



# Motion Practice: Dependency and Neglect

# ABA Standards for the Representation of Children

The child's attorney should file petitions, motions, responses or objections as necessary to represent the child.

## Possible Relief Requested:

1. Mental or physical examination of a party or the child
2. Parenting, custody, or visitation evaluation
3. Increase, decrease, or termination of contact/visitation
4. Restraining or enjoining a change of placement
5. Contempt for non-compliance with a court order
6. Termination of the parent-child relationship
7. Child support
8. Protective order concerning the child's privileged communications or property (tangible or intangible)
9. Services for the child or family
10. Dismissal of petitions or motions



# Motions

- The parent's attorney must file petitions, motions, discovery requests, and responses/answers to pleadings filed by other parties that are appropriate for the case. These pleadings must be thorough, accurate and timely.
- The parent's attorney should make appropriate motions and evidentiary objections to advance the client's position during the hearing.
- If necessary, the parent's attorney should file briefs in support of their client's position on motions and evidentiary issues.
- The parent's attorney should always be aware of preserving legal issues for appeal.



# Motions

## TRJPP Rule 105 Overview

- (1) An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be in writing; shall state with particularity the grounds relied upon; and shall set forth the relief or order sought.



# Motions

## Motion Filing & Notice Requirements

- (2) Upon the filing of the motion, the clerk shall schedule a tentative date for the motion to be heard.
- (3) All motions shall include the date upon which the motion is expected to be heard and shall be served on the parties *a reasonable time prior to that date*.
- (4) A written response to a motion is not required.



# Filing Motions In Juvenile Court



# Every Filing Should Advance Your Client's Ultimate Success and Preserve Your Credibility

- Motion practice is a strategic tool.
- Motions are not filed in a vacuum. Attorneys should weigh whether filing a motion advances their client's ultimate goals. Think in terms of permanency.
- Thoughtful use of motions can streamline cases, avoid wasted effort, and preserve the lawyer's credibility.
- Findings = Your Friend: Always request written findings for dispositive or evidentiary motions.



# Red Flags: When to Reconsider a Motion

- 🚩 Filing motions on every issue indiscriminately
- 🚩 When informal resolution is possible (Could a call, email or meeting with opposing counsel result in resolution?)
- 🚩 When motion lacks legal merit
- 🚩 Client's perspective (e.g., child doesn't want to testify, parent wants to avoid delays)

## Alternative Strategies:

- Use objections during the hearing instead of a pretrial motion.
- Leverage discovery tools informally (case file review, agreed orders).
- Collaborate with GAL/DCS for stipulations instead of motions.





# Prioritize Your Theme

- When filing a motion, concentrate on your strongest two to three themes. Overloading with arguments weakens your best points and risks confusing the judge.
- Effective advocacy requires prioritization.



# Clarity Wins Arguments

- Lead with your strongest argument, write in active voice, and keep sentences short. Avoid block quotes, string citations, and unnecessary footnotes.
- Less is more. Mastering simplicity is the mark of great advocacy.
- Respect the court's time—be direct, organized, and easy to follow.



# Argue the Issues

- Effective advocacy requires channeling passion into strong legal arguments, not personal attacks.
- Judges consistently dislike incivility and disrespect between lawyers.
- Snide or hostile remarks rarely impress the court and often backfire, damaging credibility—the lawyer’s most valuable asset.



# Procedural Basics

The background of the slide features a large, faint, circular seal of the Tennessee Judiciary. The seal contains the text "THE TENNESSEE JUDICIARY" around the top and "SEAL OF THE TENNESSEE JUDICIARY" around the bottom. In the center is a figure of a woman holding a scale of justice, with the Latin phrase "FIAT JUSTITIA RUAT COELUM" (Let justice be done, though heaven fall) inscribed above her. Three stars are positioned at the bottom of the seal.

# Motions

- **WHAT** to bring to court: Affidavits, documents, proposed orders
- **WHO** to bring to court:
  - Do you want your client to testify in a motion hearing?
- **HOW** to preserve the Court's ruling



# Know Your Local Rules

- Local rules vary—e.g., Davidson (docketing before filing), Shelby (motion days), Knox, 5 business days notice.
- Davidson County
  - Motion is filed – response is optional
  - Motion is docketed before it is filed
  - At initial hearing, no proof is presented – only legal argument
  - If proof is necessary, a second hearing is set
  - Judicial officer may ask for briefs by the parties
- Shelby County Juvenile Court has local rules requiring motions to be filed with the Clerk's Office, docketed, and set on specific motion days.
  - Source: *Shelby County Juvenile Court Local Rules (Rule 4)*.



# Motions



# Exchange First, File Later

**Informal Discovery:** Review the case file as early as possible.

- Gather key documents (copies of pleadings and relevant notices filed by other parties).
- Obtain information from the caseworker and service providers.
- When additional information is required, use informal discovery methods first.
- Know your local rules: Williamson Co. requires that the party filing a Motion for Discovery certify efforts to come to an agreement prior to filing (Local Rule 14).





# Discovery Motions Pursuant to TRJPP Rule 305

## Informal Discovery

- Exchange information early and cooperatively — the rule encourages informal resolution before formal requests.
- Communicate with opposing counsel and GAL about witness lists, exhibits, and expert reports.
- Request DCS case documents and service updates through informal disclosure first.
- Courts expect counsel to document informal efforts before filing to compel discovery.

## Formal Discovery Tools

- Motion to Compel – File only after informal efforts fail.
- Subpoenas & Depositions – Used to preserve testimony when necessary.
- Protective Orders – Use when confidential or privileged materials are sought.
- Motion to Exclude – If evidence wasn't produced, move to exclude it before or at trial.
- Discovery Sanctions – May include exclusion or continuance (court discretion).



# Responses to Discovery Motions

- Motion to Quash (overboard or improper subpoena)
- Motion to Quash as Irrelevant
- Motion to Quash Discovery (e.g., improper subpoena or deposition request)
- Motion for Protective Order (safeguard privileged information)
- Motion for Extension of Time (to respond/comply with discovery)
- See *In re Carolina M.*, 2016 WL 5944997 (Tenn. Ct. App. Oct. 6, 2016): CASA's motion to quash a discovery. Be careful in adversarial approaches.



# Motions in Limine

- Why do you need them in a judge-tried case?
  - Affects how you try the case
  - Resolves issues early
  - May affect pre-trial resolution of the case
- What issues can you raise?
- Have discussions pre-trial with counsel about children's testimony pursuant to Rule 306. Motion to Exclude Child from Testifying or Motion for Accommodations as appropriate.
- See *In re Kansas B.*, 2022 WL 1307501 (Tenn. Ct. App., Apr. 29, 2022): When can you move to exclude or accommodate a child witness?
- Many courts have pre-trial dockets: use pretrial conference to handle these issues if possible.



# Rule 306, Child Competency & Statements

- TRJPP Rule 306 + TRE Rule 601 = Presumption of Competence
  - See *In re: Kansas B.* (Tenn. Ct. App. 2022): Error to exclude 7-year-old testimony absent competency findings over stepfather's objections.
- Use accommodations, not exclusion.
  - Motions should propose:
    - closed courtroom, in-camera testimony, or protective orders to reduce trauma.
- Use hearsay exceptions TRE Rule 803(25) (abuse/neglect hearsay) and TRE Rule 803(4) (medical diagnosis) when child should not testify.



# Motions for Failure to Make Reasonable Efforts

## Powerful tool for advocating for your client

- Motions for needed services:
  - Failure to Provide for the Educational Needs of a Child
  - Failure to Make Reasonable Efforts to Locate Missing Parent
  - Failure to Make Reasonable Efforts to Reunify Based Upon Inadequate Visitation
  - Motion to Compel Services (mental health evals, parenting, visitation support)
- Request findings on reasonable efforts at every review or permanency hearing
- See *In re Kaliyah S.*, 455 S.W.3d 533 (Tenn. 2015), which clarifies how reasonable efforts interact with TPR grounds. These motions are powerful in D&N (review/disposition), but not a defense to TPR.



# Trial Home Visits and Motions for Return

## T.C.A. § 37-1-130(d)

- When DCS decides to return a child on a trial home visit (THV)
  - Must notify the court
  - Court has 15 days to object or set a hearing
  - If court does not act, THV goes forward, and custody terminates after 90 days.
  - ❖ Practitioners should monitor these notices, if you believe the THV is unsafe, file a Motion for Review within the 15-day window.
  - ❖ Conversely - If you represent a parent who is ready for a THV, you can file a Motion for Return Custody, citing T.C.A. § 37-1-130 and parental progress.
- Have conditions that led to removal been remedied? Do the reasons for foster care persist?



# Dispositional & Termination Motions



# Motion to Return from Custody

- Severe child abuse finding T.C.A. § 37-1-102 (b)(22)
  - A Motion to Return Custody can be filed in specific circumstances, even after a severe abuse finding T.C.A. § 37-1-130 (c).
  - Extraordinary evidence generally required. See *In Re: Josephine H.* (Tenn. Ct. App. 2024)
  - If severe abuse finding exists, return only if clear & convincing evidence shows safety.
- DCS may file a motion requesting the Court to order they don't have to make reasonable efforts.
- Severe abuse is a ground for termination of parental rights– never stipulate severe abuse.





# Motions in Limine & Evidence in TPR Trials

- File motions to exclude prejudicial or irrelevant history (TRE Rule 403, TRE Rule 404(b)).
- Move to admit child statements under TRE Rule 803(25) or TRE Rule 803(4) instead of live testimony.
- Ask court to limit cumulative or inflammatory proof.
- Summary judgment permitted only when no factual disputes exist (rare in best-interest analysis). TN allows when facts are truly undisputed (*In Re Rhyder C.* (Tenn Ct. App. 2022)).
- ***Reminder: You want rulings on the record for appeal.***



# Additional Motions and Common Filings

Procedural Motions	Post-Disposition / Enforcement Motions	Case-Progress / Review Motions
Motion to Rehear (TRJPP Rule 105)	Motion to Enforce Order	Motion for Further Findings
Motion to Vacate (T.C.A. § 37-1-139)	Motion for Contempt	Motion to Progress Visits
Motion to Set Aside (TRE Rule 60.02)	Motion for Trial Home Visit	Motion to Address Reunification
Motion for Stay (TRJPP Rule 108)	Motion to Modify Custody/Visitation (TRJPP Rule 310)	Motion to Review Placement
Motion to Reconsider	Motion for Relief from Judgment (TRJPP Rule 310)	Motion to Advance a Matter on the Docket



# Application 1

## Case Scenario:

Maria is a 10-year-old removed from her mother due to alleged substance abuse. DCS has not arranged any visitation in 6 weeks. Mother completed her alcohol/drug assessment, but services have not started. At the last hearing, DCS reported “ongoing efforts,” but mother has no visits and no referrals.

- What motion(s) would you file?
- What relief would you request?



# Application 2

## Case Scenarios:

- A 14-year-old in foster care has been out of school for three weeks because transportation was never arranged. The foster parent reported this to the caseworker, but no action has been taken.
- At the pre-trial conference, DCS indicates it intends to call a 7-year-old child to testify about alleged abuse. The child's therapist has warned this could be retraumatizing.
  - What motion(s) might you file, assuming you have tried to informally resolve the issues?
  - What relief would you request?



# Let's Talk About AI

A faint, circular seal of the University of Tennessee is visible in the background. The outer ring of the seal contains the text "THE TENNESSEE UNIVERSITY" at the top and "SEAL OF THE UNIVERSITY OF TENNESSEE" at the bottom. Inside this ring is a smaller circle containing the Latin motto "FIAT JUSTITIA RUAT COELUM". In the center of the seal is a figure of a woman in classical attire, holding a torch in her right hand and a book in her left. Below the figure are three stars.

# Opportunities and Considerations

## Opportunities for Practice

- Draft templates for common motions and orders (reasonable efforts, visitation, etc.)
- Summarize case law or statutes quickly to support motion arguments
- Generate outlines or talking points for oral arguments and hearings
- Improve access to justice by supporting pro bono and rural practitioners

## Ethical & Practical Cautions

- Verify all AI-generated text for accuracy and legal authority.
- Protect client confidentiality—never input identifying information into public tools.
- Remember Rule 1.1 (Competence) and Rule 1.6 (Confidentiality) from TN Rules of Professional Conduct.
- Treat AI as an assistant, not as an advocate—it cannot exercise judgment.
- See ABA Ethics Opinion 512.



# Practical Takeaways

- **File With Purpose** – Every motion should advance your client's goals. Be strategic, not noisy.
- **Cite the Rule or Statute** – Anchor every motion in its authority (TRJPP, T.C.A., or case law).
- **Request Written Findings** – Always ask for findings of fact and conclusions of law.
- **Preserve the Record** – State your objection, basis, and requested relief clearly.
- **Collaborate Before You File** – Try informal resolution first; judges expect cooperation.
- **Time It Right** – File early enough for notice under TRJPP Rule 105; follow local timelines.
- **Protect the Child's Voice** – Use TRJPP Rule 306 and TRE Rule 803(25) to balance protection and participation.
- **Build the Record for Permanency** – Motions shape the final permanency findings - frame every filing with reunification or permanency in mind.





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