

**RULES REGULATING PRACTICE AND PROCEDURE
IN THE JUVENILE COURT OF MEMPHIS AND
SHELBY COUNTY, TENNESSEE**

ADOPTED AND EFFECTIVE OCTOBER 1, 2008

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Compiler’s Note. These Local Rules of the Juvenile Court Memphis and Shelby County were adopted and entered on the minutes of the Court on October 1, 2008.

Rule 1

SCOPE AND PURPOSE

These rules and the Tennessee Rules of Juvenile Procedure shall govern the practice and procedure in the Juvenile Court of Memphis and Shelby County. They are intended to provide for the speedy and just determination of every proceeding, and in juvenile proceedings they shall at all times be enforced and construed beneficially for the remedial purposes embraced in Title 37 of the Tennessee Code Annotated. In the event of any apparent conflict, the Tennessee Rules of Juvenile Procedure shall prevail.

Rule 2

COURTROOM DECORUM

All persons in the Courtroom will stand while the Court is being opened and also while the Court is being adjourned. All orders, judgments, and decrees will be handed to Court through the Court attendants and lawyers will not approach the bench from the bar except when directed by the Judge. There will be no smoking or chewing of gum in the Courtroom and all lawyers and Court attendants will be appropriately dressed while in Court attendance. The Bailiff in attendance will be charged with the responsibility of requiring compliance with these standards of Courtroom conduct and deportment.

Rule 3

OPENING AND ADJOURNMENT OF COURT

Upon the Judge or Referee entering the Courtroom preparatory to the formal opening of Court, the Bailiff will call the Courtroom to order, directing all in attendance before the Court to stand and will open Court in substantially the manner following:

This Honorable Juvenile Court of Memphis and Shelby
County is now open for the transaction of business pursuant
to adjournment, the Honorable _____ presiding.

Thereupon the Judge or Referee will take the seat upon the bench and those in the Courtroom will be seated. Upon the Court instructing the Bailiff to adjourn Court for the day, the Bailiff will direct all in attendance before or in the courtroom to stand, as will the Judge, and will adjourn Court in substantially the manner following:

This Court now stands adjourned until tomorrow morning
at _____ o'clock. (or until a day certain)

Rule 4

SESSIONS

There shall be a session of Court daily except on non-judicial days, which are Saturdays, Sundays, and holidays. Court hours are 8:30 a.m. to 4:30 p.m. Only the presiding Judge may authorize exceptions to this schedule. Unless the Judge directs otherwise, any case in which the Court has jurisdiction may be heard in the first instance by a Referee.

Rule 5

OFFICE HOURS

The office of the Clerk of Court shall be open for the regular transaction of business from 8:00 a.m. until 4:30 p.m. except on non-judicial days.

Rule 6

PLEADINGS

All petitions, answers, orders, briefs, or other legal documents, filed or presented to this Court shall be typewritten on forms provided by the Court or typewritten on letter-sized (8 1/2 " x 11") paper, opaque and unglazed. Two copies of every pleading shall be filed in all cases, one of same to be marked "duplicate." Such pleading must be filed at the Legal Records Section of the Court Clerk's Office, and it shall be the duty of the Clerk of Court to indicate on each copy the date and time of filing. Form petitions that meet the requirements of law are provided by the Court for most every type of proceeding within the jurisdiction of the Court, and Court personnel shall appropriately assist as necessary in the preparation of petitions.

Rule 7

SUBPOENAS

All subpoenas shall be typed or printed on forms provided by the Court and submitted to the Court officer assigned to the case, or to the Clerk of Court, as diligently as possible, but not later than five (5) days, excluding non-judicial days, before the scheduled date of trial. A party to a proceeding who is not represented by an attorney may simply furnish to the assigned Court officer a list of the names and addresses of the witnesses to be subpoenaed, and it shall be the responsibility of that officer to cause subpoenas to be issued in accordance with this rule.

Rule 8

ATTORNEYS

All attorneys licensed to practice law in Tennessee shall be allowed to appear in any matter coming before the Court. Every party to a proceeding who wishes to employ an attorney shall be given an opportunity to do so. The Court will appoint an attorney to represent any defendant who has a constitutional right to counsel and who is determined by the Court to be indigent. Attorneys and guardians ad litem shall enter an appearance in a case in which they represent a party as counsel of record or have been appointed by the Court. Entering an appearance may be made by filing a pleading on behalf of a party,

filing a formal notice of appearance or a written form notice filed with the Clerk. Attorneys of record and guardians ad litem shall represent the party throughout the proceedings, including any appeals, until the case has been concluded or counsel has been allowed to withdraw by Court order upon written motion. In accordance with Rule 19 of the Tennessee Rules of Juvenile Procedure, attorneys of record who wish to terminate their representation may do so only with permission of the Court.

(Note: Attorneys may elect to file all preliminary and statutorily required documents without the assistance of Court personnel.)

Rule 9

CONDUCT OF TRIALS

Proceedings in this Court, except dependent and neglect cases, shall be open to the general public. In the discretion of the Court, the general public may be excluded from any juvenile or paternity proceeding and only those persons having a direct interest in the case may be admitted. And no person within, without, or in the vicinity of the Juvenile Court Building shall accost, solicit, or interfere in any way with any person on or about the premises of the Court or otherwise engage in any conduct which may tend to interrupt, disturb, or hinder the orderly conduct of the Court's business. In Juvenile proceedings a parent or guardian must be present at every adjudicatory hearing unless excused by the Court in writing or on the record. The Court will appoint a guardian ad litem to act on behalf of a child in determining the interests of a child at any stage of the proceedings when the child is without parent or guardian, or when it appears to the Court that the interests of the child so require.

Rule 10

DISCOVERY

Neither the Rules of Civil Procedure nor the Rules of Criminal Procedure pertaining to discovery are applicable in Juvenile Court proceedings. The Court shall, however, allow discovery upon motion by either party, being timely filed, and upon good cause shown. Any party may object to discovery by filing a response promptly after the filing of such motion. Failure to respond to a motion for discovery shall be considered consent to such motion. Discovery may then be allowed under such terms and conditions as the Court may prescribe. Officers of the Court shall make available for inspection by counsel to a party to any proceeding all Court files, records, and written reports in the case, except confidential reports of harm made pursuant to child abuse laws and other information which may not lawfully be disclosed. Court Appointed Special Advocate (CASA) and child welfare agency reports shall be confidential and, unless the Court directs otherwise, shall be submitted to the Court in original form only, in camera, and may be reviewed exclusively by counsel for the parties. The confidential CASA or child welfare agency report shall not be made a part of the record except under seal. Thereafter, upon written motion of a party, and good cause being shown, the Court may allow the seal to be removed under such circumstances as the Court may prescribe.

Rule 11

ERROR AND EXCEPTIONS

Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded. Exceptions to rulings of the Court are unnecessary. If a party makes no objection to a ruling or order, absence of an objection does not in itself prejudice the party thereafter.

Rule 12

PETITIONS FOR REHEARING HEARD BY THE PRESIDING JUDGE

If a rehearing of any decision heard by the Judge is sought by any party to the action, a petition for rehearing before the Judge must be filed with the Clerk of Court within ten (10) days after the entry of the decree or judgment. Upon good cause shown, the Court may extend time limits specified in these rules except those time limits that are statutory. Before being presented to the Court, copies of petitions for rehearing, with any brief in support thereof, must be furnished to the adversary counsel, who will be accorded five (5) days within which to answer. Such petitions for rehearing and answers shall be filed and delivered by respective counsel promptly to the Court without argument. If the Court desires to hear oral argument, counsel will be so notified.

Rule 13

REHEARINGS OF MATTERS FIRST HEARD BY A REFEREE

The Judge may, on his own motion, order a rehearing of any matter heard by a Referee. Any party may, within five (5) days after the hearing before the Referee, excluding non-judicial days, file a request for and be allowed a hearing before the presiding Judge. Provided, however, that a rehearing will not be allowed in any delinquency or unruly case in which the Referee recommends dismissal after a hearing on the merits. The recommendation of the Referee, in all matters before the Court, shall be the decree of the Court pending a rehearing. Any hearing by a Referee on any preliminary matter is final and not reviewable by the Judge of the juvenile Court, except on the Court's own motion, except setting of bond in detention hearings.

Rule 14

ORDERS AND DECREES

Unless specifically directed to do so by the Court, attorneys are not required to prepare and submit orders and decrees. Such orders and decrees are prepared by a clerk who records the order at the time given in Court. Any party wishing to prepare and submit an order for approval may simply inform the Court of that intention. Such orders must be submitted to the Court for approval and entry not later than the fifth (5th) day following the decision.

The following language shall be included in all recommendations and orders when a child adjudicated delinquent is placed in the custody of the Tennessee Department of Children's Services, TO WIT:

That a child is placed in the custody of the Department of Children's Services pursuant to T.C.A. Section 37-1-129 shall be removed immediately from the Juvenile Court's detention facility by the department's representative. For the purpose of this provision "immediately" means the day the Court commits the child to the Department of Children's Services.

Rule 15

APPEALS

An appeal of the Court's disposition of a child in any case, whether the allegations of the petition are admitted or denied may be perfected by filing a notice of appeal on a form provided by the Court within ten (10) days, excluding non-judicial days, of the final disposition. The appeal period shall commence the day after the order of disposition is entered. Provided, however, that if a rehearing of a matter heard by a Referee is not requested or provided on the Court's own motion, the parties shall be allowed fifteen (15) days, excluding non-judicial days, from the date of entry of the order in which to perfect and appeal. Any final order or judgment in a dependent and neglected or unruly proceeding may be appealed to the circuit Court and final orders in a delinquency proceeding may be appealed to the criminal Court. An appeal shall not operate as a stay, and the order of this Court shall remain in effect until or unless the circuit or criminal Court enters an order to the contrary. Appeal of any final judgment entered in Juvenile Court except the disposition of a child shall be as provided in the Tennessee Rules of Appellate Procedure.

Rule 16

MEDIATION AND PARENTING PLANS

Parties shall be made aware that Mediation services are available and may be ordered at the discretion of the Court in contested cases. The Court may also order that a Parenting Plan be submitted and incorporated by references into any Final Order.

Unless otherwise ordered, the Court requires contested actions, either for initial orders or modification of existing orders of this Court involving the following issues to be referred to mediation prior to a trial on the merits:

- (1) Custody of minor children;
- (2) Co-parenting responsibilities and schedules.

Upon motion of any party or sua sponte, the Court may order any other eligible matter within the jurisdiction of this Court, except delinquency, and neglect and abuse matters, to be referred to mediation prior to a trial on the merits. The parties may agree on any person to be a mediator. If the parties cannot agree on a mediator, a motion shall be made to the Court to appoint a Rule 31 dispute resolution neutral mediator. Nothing in this rule shall prevent the parties from proceeding with settlement negotiations prior to mediation.

The mediators' fees may be taxed as Court cost or the Court may determine the case is appropriate for pro bono mediation. The parents or guardian may directly negotiate the fees with the mediator. Each mediator must provide proof of three pro bono mediations to the AOC for annual reapproval.

THIS RULE MAKES MEDIATION DISCRETIONARY ON ALL CONTESTED ISSUES INVOLVING MINOR CHILD(REN). THE COURT ENCOURAGES THE PARTIES TO USE MEDIATION OR OTHER ALTERNATIVE DISPUTE RESOLUTION METHODS ON ALL CONTESTED ISSUES.

RULE 17

VISITATION – CUSTODY – PATERNITY PETITIONS

CUSTODY and PATERNITY – In initial petitions for custody or after establishment of parentage in the event there is a request for visitation and there is no agreement between the parties regarding visitation, unless the Court finds otherwise, the Court's standard visitation schedule shall be entered until there is an agreement of the parties or order of the Court is entered. In the event either party disagrees with standard visitation they may request the matter be scheduled on the appropriate docket for determination by the Court.

VISITATION – In initial petitions for visitation, in the event there is no agreement between the parties and/or guardian regarding visitation, unless the Court finds

otherwise, the Court may enter an order for co-parenting time with the current non-residential parent according to the Court's standard visitation schedule until an agreement is reached or the Court makes a further determination.

Standard Visitation Schedule - - - See Appendix 1

Rule 18

SCHEDULING OF HEARINGS AND CONTINUANCES

At any time prior to the trial date upon motion of any party or on its motion, the Court may refer any appropriate case for mediation.

Cases may be continued only by leave of Court. Cases will not be continued except for good cause. All cases continued by leave of Court will be by written order stating (a) the reason for continuance, (b) who requested continuance, and (c) date of continuance. Agreed upon continuances shall be by Order signed by counsel of all parties and/or parties and shall specify a new trial date. It is the party's responsibility requesting the continuance to notify all parties and witnesses subpoenaed of the continuance and the new trial date.

No case shall be "continued indefinitely." Any case not specifically scheduled for hearing within twelve (12) months of the date of filing or last issued process or service, which ever is later, shall be subject to dismissal.

Absence of a witness will not be grounds for a continuance unless the witness has been subpoenaed in accordance with the requirements of these rules and the Rules of Civil Procedure, if applicable.

When a case is set without objection, failure to complete discovery, unavailability of counsel on the trial date, inability to take depositions, or failure to complete any other trial preparation will not be grounds for a continuance, except for good cause shown prior to trial date. In cases continued or passed for reassignment, the Court may award expenses and attorney's fees, including compensation to witnesses for lost income and/or travel expenses and tax the same as Court costs.

All dispositional hearings shall occur immediately after the adjudication of a petition unless the Court deems otherwise. The Court may on its own Motion set a later dispositional date.

All petitions alleging dependent and neglect shall be set on a docket as may be designated by the Court for a status report within (not-later-than) thirty (30) days from the date of filing of said petition in the Clerk's Office. On the status report date, any pending procedural matters shall be resolved and an adjudicatory hearing date shall be assigned pursuant to a Certificate of Readiness being filed in accordance with Rule 21 of these rules.

RULE 19

PRELIMINARY HEARINGS IN DEPENDENT AND NEGLECTED CASES

Preliminary hearings in dependency and neglect proceedings may be limited by the Court to thirty (30) minutes. Each side will be allowed a maximum of fifteen (15)

minutes for opening presentation of witnesses, cross-examination of adverse party, and closing arguments. The Court may in its discretion expand said time limits.

It is unnecessary for the Court to hear more of the petitioner's proof than is necessary to establish probable cause, and the Court may terminate the hearing at any time that probable cause has been established and the defendant's have been afforded the opportunity to cross-examine the witnesses called by the petitioner and to present defense reasonably tending to rebut probable cause.

- (a) The rules and time restrictions pursuant to Rule 16, of the Rules of Juvenile Procedure shall be controlling.
- (b) At the preliminary hearing if a guardian ad litem has not been appointed, one shall be appointed for each child who is or may be the subject of a report of allegations of a petition for dependency, neglect and abuse, pursuant to Rule 13 of the Supreme Court Rules, and
- (c) The Court shall advise any party without counsel of the right to be represented throughout the case by counsel and that counsel shall be appointed if the party is entitled to counsel by law and is indigent and requests appointment of counsel.

Rule 20

MOTIONS – GENERALLY AND FOR APPOINTMENT OF ATTORNEY

Motions shall be disposed as here in after provided:

- 1. Motions shall be set for hearing on the dockets designated by the judicial officers to whom the cases are assigned. Legal arguments may be heard and agreements announced on the motion docket. Testimony will not be heard at the initial motion docket. If testimony is required, the case will be re-docketed. Briefs and responses may be required at the discretion of the judicial officer.
- 2. Motions shall be filed at least fourteen (14) days prior to setting for hearing, unless special approval from the Court is obtained prior to filing.
- 3. Motions for discovery in dependent and neglected, custody, or visitation cases will be routinely granted unless a written objection is filed. If an objection is filed, the designated judicial officers shall schedule the motion for a contested hearing.

Advisory Comment:

When the new Local Rules of Court become effective it will be the responsibility of the proponent of a petition to make a report of the status of the case (excluding child support and delinquency matters) within thirty (30) days of the filing of the action. Both private attorneys and attorneys for the DCS may

contact the Protective Services Department to obtain the docket day to which the case has been assigned and the proper docket day to present the report. The report is required in writing within the prescribed time. Since no testimony will be required, these status reports may be submitted in advance.

The purpose of this report is to determine that the case is progressing to be ready for trial at the assigned trial date which is set by the Protective Services Department. In most cases, and all D&N cases, a GAL will be appointed, and in the event neither a private attorney nor DCS is involved the GAL could fulfill this duty.

Referees assigned D&N and Visitation and Custody dockets each have a scheduled preliminary hearing docket. Status reports will be presented to the appropriate referee assigned the concerned docket either by mail or during the referee's preliminary hearing docket following the scheduled PCO

preliminary hearing, if any. Status reports shall be typed and reflect the status of the case. There will be no testimony or evidence presented at the status report date. Parties may announce agreements at these hearings.

Motions may be filed in the usual manner, and Referees may also schedule motions on cases assigned to their scheduled docket at the preliminary hearing docket with approval of the referee. The assigned referee may schedule the motion to be heard at the mutual convenience of the court and/ or the parties.

Rule 21

CERTIFICATE OF READINESS – WITNESS AND EXHIBIT LISTS

In all cases, except Title IV-D child support matters, set for adjudication and/or disposition including, including matters for an initial order of Non Title IV-D child support and matters to modify an existing order of Non Title IV-D child support order, a Certificate of Readiness containing the following shall be filed with the Clerk of the Court and served upon all parties no later than ten (10) days prior to the scheduled hearing:

- a. A Witness List -- including the names, addresses and phone number (if known) of all witnesses (other than impeachment and rebuttal witnesses). Any witness not so listed shall not testify unless excused by rule or the Court.
- b. An Exhibit List – copies of exhibits to be proffered at trial (other than impeachment or rebuttal exhibits). Exhibits, that are not easily capable of image reproduction shall be identified and made available for inspection by opposing counsel.

Failure to comply with this rule could result in sanctions to the attorney and offending parties witnesses not being allowed (permitted) to testify.

SAMPLE FORM See Appendix

Rule 22

RESTITUTION

The Court may at the dispositional hearing set restitution in Delinquency cases as provided by T.C.A. 37-1-131 on motion of proper parties or on the Court's motion. The Court may limit discovery for purpose of restitution.

Rule 23

CHILD AND FAMILY TEAM NON-DCS AND NON-PCO CASES

Parties shall be made aware that the Tennessee Department of Children's Services is available to conduct a CHILD AND FAMILY TEAM conference to aid the Court and to assist the parties to resolve issues alleging that a child is dependent and neglected unless the department is a party or a protective custody order has been entered. The parties' participation in scheduled meetings may be ordered at the discretion of the Court in contested cases upon review by the Court of the department's initial investigative report of the allegations of the petition. In the event the Court orders a child and family conference the department will inform the parties at their last known address to appear at a place to be designated either together or separately as may be appropriate for them to be instructed as to department's function in facilitating child and family meetings, and shall be informed of the duties and responsibilities of the parties. In the event the parties fail or refuse to participate in said meeting the Court may render sanctions against the offending party unless good cause is shown for such failure.

Rule 24

AGREED ORDERS IN CIVIL MATTERS

Tennessee Rules of Juvenile Procedure, Rule 22

(A) General Provisions. Most civil matters within the jurisdiction of this Court may be resolved by a written agreement between the parties. After petition is filed if the parties resolve their matter they may submit a written agreement to be signed by the designated referee as per AGREED RECOMMENDATION, which shall recite that the parties are aware that the agreement is based upon the order of the court and their failure to comply therewith without just cause places them in contempt of court and subjects them to the action that the court deems proper within its jurisdiction. The order may be entered into the minutes after judge's confirmation by signature.

(B) In child custody cases, and cases pursuant to petition for parentage, T.C.A. 36-2-301, et seq., when parties are in complete agreement in matters of custody, support (with completed child support work sheets), and visitation, and a court hearing appears to be unnecessary, the parties may enter into an agreed order. *

Agreed orders may be modified, due to change of circumstances, by agreement of the parties with approval of the court or by order of the court upon notification to parties and a hearing. In no event shall modification of an agreed order result in a child being placed into the custody of the Department of Children Services without the appropriate petition having been filed with the clerk of the court alleging the child to be dependent, neglected, abused, unruly or delinquent.

(C) In petitions alleging dependency, neglect or abuse the court shall not approve an agreed order regarding custody, support, or visitation awarded to a party other than the state unless there has been a social investigation as required by law, and the investigating agency's recommendation concurs with the agreement between the parties.

This subsection shall not be construed as eliminating the judicial findings required for child in state custody by T.C.A. section 37-1-166 and 37-2-409 or as otherwise required by case law and federal regulations. The agreed order must recite the findings to the court's satisfaction and be signed by the referee and confirmed by the judge.

*In regard to agreed orders in custody cases, counsel is urged to carefully review the holding in Blair v. Badenhope, 77 S.W.3d 137 (Tenn. 2002), regarding possible impact of an agreed order changing custody from a parent to a third party on any future modification of such agreed order. See Rule 22, TRJP and Advisory Commission Comment (2007)

Rule 25

RESTRAINING ORDERS

(a) On application of a party or on the court's own motion the court may make an order restraining or otherwise controlling the conduct of a person if:

(1) An order of disposition of a delinquent, unruly or dependent or neglected child has been or is about to be made in a proceeding under this chapter, or as otherwise authorized by law;

(2) The court finds that the conduct (i) is or may be detrimental or harmful to the child and (ii) will tend to defeat the execution of the order of disposition; and

(3) Due notice of the application or motion and the grounds therefor and an opportunity to be heard thereon have been given to the person against whom the order is directed.

(b) Restraining orders may be issued upon such terms and conditions, and shall remain in force for such time, as shall seem just and proper to the judge. See Rule 26, TRJP and Advisory commission Comment (2007)

These Local Rules of the Juvenile Court of Memphis and Shelby County, Tennessee, are hereby adopted and entered on the minutes of the Court on the ____ day of _____, 2008.

Curtis S. Person, Juvenile Court Judge

APPENDIX

STATUS REPORT

Type of case
Service of process on all parties
Is party entitled to attorney by law
Has GAL been appointed
Have parties exchanged witness list
Has discovery been completed
Referral of case for mediation
Referral of case for DCS child and family team meeting
Estimated length of time to try cases

PRIVATE ATTORNEY PROCESS FOR FILING PETITIONS

Dependent & Neglect

1. Information sheet completely and accurately filed out.
2. Affidavit of Custody TCA 36-6-224.
3. Request Clerk of Court to research court records to determine if files exist
4. Petition typed according to statute and Rules of Court:
 - (a) If emergency protective custody requested petition must have proper allegations
 - (b) Order prepared for Judge or Referee to issue PCO
5. Complete summons and notices to be served on appropriate parties.
6. Check with Protective Services department to obtain status report date.
7. Request Protective Services department to make referral to DCS.
8. Request appointment of GAL from coordinator.
9. Make status report in writing to proper docket and date.
10. Request clerk to schedule for trial when case at issue.
11. Prepare and file subpoenas.

CUSTODY AND/OR VISITATION

1. Request Clerk of Court to research court records to determine if files exist.
2. Prepare petition and summons to file.
3. Check with Protective Services department to obtain status report date.
4. Make status report in writing to proper docket and date.
5. Request clerk to schedule for trial when case at issue.
6. Prepare and file subpoenas.

