

MOTIONS PRACTICE: TOOLS FOR YOUR DEFENSE

Regional Juvenile Defender
Workshops
February-May 2006
Professor Tamar Birckhead
UNC School of Law



MOTIONS PRACTICE IN JUVENILE COURT

- A CONTRADICTION IN TERMS?
- FORM OF THE MOTION IN NC?
 - See generally, NC GL Article 52 (starts at 15A-951)
 - See NC GL 15A-953 for motions practice in district court



WHAT CAN A MOTION ACHIEVE?

- Forces you to fully develop your argument
- Protects client's rights
- Weakens state's morale
- Increases defense's bargaining power
- Demonstrates the quality of your advocacy to judge/ADA/client
- Strengthens atty-client relationship and builds client trust



MOTIONS WORK!



- The results are not “academic”
- Effective and persuasive
- Much success in the last two years in Durham and Orange juvenile courts
 - General motions
 - Motions specific to the charges and the facts

WHAT TO CONSIDER BEFORE FILING A WRITTEN MOTION?



- All practice is local:
 - But don't let this stop you!
- Who is the judge?
- Who is the ADA?

- Is this the best way to get what I need?

- Do I need to preserve the record for appeal?

...STILL NOT SURE WHETHER TO FILE A WRITTEN MOTION?



BREAK IT DOWN:

- What do I ultimately want to accomplish?
- Will my client's rights be protected if I don't get what I want and I haven't filed a motion?

WHAT IS YOUR ULTIMATE GOAL?



- TO GET INFORMATION?
 - DISCOVERY
 - TRANSCRIPT
 - COMPETENCY DETERMINATION
- TO GET FUNDS?
 - EXPERT
 - INVESTIGATOR
- TO GET A COURT ORDER?

WHEN DO I WANT TO FILE THE MOTION?



- To be considered when you are first assigned the case. Ask yourself:
- When is the issue ripe?
 - Pretrial?
 - At trial?
 - Post-trial?

WHAT MOTIONS DO I FILE PRE-TRIAL?



- PRE-TRIAL
 - MOTIONS BASED ON THE PETITION
 - DISCOVERY MOTIONS
 - COMPETENCY MOTION
 - MOTION FOR FUNDS TO HIRE EXPERT
 - MOTION TO SUPPRESS
 - MOTION FOR TRANSCRIPT
 - MOTION TO CONTINUE
 - MOTION TO DISMISS

WHAT MOTIONS DO I FILE AT TRIAL?



- AT TRIAL
 - MOTION TO CHANGE VENUE
 - MOTION FOR RECUSAL
 - MOTION TO SEQUESTER
 - MOTIONS IN LIMINE
 - MOTION TO DISMISS AT END OF STATE'S CASE
 - MOTION FOR FINDING OF NOT DELINQUENT

WHAT MOTIONS DO I FILE POST-TRIAL?



- POST-TRIAL
 - NOTICE OF APPEAL
 - CHANGE OF VENUE
 - MOTION FOR DEFERRED DISPOSITION
 - SENTENCING MEMORANDUM
 - MOTION FOR APPROPRIATE RELIEF
 - PETITION TO EXPUNGE JUVENILE RECORD

PUT IN THE EFFORT AND BE CREATIVE!



- BE INVENTIVE –
START FROM SCRATCH, IF NECESSARY
- TAKE CHANCES – YOU CAN CHANGE THE PRACTICE OF YOUR COURT
- DO THE LEGAL RESEARCH – IT'S WORTH IT
- LET YOUR GOAL DRIVE YOUR METHOD

HOW DO I PREPARE FOR THE HEARING?



- AFTER FILING THE MOTION, YOUR WORK IS NOT OVER
 - PREPARE YOUR ORAL ARGUMENT
 - PREPARE YOUR WITNESSES
 - PREPARE YOUR CROSS-EXAMINATION
 - KNOW THE LAW AND BRING COPIES OF CASES
 - KNOW THE APPLICABLE JUVENILE CODE

CAVEATS FOR MOTIONS PRACTICE



- FILE ONLY WHEN YOU HAVE A **GOOD** REASON
- COLLECT OTHERS' MOTIONS – BORROW FROM THEM WHEN APPROPRIATE
- GET FEEDBACK FROM COLLEAGUES
- KNOW YOUR JUDGE
- KNOW YOURSELF

AND, FINALLY...



- COMMUNICATE WITH YOUR CLIENT
- EDUCATE THEM ON WHAT YOU'RE TRYING TO ACCOMPLISH
- SHARE YOUR MOTIONS STRATEGY WITH THEM
- EMPOWER THEM WITH UNDERSTANDING
