

LOCAL RULES OF PRACTICE FOR THE JUVENILE COURT OF RUTHERFORD COUNTY, TENNESSEE

Rule 1. Scope and Purpose

These rules shall govern the practice and procedure in the Juvenile Court of Rutherford County, Tennessee. These rules supersede all local rules adopted prior to December 1, 2007.

Rule 2. Courtroom Decorum

There will be no smoking, eating, drinking, or chewing gum in the courtroom. Lawyers, Court attendants, and all persons will be appropriately dressed while in Court attendance. There will be no pagers, telephones, or beepers allowed in the courtroom unless such devices are silenced. Any such devices that disrupt Court proceedings are subject to seizure and confiscation, and any person who is in possession of such a device that disrupts Court proceedings may be held in contempt of Court and sanctioned accordingly.

Rule 3. Sessions and Office Hours

There shall be a session of Court daily, except on non-judicial days, which are Saturdays, Sundays, and holidays. Court hours are 8:00 a.m. to 4:30 p.m. Exceptions to this schedule may be authorized by the Judge or Referee.

Rule 4. Referees

Unless the Judge directs otherwise, a Referee may hear any case over which the Court has jurisdiction. Any ruling by a Referee on a preliminary matter is final and not reviewable by the Judge, except on the Court's own motion. T.C.A. Sec. 37-1-107(d). Any ruling by a Referee on a non-preliminary matter may be appealed to the Judge by filing a request for rehearing with the Juvenile Court Clerk within five (5) judicial days of the date on which the Referee's Order is stamped "FILED" by the Juvenile Court Clerk. T.C.A. Sec. 37-1-107(e). A prematurely filed request for rehearing shall be treated as if it were timely filed immediately after the entry of the Referee's Order. Unless the Judge orders otherwise, the ruling of the Referee shall be the decree of the Court pending a rehearing. T.C.A. Sec. 37-1-107(e).

Rule 5. Court Costs and Filing Fees

Costs for filing a pleading, service of process, and Court costs are to be established and assessed by the Juvenile Court Clerk. The schedule of fees is available for inspection and copying upon request in the office of the Juvenile Court Clerk. Filing fees or costs may be waived by the Court for good cause.

Rule 6. Form of Pleadings

All pleadings filed or presented to the Court shall be on letter-sized (8 ½" x 11") paper. An original pleading shall be filed in all causes and shall be accompanied by sufficient copies necessary for service upon the parties and sibling files.

Rule 7. Intake, Service of Process, Subpoenas, and Other Documents

(a) All process shall be delivered to the office of the Juvenile Court Clerk for service of process to be completed by any means reasonably sufficient to insure that the parties have notice pursuant to statute.

(b) Unless the Court orders otherwise, every pleading or other document filed with the Court subsequent to the original Petition shall be served on all parties and shall contain a Certificate of Service. The Certificate of Service shall contain the date and manner of service and the names and locations of each person served.

(c) After service of process has been effectuated by personal service for an initial scheduling and the party has presented him/herself to the Court, subsequent notice may be made by mail or in open Court. All parties shall appear at all proceedings unless excused by the Judge or Referee.

(d) In delinquent/unruly cases, when a detention hearing is needed, the Petition(s) at issue must be filed with the Juvenile Court Clerk by 10:00 a.m. on the morning of the detention hearing. For non-detention hearings, the Petition(s) must be filed at least five (5) judicial days before the hearing.

(e) In paternity cases, no case will be set for hearing until the party seeking the hearing files a completed "Personal Family History" form with the Juvenile Court Clerk. This form will be made available to parties by the Juvenile Court Clerk.

Rule 8. Record of Proceedings

The Court will record all hearings which must, by law, be recorded. Audio recordings will be maintained by the Court for a period of ninety (90) days. In the discretion of the Court, copies of audio recordings may be released to attorneys of record or court reporters. Any such party who desires to obtain a copy of a recording shall submit a written request to the Court, setting forth the reasons supporting the party's need to review the recording.

Rule 9. Scheduling of Hearings and Continuances

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

(b) Cases may be continued only by leave of the Court. Cases will not be continued except for good cause. All cases continued by leave of the Court will be by written Order stating the reason for the continuance, at whose instance, and the date of reassignment. Agreed continuances shall be by Order signed by counsel for all parties and shall specify a new hearing date. It is the responsibility of the party requesting the continuance to notify all other parties and witnesses under subpoena of the continuance and the reset date.

(c) No case shall be "continued indefinitely."

(d) Absence of a witness will not be grounds for a continuance unless the witness has been properly served with a subpoena in accordance with these rules and the Rules of Civil Procedure.

(e) When a case is set without objection to having it set, failure to have completed discovery, unavailability of counsel on the hearing date, inability to take depositions, or failure to have completed any other trial preparation will not be grounds for a continuance, except for good cause shown prior to the hearing date. In any case which is continued, 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.

(f) All dispositional hearings shall occur immediately after the adjudication of a Petition unless the Court deems otherwise. The Court may, upon proper motion or on its own motion, set a later dispositional date.

(g) All cases in which the State has announced its intention to transfer the case to criminal court shall be set for a transfer hearing within ninety (90) days of the date on which the child is taken into custody or the Petition is filed, whichever is earlier.

Counsel may petition and the Court for good cause may grant, extensions in the time limit for the hearing. In reviewing such a request, the Court will consider the reason for the request, circumstances of the case, the well being of the child, and whether delaying a hearing on the case will affect other related cases in other courts.

If a child is detained beyond the statutory ninety (90) day time period, upon appropriate application to the Court by the attorney for the child, the Court will entertain a Motion to Set Bond.

Rule 10. Guardian *ad litem* and CASA

(a) The Court may appoint a Guardian *ad litem* either on its own motion or at the request of any party when the Court deems such an appointment to be appropriate.

(b) The Court may also appoint CASA (Court Appointed Special Advocate) to act on behalf of a child in determining the best interest of the child in any action pending before the Court. Any party to a proceeding may request that CASA be appointed to the case. For the purpose of notice, CASA shall be deemed a party that must be notified of hearings and staffings.

Rule 11. Motions

(a) Unless otherwise docketed, motions will be set by the Juvenile Court Clerk on a designated motion day. Legal argument may be heard and agreements announced on the motion docket. Each side is allowed a maximum of fifteen (15) minutes to present all motions. Motions which cannot be heard within thirty (30) minutes shall not be set on a motion day without leave of the Court. Briefs and responses may be required at the discretion of the Judge or Referee.

(b) Motions shall be filed at least five (5) days prior to the hearing date thereon, unless all parties waive the five-day requirement or special approval from the Court is obtained prior to the filing.

(c) If attorneys are directed to prepare an Order, such Order must be filed within fifteen (15) judicial days of the hearing.

(d) In Delinquency Proceedings, the following issues must be raised via written motion prior to the trial or transfer hearing: motions to suppress evidence; request for discovery and inspections; and requests for a severance or consolidation of charges or defendants. Failure of a party to raise defenses or objections or to file motions required prior to trial shall constitute waiver thereof, but the Court for good cause may grant relief from the waiver.

(e) Attorneys filing motions to depose victims in neglect, abuse, or sexual abuse cases, or children in custody cases where neglect, abuse, or sexual abuse is alleged, shall provide notice to the District Attorney and criminal defense counsel when the attorneys are aware that a criminal case is pending regarding the same matters.

Rule 12. Discovery

(a) Local Rule for Discovery - Non-Delinquent Cases: Parties shall act in good faith to share information without a formal request for discovery. The Court will, however, allow discovery upon motion by either party, being timely filed, and upon good cause shown. Discovery may then be allowed under such terms and conditions as the Court may prescribe.

(b) Local Rule for Discovery - Delinquent Cases: In all delinquent proceedings where the complainant is the State, the attorney for the child, upon request, shall be given access to inspect and/or copy, or be informed of all matters in the possession or control of the State which would be discoverable in criminal court under the Rules of Criminal Procedure. To the extent possible, discovery shall be done informally.

Rule 13. Pre-Trial Exchanges and Briefs

(a) Private Cases: In all non-State cases set for trial, adjudication, or disposition, lists of all witnesses and exhibits (other than impeachment and rebuttal witnesses and exhibits) shall be filed with the Juvenile Court Clerk and exchanged between counsel at least three (3) full judicial days prior to the hearing. Witnesses and exhibits not listed may not be called/used except for impeachment or rebuttal purposes.

(b) State cases: In all cases in which the State of Tennessee is a party, lists of all witnesses and exhibits (other than impeachment and rebuttal exhibits) shall, upon request of any party, be exchanged between counsel at least three (3) full judicial days prior to the hearing. If requested, witness and exhibit lists not exchanged may not be used except for impeachment or rebuttal purposes.

(c) Briefs: If a party desires to file a Pre-Trial Brief, such Brief shall be filed no less than three (3) full judicial days prior to the hearing. Responsive Briefs are not required, but may be filed no later than 24 hours prior to the hearing with a courtesy copy being sent directly to the Judge or Referee.

Rule 14. Preliminary Hearings in Dependency/Neglect Proceedings

(a) Preliminary hearings in Dependency/Neglect proceedings shall be limited to two hours. Each side will be allowed a maximum of sixty minutes for opening, presentation of witnesses, cross-examination of adverse witnesses, and closing arguments.

(b) It is unnecessary for the Court to hear more of the Plaintiff'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 Plaintiff and to present defense proof reasonably tending to rebut probable cause.

Rule 15. Ratification of Permanency Plans

(a) If all parties are in agreement regarding the ratification of a Permanency Plan, it is not necessary for a ratification hearing to be held. Rather, the Permanency Plan may be signed by all parties and lodged with the Juvenile Court Clerk for entry, as if it were an Agreed Order.

(b) Alternatively, the Department of Children's Services may lodge a proposed Permanency Plan with the Juvenile Court Clerk, along with a Notice of Filing containing a Certificate of Service to all parties. If no party files an objection with the Juvenile Court Clerk within five (5) judicial days of

the date on which the Notice of Filing is filed, the Court will summarily ratify the proposed Permanency Plan without further hearing. If an objection is filed by any party, a ratification hearing will be held by the Court.

Rule 16. Mediation, Parenting Plans, and Parenting Classes

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 reference into any final Order. Additionally, the Court may order parents to complete parenting classes in any case, including Delinquent/Unruly cases.

Rule 17. Extraordinary Relief

(a) Protective Custody Orders and Temporary Restraining Orders: Persons seeking a Protective Custody Order or Temporary Restraining Order shall first file a Petition with the Juvenile Court Clerk. The Court will then determine whether the matter is an emergency and should be considered immediately *ex parte* or whether all parties can be given notice and the opportunity to be heard. When the opposing party has counsel of record, the party seeking the *ex parte* Order shall endeavor to give counsel notice that he or she will be seeking an *ex parte* Order. Exceptions to this rule include situations where time is of the essence and the best interest or welfare of the child(ren) will be compromised if notice is given. Such notice as the circumstances permit shall be given. Where no notice is given and counsel for the opposing party is known, parties seeking an *ex parte* Order should present an affidavit showing why it was not possible to give notice.

(b) Granting of Age Waiver for Marriage License: The Court may determine whether to grant judicial consent to the removal of the time and/or age requirement for the marriage license.

(c) Request for Consent to Abortion: The Court may determine whether to grant judicial consent to abortion upon proper application consistent with the procedure of Rule 24, *Rules of the Supreme Court of the State of Tennessee*.

(d) Request for Authorization for Use of Child in Law Enforcement Operation: The Court may determine whether to grant permission to use a child in a law enforcement operation.

(e) Handling of Criminal Injuries Compensation Awards for Minors: Where an attorney has been directed by the Tennessee Claims Commission or the Division of Claims Administration to turn over criminal injury compensation awards to the Juvenile Court Clerk's Office, said money shall be accompanied by a Petition and Order directing the Clerk to establish an account for the minor child. The Petition shall state the child's name, social security number, and that the funds are a result of criminal injury compensation award, and the amount that is to be tendered into the Court. The Petition will also request that the funds be placed in an interest-bearing account for the benefit of the minor child. The Order shall contain the following provisions: the child's name; when the money came into the Court; the amount being tendered into the Court; that the same shall be placed in an interest-bearing account; that to encroach upon the funds, a motion must be filed setting forth the need for the funds; the location of the account; and a certificate of service to the custodian of the minor child and any other appropriate individuals.

Form petitions meeting the requirements of this rule may be obtained from the Juvenile Court Clerk's office. Encroachment of the funds shall be allowed for any injury-related expenses specifically contemplated by the claims commission in granting the compensation award. Encroachment on the funds may also be allowed for unusual medical expenses (e.g., eyeglasses or braces) or unusual educational opportunities (e.g., school field trips), or with good cause shown, other needs. In order to obtain encroachment on the funds, the custodian or other appropriate individuals must file a motion with the Juvenile Court Clerk. The motion shall state the

child's name, the amount of money currently being held in the Juvenile Court Clerk's office for the benefit of the minor child, the particular need or expense for which disbursement is sought, and the amount sought. A written estimate or other appropriate documentation of the specific amount requested should be attached to the motion.

The Juvenile Court Clerk's office shall ensure that the attorney who represented the child in obtaining the compensation award is served with a copy of any motion to encroach. The attorney shall either appear at the hearing on the motion or the custodian or individual petitioning the Court to encroach shall be placed under oath and shall testify as to the child's need. If the Court grants the motion, an Order shall be entered reflecting the date, the amount of the disbursement, and to whom the check(s) are to be made payable. In the event that the check is to be made payable to a health care provider or to the school or other appropriate person, the Juvenile Court Clerk's office shall be charged with the responsibility of obtaining the address of the health care provider, the school or other appropriate person or agency and forwarding the check directly to them. In the event the sum is made payable to the custodian or other appropriate individual, that person shall be responsible for making an accounting to the Court within thirty (30) days of the date of the hearing as to how the money was spent. In these situations, the Court shall direct a deputy clerk to monitor the file and issue a Show Cause Order in the event the custodian or other appropriate individual does not make the required accounting.

Rule 18. Dormant Cases

To expedite cases, the Court may take reasonable measures to purge the docket of old cases where the cases have been dormant for an extended time.

Rule 19. Orders and Decrees

(a) Unless otherwise directed, the prevailing party shall draw the Order and file the same within fifteen (15) judicial days of the hearing (excluding non-judicial days). All Orders must include a certificate of service to all parties.

(b) Any Agreed Order that is announced in Court on the record does not have to be circulated to parties for their signatures prior to being lodged with the Juvenile Court Clerk. However, such Orders must state in the body of the Order that the agreement was announced in open Court.

(c) Required Additional Language for Non-Preliminary Referee Orders. The following language should be inserted in all non-preliminary Referee Orders: "This Order may be appealed to the Juvenile Court Judge by filing a request for rehearing with the Juvenile Court Clerk within five (5) judicial days of the date on which this Order was entered. This Order must be obeyed until the Judge rules otherwise. ANY FAILURE TO COMPLY WITH THIS REFEREE'S ORDER IS PUNISHABLE BY CONTEMPT, FOR WHICH THE PENALTIES MAY INCLUDE A FINE AND/OR IMPRISONMENT."

Rule 20. Restitution

(a) The Court may order restitution in Delinquency cases. Restitution is limited to a maximum of one thousand dollars (\$1,000.00) per juvenile for each delinquent act. The Court may limit discovery pertaining to restitution if it determines that the information sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or expensive, or the discovery sought is unduly burdensome or expensive, taking into account the needs of the child and the case.

(b) The amount of restitution may be “Reserved” by the State at disposition for future action when, in the opinion of the Court, it is in the child’s best interest to begin treatment and rehabilitation despite the fact that the amount of restitution is unresolved.

Rule 21. Delinquent Cases

(a) Arrest and Detention of Juveniles. In cases alleging juvenile delinquency, no child shall be placed in Juvenile Detention unless an officer authorized by law effects a proper arrest. Reference is made to Rule 4, *Tennessee Rules of Criminal Procedure*, for illustration of the proper procedure in this regard.

(b) Detention Hearings. When conducting detention hearings pursuant to Rule 15, *Tennessee Rules of Juvenile Procedure*, it is unnecessary for the Court to hear more of the State’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 State and to present defense proof reasonably tending to rebut probable cause.

Rule 22. Unruly Cases

In cases alleging unruly behavior based upon a child’s habitual disobedience of his/her parent(s), guardian, or custodian, it is necessary for the Petitioner to prove that the child “[h]abitually is disobedient of the reasonable and lawful commands of the child’s parent(s), guardian, or other legal custodian **to the degree that such child’s health and safety are endangered.**” See T.C.A. Sec. 37-1-102(a)(23)(ii) (Emphasis Added).

Rule 23. Waivers or Modification of Rules

Any of the rules herein enacted may be waived or modified by special Order of the Court when in the Court’s opinion such waiver or modification is necessary in order to protect the child(ren’s) best interests, to do justice, or to arrive at the equities of the case between or among the parties involved.

These Local Rules of the Juvenile Court of Rutherford County, Tennessee, are hereby adopted and entered on the minutes of the Court on this the 1st day of December 2007.

Donna Scott Davenport, Juvenile Court Judge