True
2. False



- 7B-800: The court may permit a petition to be amended when the amendment does not change the nature of the conditions upon which the petition is based.



- Use the checklists!
- Even if you don't know your client's position, it is your obligation to ensure that due process is followed and that the statute has been complied with!

