

This is Really a Tough Job (Making Non-Jury and Jury Trials More Manageable)

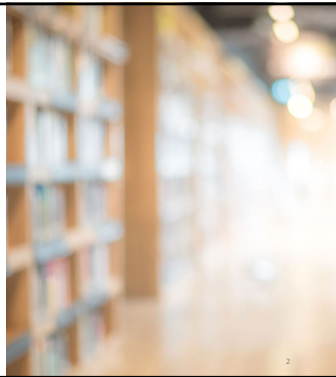
Senior Judge Don R. Ash

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Learning Objectives

After this session, you will be able to:

1. General ideas about pre-trial and Courtroom management
2. Tips for making non-jury trial more enjoyable and efficient; and
3. Tips for making jury trial more enjoyable and efficient



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Without Preparation !



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Key Word to Real Estate

(My Wife, Rita Ash is a Realtor with Parks in Murfreesboro)

- **Location**
- **Location**
- **Location**



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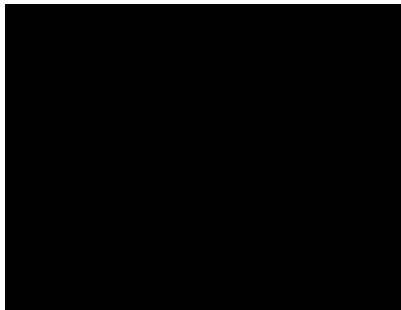
Key Word for all Trials

- **Preparation**
- **Preparation**
- **Preparation**



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Set
Expectations
Early



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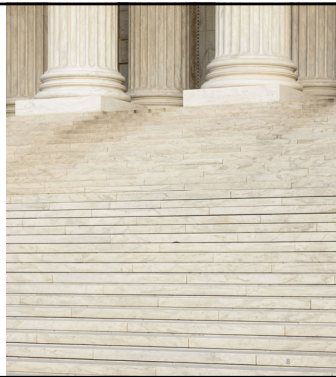
People Expect a Judge To:

Treat lawyers, the accused, jurors, and witnesses with civility and courtesy.
 Be patient with persons before the court.
 Be firm but fair in enforcing rules on civility.
 Start on time, and don't waste time.
 Control his / her temper!
 Treat everyone evenly and fairly.
 Let the accused have their "day in court."
 Be fair and impartial.
 Be dedicated to Justice and the Rule of Law.
 Not your job to educate lawyers on the law
 Remember you may not be the smartest lawyer in the courtroom !!!

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Judge Sets Tone

- Judge sets tone of civility in courtroom
- Level of formality in courtroom sets the tone for how attorneys, defendants, witnesses, and staff conduct themselves in courtroom
- When courtroom has air of dignity, courtesy, decorum, and order, appearance of justice benefits



Judge Joe Binkley

- Your first example of a Great Judge
- A great example of civility and dignity



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If the case becomes a battle between the Judge and counsel – The Judge Loses !!





Pay Attention

- Pay attention and act like you are paying attention.
- If you take notes or refer to books or a computer for information, explain what you are doing so the accused understands.

DO WE EVER TALK TO OTHER ADULTS LIKE THIS ?



Case Management

Remember more than 90% of all cases settle !!!!!!!

- Cases need to cook for awhile before they are ready to set for trial !



- Give cases time to get resolved !
What is a reasonable time for a divorce to settle ?

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Develop a Plan for Each Day's Work



- Plan ahead and review documents
- Make sure attys have complied with local rules
- Preparation is power
- Be Prepared – Get to Court early !!

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Non-Jury Trials



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Have a Source to Help You Prepare !!!

- Judicial Assistant



- Law Clerk/Intern



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I create a folder on each contested case about two weeks before trial !!



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What do I like in my Divorce Folder ?

- Complaint – check on service
- Answer and Counter-complaint
- Compliance with local rules (see next slide)
- Proposed parenting plan from each side (many times I will write on one for my ruling)
- Child support worksheets
- I WILL USE THIS INFORMATION TO FILL OUT MY MEMO GRID AS MUCH AS POSSIBLE BEFORE TRIAL-STATISTICAL INFORMATION – AND ASK PARTIES TO STIPULATE BEFORE TRIAL BEGINS !!! (**major time saver**)

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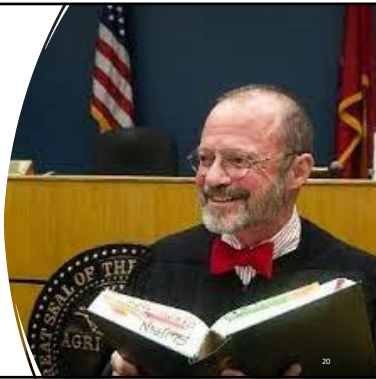
Contested Divorce Checklist

- Contested Divorce Checklist**
- ☐ Complaint
 - ☐ Answer & Counter-Complaint
 - ☐ Any Orders regarding discovery, disputes
 - ☐ Petitioner's Proposed Parenting Plan & CSW
 - ☐ Respondent's Proposed Parenting Plan & CSW
 - ☐ Blank Parenting Plan Form
 - ☐ Local Rules 12.01-12.06 (for contested divorce hearings)
 - Filed 8 days prior to final hearing date
 - Statement in Compliance with Rule 12.02:**
 - ☐ Husband
 - ☐ Wife
 - Form of Income, Attached W-2, Proposed Property Division:**
 - ☐ Husband
 - ☐ Wife
 - Valuations of Assets, Debts and Separate Property:**
 - ☐ Husband
 - ☐ Wife
 - Witness & Exhibit List:**
 - ☐ Husband
 - ☐ Wife

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Judge Bill Swann

- I Stole this form from in 1995 – made some modifications
- Another Great Judge
- Now Retired



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Memo Divorce Grid

DIVORCE AND ATTENDANT ISSUES

Docket No. _____ Date of Trial _____

Wife's Attorney _____ Husband's Attorney _____

Emotional Distress:

This case came on to be heard upon the original bill of the _____ for divorce upon the grounds of _____ and the answer thereto; the counterclaim of the _____ upon the grounds of _____ and the answer thereto.

Spouse support for the _____ was not sought in his/her bill for divorce, and that was not pursued at trial of the case.

Kidness, Custody and Residence:

The case was heard upon the testimony of the parties and other witnesses:

For the Plaintiff

- 1.
- 2.
- 3.
- 4.
- 5.

For the Court

- 1.
- 2.

For the Defendant

- 1.

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Best Interest Checklist

Health of wife:
THE DIVORCE:

Health of husband:

1. A divorce is awarded today to the _____ upon the grounds of _____
The original bill/counter-claim of the _____ is dismissed.

2. Findings of fact supporting the award:

3. Injunctive relief (if sought):

PRIMARY RESIDENTIAL PARENT

1. This Court specifically agrees with the findings of *Bah v. Bah*, 668 S.W. 2d 663 which held when ascertaining the child's best interest, the Court should consider which home will provide the best environment for the physical, emotional and moral welfare of the child. The court shall make residential provisions for each child, consistent with the child's developmental level and the family's social and economic circumstances, which encourage each parent to maintain a loving, stable, and nurturing relationship with the child. The child's residential schedule shall be consistent with this part. If the limitations of § 36-6-406 are not dispositive of the child's residential schedule, the court shall consider the factors found in § 36-6-106(a)(1)-(16):

Factors: Mother: Father:

(1) The strength, nature, and stability of the child's relationship with each parent, including whether one (1) parent has performed the

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Alimony Checklist

Determining whether a spouse has made a substantial contribution to the preservation and appreciation of the other spouse's separate property is a question of fact. The direct or indirect contribution of a spouse as homemaker, wage earner, parent or family financial manager, together with such other factors as the court having jurisdiction thereof may determine.

AND/OR

3. Certain adjustments in the ownership of the separate property of a party will be made in order to serve as security for part of the child support or spousal support pronounced above or to be announced below:

4. Certain adjustments in the ownership of the separate property will be made in order to effect payment pursuant to division of marital property [36-4-121 and 38-4-121(f)]:

SPOUSAL SUPPORT

A. **FACTORS FOR CONSIDERATION REGARDING SPOUSAL SUPPORT**
The legislature has directed Tennessee courts to consider twelve factors in awarding spousal support § 36-6-121(f)(1)-(12):

YES NO


(1) The relative earning capacity, obligations, needs, and financial resources of each party, including income from pension, profit sharing or retirement plans and all

result in a finding the contribution was substantial. Instead, the facts must be reviewed to determine: (1) whether the contributions were "real and significant" and (2) whether the real and significant contributions directly or indirectly caused the preservation and appreciation in the value of separate property. *Kerr v. Kerr*, 244 S.W.2d 321 (Tenn. 1951).

1) *Sherrill v. Sherrill*, 831 S.W.2d 295, 295 (Tenn. Ct. App. 1992).

2) *Langbein v. Langbein*, 81 S.W.2d 741, 747 (Tenn. 1935).

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Modification of Parenting Plan

- Staff prepares me a folder again
- Original parenting plan
- Petition for modification and Answer
- Local Rule Required filings
- Proposed Parenting plans from both side
- Child support worksheets

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Modification of Parenting Plan Checklist (Don't forget stipulation request)

PARENTING PLAN MODIFICATION

Case No. _____, _____
Mother's Attorney: _____ Father's Attorney: _____

Procedural Context:
This case came on to be heard upon the bill of the _____ for modification of the parenting plan upon the grounds of _____, and the answer thereto, the counterclaim of the _____, upon _____, and the answer thereto.

Evidence Proffered and Received:
The case was heard upon the testimony of the parties and other witnesses:

For the Plaintiff:
1. _____
2. _____
3. _____
4. _____
5. _____

For the Court:
1. _____
2. _____

For the Defendant:
1. _____
2. _____
3. _____

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Types of Modification to be considered

[Note Child Support rules: This IV-D child support rules involving the department of human services or any of its public or private contractors shall be bifurcated from the remaining parental responsibility issues. Separate orders shall be issued concerning this IV-D issues, which shall not be contained in, or in part of, temporary, permanent or modified parenting plans. The department and its public or private contractors shall not be required to participate in mediation or dispute resolution pursuant to the part.]

6. Request for Modification of Primary Residential Parent/Custody:
V.C. 4, § 36-4-1004(b)(1)(B)

1) The petitioner must prove by a preponderance of the evidence a material change in circumstances.

a. DOES NOT:
- require a showing of substantial risk of harm to the child
- interfere with the requirement that parties to an action for divorce incorporate a parenting plan into the final decree or decree modifying an existing custody order.
- imply a mandatory modification to the child support order

b. Includes but is not limited to:
- failure to adhere to the parenting plan or an order of custody and visitation or circumstances that make the parenting plan no longer in the best interest of the children.

c. In each individual case, the determination of whether a material change in circumstances occurred must be made with specific findings as to the reasons and the facts constituting the basis for the custody determination:

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Best Interest Test of Modification Standard met

4) If a material change in circumstances has occurred, you must also determine whether a change of the parenting plan is in the best interest of the child using the best interest factors:

III. Determination of Change in Parenting Plan

Finally, pursuant to the modification procedures described in § 36-4-1004(c), the court must apply the Illinois 135 factors of § 36-4-1004(b), so as to determine how, if at all, to modify the residential parenting schedule. Just as the court's processes for determining the child's best interests and residential schedule when making its initial custody decision overlap substantially, here again the two analyses are likely to be quite similar. Compare V.C. 4, § 36-4-1004(c) with § 36-4-1004(b). *See, e.g.,* *Illinois v. Smith*, 414 N.W.2d 485, 497-98 (Iowa, 1987).

The court shall make residential provisions for each child consistent with the child's developmental level and the family's social and economic circumstances, which encourage each parent to maintain a loving, stable, and nurturing relationship with the child. The child's residential schedule shall be consistent with this part. If the limitation of § 36-4-1004 are not dispositive of the child's residential schedule, the court shall consider the factors found in § 36-4-1004(c)(1)(C):

Factor	Mother	Father
(1) The strength, nature, and stability of the child's relationship with each parent, including whether any (1) parent has performed the majority of caregiving and (2) parent is the child's primary caregiver.		
(2) Each parent's age, caregiver's past, and		

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Termination of Parental Rights



Have your staff do another folder !

Documents in your folder

- **Original Petition (Check on Service or Process)**
- **Answer**
- **Is Petition against both parties or has there been a Surrender (Copy of Surrender)**
- **Appointment Order of Guardian Ad Litem**
- **Documents required by Local Rule**

Termination of Parental Right memo (Don't forget to get stipulations)

Termination of Parental Rights Memo

Docket No. _____ v. _____
Petitioner's Attorney _____ Date of Trial _____
Mother's Attorney _____
Father's Attorney _____
Guardian Ad Litem _____

Exemptions (Check):
This case came to be heard upon the Petition to Terminate Parental Rights filed by _____ on (date) _____ upon the grounds of _____
An answer was filed by (Mother/Father) _____ on (date) _____
(Optional) The parental rights of (Mother/Father) were terminated prior to this hearing on (date) _____ The Court appointed a Guardian Ad Litem on (date) _____

Evidence Offered and Received:
This case was heard upon the testimony of the parties and other witnesses:
For Petitioner(s):
1. _____
2. _____
3. _____
4. _____
5. _____
For Respondent (Mother/Father):
1. _____

Termination Factors

Amended Dec 2023

A trial court cannot make oral findings from the bench and later adopt them by reference in its final order.

(Step 3) Grounds:

1. First, a trial court must determine whether any grounds have been established for the termination of parental rights by clear and convincing evidence. The termination grounds are set out in Tennessee Code Annotated section 36-3-113(g).

2. Abscondence by the parent or guardian, as defined in § 36-3-104.

3. Failure to support a child to such an extent that:

4. There has been substantial noncompliance by the parent or guardian with an agreement of responsibility in a permanency plan pursuant to title 37, chapter 2, part 3.

5. The child has been removed from the home of the parent or guardian by order of a court for a period of six (6) months (the six (6) months must accrue on or before the first date the termination of parental rights petition is set to be heard) and:

6. The conditions that led to the child's removal still persist, preventing the child's safe return to the care of the parent or guardian, or other conditions exist that, in all reasonable probability, would cause the child to be subjected to further abuse or neglect, preventing the child's safe return to the care of the parent or guardian.

7. There is little likelihood that these conditions will be remedied at any date so that the child can be safely returned to the parent or guardian, or other conditions exist that, in all reasonable probability, would cause the child to be subjected to further abuse or neglect, preventing the child's safe return to the care of the parent or guardian.

8. The continuation of the parent or guardian and child relationship greatly diminishes the child's chance of early integration into a safe, stable and permanent home.

9. The parent or guardian has been found to have committed severe child abuse, as defined in § 37-2-102, under any prior order of a court or is found by the court hearing the petition to terminate parental rights or the petition for adoption to have committed severe child abuse against any child.

10. The parent or guardian has been sentenced to more than two (2) years' imprisonment for conduct against the child who is the subject of the petition, or for conduct against any sibling or half-sibling of the child or against a child residing temporarily or permanently in the home of such parent or guardian, that has been found under any prior order of a court or that is found by the court hearing the petition to be severe child abuse, as defined in § 37-2-102. Unless otherwise stated, for purposes of this subdivision (g)(5), "sentenced" shall not be construed to include a suspended sentence.

Best Interests Test

Amended Dec 2023

(Step 2) Best Interests:

2. Second, if the petitioner establishes a ground for termination, then the trial court must determine (and make a written finding) whether the best interest of the child will be served by the termination of parental rights by clear and convincing evidence. The (non-exclusive) best interest factors are set out in Tennessee Code Annotated section 36-3-113(i):

A. The effect a termination of parental rights will have on the child's critical need for stability and continuity of placement throughout the child's minority.

B. The effect a change in caretakers and physical environment is likely to have on the child's emotional, psychological and medical condition.

C. Whether the parent has demonstrated continuity and stability in meeting the child's basic material, educational, housing, and safety needs.

D. Whether the parent and child have a secure and healthy parental attachment, and if not, whether there is a reasonable expectation that the parent can create such attachment.

E. Whether the parent has maintained regular visitation or other contact with the child and used the visitation or other contact to cultivate a positive relationship with the child.

F. Whether the child is fearful of living in the parent's home.

G. Whether the parent, parent's home, others in the parent's household, trigger or exacerbate the child's experience of trauma or post-traumatic symptoms.

H. Whether the child has created a healthy parental attachment with _____

[illegible]

PARENTAL RELOCATION	
Checklist & Memo	
Children & ages: _____	✓ _____
Date of Current Parenting Plan: _____	
Current PRP: _____	Current Schedule: _____
Relocating parent: _____	Proposed Relocation: _____
<u>Witnesses & Exhibits</u>	
<u>Witnesses for Petitioner:</u>	
1. _____	5. _____
2. _____	6. _____
3. _____	7. _____
4. _____	8. _____
<u>Witnesses for Respondent:</u>	
1. _____	5. _____
2. _____	6. _____
3. _____	7. _____
4. _____	8. _____
<u>Exhibits:</u>	
1. _____	7. _____
2. _____	8. _____
3. _____	9. _____
4. _____	10. _____
5. _____	11. _____
6. _____	12. _____

[illegible]

December 2023	
<u>Tenn. Code Ann. § 36-6-108</u>	
A. Statement of Intent to Move	
Statement of intent to move given: (date) _____	Location: _____
Reasons for proposed relocation: _____	
Statement that absent agreement or objection by the nonrelocating parent within 30 days of the date of notice, relocating parent will be permitted to do so by law: _____	
B. Petition for Relocation	
Petition for Relocation filed: (date) _____	
Response in Opposition filed: (date) _____	
C. Best Interest	
<p>If a petition in opposition to relocation is filed, the court shall determine whether relocation is in the best interest of the minor child. In determining whether relocation is in the best interest of the minor child, the court shall consider the following factors:</p> <p>(A) The nature, quality, extent of involvement, and duration of the child's relationship with the parent proposing to relocate and with the nonrelocating parent, siblings, and other significant persons in the child's life;</p> <p>(B) The age, developmental stage, needs of the child, and the likely impact the relocation will have on the child's physical, educational, and emotional development, taking into consideration any special needs of the child;</p> <p>(C) The feasibility of preserving the relationship between the nonrelocating parent and the child through suitable visitation arrangements, considering the</p>	

[illegible]

Logistics and financial circumstances of the parties;			
(D) The child's preference, if the child is twelve (12) years of age or older. The court may hear the preference of a younger child upon request. The preference of older children should normally be given greater weight than those of younger children;			
(E) Whether there is an established pattern of conduct of the relocating parent, either to promote or thwart the relationship of the child and the nonrelocating parent;			
(F) Whether the relocation of the child will enhance the general quality of life for both the relocating parent and the child, including, but not limited to, financial or emotional benefit or educational opportunity;			
(G) The reasons of each parent for seeking or opposing the relocation; and			
(H) Any other factor affecting the best interest of the child, including those enumerated in § 36-6-106(a).			


_____. If, upon consideration of factors, the court finds that relocation is in the best interest of the minor child, the court shall modify the permanent parenting plan as needed to account for the distance between the nonrelocating parent and the relocating parent.

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Summary Judgement

Create Your Folder (ideally have your judicial assistant or law clerk prepare).

- 1) Complaint
- 2) Answer
- 3) Motion for SJ and Response
- 4) Supporting Documents (List of Undisputed facts, Depositions, Interrogatories, Etc.)



SUMMARY JUDGMENT MEMO

Standard:

"Summary judgment is appropriate when 'the pleadings, depositions, answer to interrogatories, and admission on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.'" *Rye v. Women's Care Center of Memphis, MPLLC*, 477 S.W.3d 235, 250 (Tenn. 2015) (quoting Tenn. R. Civ. Pr. 56.04).

"[W]hen the moving party does not bear the burden of proof at trial, the moving party may satisfy its burden of production either (1) by affirmatively negating an essential element of the nonmoving party's claim or (2) by demonstrating that the nonmoving party's evidence at the summary judgment stage is insufficient to establish the nonmoving party's claim or defense." *Id.* at 264 (emphasis in original). "[W]hen a motion for summary judgment is made [and] . . . supported as provided in [Tennessee Rule 56,] to survive summary judgment, the nonmoving party 'may not rest upon the mere allegations or denials of [its] pleading,' but must respond, and by affidavits or one of the other means provided in Tennessee Rule 56, 'set forth specific facts' at the summary judgment stage 'showing that there is a genuine issue for trial.'" *Id.* (quotations omitted).

Complaint filed: _____ Claims: _____

MSJ filed: _____ Response to MSJ filed: _____

Documents in Support of MSJ: (depositions, affidavits, interrogatories, etc.)

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Complaint filed: _____ Claims: _____

MSJ filed: _____ Response to MSJ filed: _____

Documents in Support of MSJ: (depositions, affidavits, interrogatories, etc.)

_____	_____
_____	_____
_____	_____
_____	_____

Documents in Opposition to MSJ:

_____	_____
_____	_____
_____	_____
_____	_____

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MSJ: Undisputed Facts:

1. _____	6. _____
2. _____	7. _____
3. _____	8. _____
4. _____	9. _____
5. _____	10. _____

Response: Disputed or Additional Undisputed Facts:

1. _____	6. _____
2. _____	7. _____
3. _____	8. _____
4. _____	9. _____
5. _____	10. _____

Argument:

Movant (Plaintiff/Defendant) seeking (grant of summary judgment/dismissal) on _____ claims based on no genuine issue of material disputed fact that _____.

Non-movant (Plaintiff/Defendant) argues (issue) _____ is a disputed fact based on _____.

Holding:

The Court finds there (is/is no) genuine issue of disputed material fact concerning whether _____ and (grants/denies) the motion for summary judgment.

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My
Suggestions
(Feel Free to
Disregard)

- You review the filings and highlight what you believe are the material undisputed facts
- Have your staff type up a draft of the undisputed facts and conclusions of law
- Remember the judge must prepare his/her own conclusions of law and findings of fact – lawyers can not do it for you !!!!!!!

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Chancellor Jeri Bryant is a wonderful resource when dealing with a summary judgment motion !!!



- A Great Judge
- Handled numerous SMJ Motions
- A great mentor for younger Judges

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Appellate Courts sometimes require Finds of Fact and Occlusions of Law (I do it in almost every case)



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Once Your Form is Filled Out You can read your Findings into the Record



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Disclaimer

- Laws change
- Need to update
- Not biblical – Double check my work
- All forms referred to are in your materials

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Jury Trials

- Consider different procedures for criminal versus civil jury trials

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Develop a Case Management Plan

- Regularly review new filings assigned to you
- After a careful review of the complaint and answer or plea date in a criminal proceeding, decide if a status conference is appropriate
- Do a detailed scheduling order with a designated trial date (Just my opinion about the trial date)



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I Stole these two forms

- Judge Chris Craft (criminal)
- Always willing to help with questions
- Another Great Judge
- Judge Butch Childers (civil)
- Retired
- Another Great Judge



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Checklist for Criminal and Civil Trials (provide to both sides)

- CRIMINAL**
1. Bailiff opens Court (after everyone is in place).
 2. Call the jury: "Will the Clerk please call the jury?"
After all testimony is heard, the Clerk will call the jury.
 3. The Clerk will call individual jurors to the jury box. After examining jurors in front of the jury and to the Clerk, all potential jurors have been called and seated. **ADMONISH THE JURY** (Clerk will have delivery sheet for jurors before judge comes in.)
"Ladies and Gentlemen, please stand and take your right oath."
THE OATH
"I, _____, do hereby swear that I will faithfully and impartially try the case before me, and I will not be influenced by any person or thing."
"Do you all agree to do this?"
"Yes, we do."
"Very well, please be seated."
4. Introduction and Court personnel. Introduction and admonition (to each side separately) as stated in presence of jury. **"Do you have any questions?"** If so, explain the Rule and ask witnesses to step out.
 5. "You have been summoned here as prospective jurors in a criminal case against _____ (Name of State or defendant) charged with _____ (Charge of crime)."
"I am, against the Rule and ask witnesses to step out."

- CIVIL**
- DAILY TRIAL CHECKLIST**
1. Bailiff opens Court (after everyone is in place).
 2. Call the case: "Will the Clerk, please call the case?"
The _____ County Circuit Court, Case No. _____
 3. Introduce self and Court personnel. Make a brief statement of the Nature and Type of Case.
"Ladies and Gentlemen, you have been summoned here as prospective jurors in a civil case. This is a case involving a _____ (Party plaintiff, etc.) and the events allegedly occurred on or about (date) _____ at or near (location) _____."
 4. Introduce parties and attorneys or self, attorneys to do so.
 5. The Clerk will call individual jurors to the jury box. After examining jurors in front of the jury and to the Clerk, all potential jurors have been called and seated. **ADMONISH THE JURY** (Clerk will have delivery sheet for jurors before judge comes in.)
"Ladies and Gentlemen, please stand and take your right oath."
"I, _____, do hereby swear that I will faithfully and impartially try the case before me, and I will not be influenced by any person or thing."
"Do you all agree to do this?"
"Yes, we do."
"Very well, please be seated."
6. "You have been summoned here as prospective jurors in a civil case against _____ (Name of State or defendant) charged with _____ (Charge of crime)."
"I am, against the Rule and ask witnesses to step out."

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Jury Trial Pre-Trial (Not in every case!)

- First base is a strong pretrial order with clear deadlines
- Pre-Trial Conferences are essential to cover issues like jury selection, evidentiary problems, technology, etc.
- Goal is for the Jury Trial to be a smooth process
- Preparation, Preparation, Preparation



[illegible]

Try to resolve evidentiary issues pre-trial
(Different issues in civil vs. criminal)

- **Can pre-mark exhibits easily in a civil trial**
- **Consider a jury notebook with exhibits**
- **Try to prevent Motions in Limine on the day of trial**

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Judge's Role in Voir Dire

- Set the tone
- Encourage responses/participation
- Control scope of atty's voir dire
- Ground rules for C and P challenges
- Abusive/invasive exam restrictions
- Court set time limits
- Case specific voir dire – try to anticipate the tough questions plus concepts and you handle them !!!

Criminal vs. Civil Cases

- Understand it may be more difficult for jurors to handle a criminal case (concerned about jail time, possible life experience with sexual abuse, Should I judge someone ?, Impact of Television, Possible individual Voir Dire)
- Civil Cases have challenges as well – Tort Reform, McDonald's Coffee case, Too many personal injury lawyers
- Self-Represented Litigants – Civil Trial vs. Criminal Trial

Biggest Challenges

- Excessive time doing nothing
- Lack of understanding of the process
- Low compensation
- Length of service



How Many Jurors in the Box? (Important)

- What do your rules allow?
- Consider seating enough jurors (add additional chairs) to cover preemptory challenges
- Allow Back Strikes



Questionnaires – Benefits

- Reduces juror nervousness when asked to talk in front of other jurors
- Allows jurors to be more honest about embarrassing issues – medication, criminal conduct of self or relatives, mental issues, initial opinions about legal issues
- Shortens time of *voir dire*
- Excellent in high profile cases
- Poll the seats before Voir Dire so Attys can avoid some questioning !!

Batson v. Kentucky
476 U.S. 79 (1986)

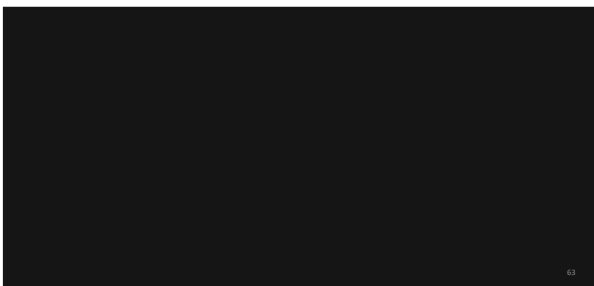
- Defendant must make prima facie showing challenge based on race
- If so, prosecution must offer race-neutral basis for striking juror in question (burden shifts)
- Court must determine whether defendant has shown purposeful discrimination
- See checklist in materials

Teaching Moment

- Take time to explain to the jury the procedures as the trial progresses (i.e. – Opening Statements are like a road map)
- Explain rulings on objections if possible (i.e. – explain what hearsay is)



Does This Sound like your jury instructions ?



Jury Instructions

- People learn different ways
- Copies of instructions for jurors
- Avoid legal jargon
- Putting instructions on screen
- Give instructions throughout the trial



Final Ruling

- Be sure and prepare parties for jury verdict
- Tell them procedures return with the verdict
- Have security in the room and warn of consequences if outburst
- After verdict, explain the sentencing/appeal process !!!

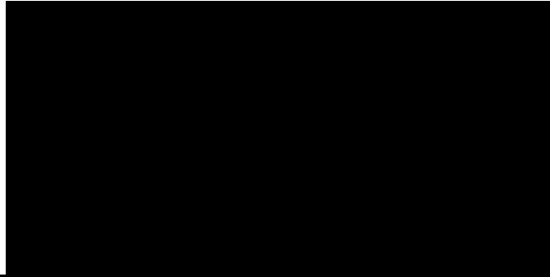


My Favorite Rules of Procedure and Evidence when handling a Jury Trial !!!!!

- Tn Rule of Evidence 403– Exclusion of relevant evidence on grounds of prejudice, confusing, misleading the jury, etc.
- Tn Rule of Civil Procedure 43A.03 – Jurors' Questions of witnesses – try it in a civil trial first
- Tn Rule of Civil Procedure 47.02 – sitting of additional jurors – speeds up Voir Dire !!

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Some Juror Questions – Interesting !



67

Check Your Handouts

- I have included the materials cited to in this presentation
- My office can send to your office these materials if it would be easier for you to use
- I would appreciate any suggestions for additions or deletions to my materials



Winner of the Contest
receives \$50 !

68

On a piece of paper write 1 - 15.

•Name each television show depicted in the dance video !

•Good Luck !!!!!

70

Let's Dance !



71

I Have Not Listed All The Great Judges in Our Conference !!!!!

- The Best Thing about being Part of Our Judicial Family is ACCESS !!
- Each of you have ACCESS to some of the most experienced and best legal minds in the State
- Use this resource !!!!!

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Senior Judge Don Ash
a/k/a not so great of a Judge

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