

# Innovative Motion Practice in Juvenile Court

A motion is a procedural device to bring a limited, contested issue before a court for decision.

"Motion". Wex. Cornell Law School. Retrieved 8 January 2018.

# A Motion in a Legal Proceeding

- In the United States, as a general rule, courts do not have self-executing powers. In other words, in order for the court to rule on a contested issue in a case before it, one of the parties or a third party must raise an appropriate motion asking for a particular order. Some motions may be made in the form of an oral request in open court, which is then either summarily granted or denied orally by the court. Today, however, most motions (especially on important or dispositive issues that could decide the entire case) are decided after oral argument preceded by the filing and service of legal papers. That is, the movant is usually required to serve advance written notice along with some kind of written legal argument justifying the motion. The legal argument may come in the form of a memorandum of points and authorities supported by affidavits or declarations.

- W.I. Pedia

# I Move for a “Bad Court Thing”



# Court Rules

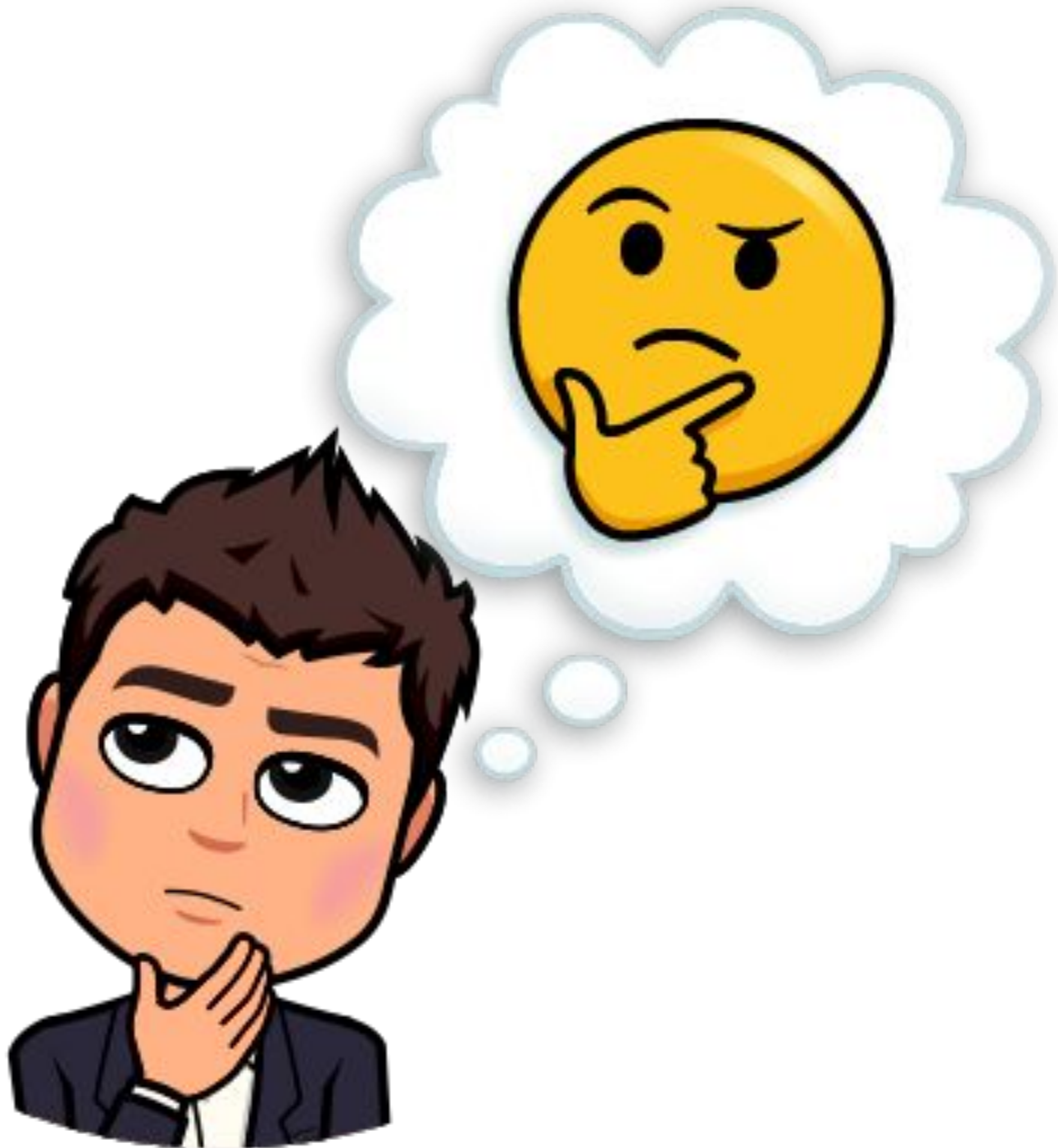
- Utah R. Juv. P. 19A
- 19A(a): A request for an order must be made by motion. The motion must be in writing unless made during a hearing or trial, must state the relief requested, and must state the grounds for the relief requested. A written motion, other than one which may be heard ex parte, and notice of the hearing shall be served not later than seven days before the time specified for hearing, unless a different period is fixed by these rules or by court order.

# Court Rules

- Utah R. Juv. P. 19A:
- (b) Name and content of motion.
- (b)(1) The rules governing captions and other matters of form in pleadings apply to motions and other papers. The moving party must title the motion substantially as: “Motion [short phrase describing the relief requested].” The motion must include the supporting memorandum. The motion must include under appropriate headings and in the following order:
  - (b)(1)(A) A concise statement of the relief requested and the grounds for the relief requested and
  - (b)(1)(B) One or more sections that include a concise statement of the relevant facts claimed by the moving party and argument citing authority for the relief requested.
- (b)(2) If the moving party cites documents or materials of any kind, relevant portions of those documents or materials must be attached to or submitted with the motion.
- (b)(3) The motion may not exceed 25 pages, not counting attachments unless a longer motion is permitted by the court.

# Court Rules

- Utah R. Juv. P. 19A
- (c)(1) A nonmoving party may file a memorandum opposing the motion within 14 days after the motion is filed unless otherwise ordered by the Court. The nonmoving party must title the memorandum substantially as “Memorandum opposing motion [short phrase describing the relief requested].” The memorandum must include under appropriate headings and in the following order:
  - (c)(1)(A) A concise statement of the party’s preferred disposition of the motion and the grounds supporting that disposition;
  - (c)(1)(B) One or more sections that include a concise statement of the relevant facts claimed by the nonmoving party and argument citing authority for that disposition; and
  - (c)(1)(C) Objections to evidence in the motion, citing authority for the objection.
- (c)(2) If the nonmoving party cites documents or materials of any kind, relevant portions of those documents or materials must be attached to or submitted with the memorandum.
- (c)(3) The memorandum may not exceed 25 pages, not counting attachments, unless a longer memorandum is permitted by the court.



## Practice Tip

- A nonmoving party may file a memorandum opposing the motion within 14 days after the motion is filed **unless otherwise ordered by the Court.**
- This language varies from URCP Rule 7(d).
- When you file a motion for early review or for expedited hearing, shorten the time for objections.

# Ex Parte Motion to Shorten Time

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IN THE SECOND DISTRICT COURT  
STATE OF UTAH, FARMINGTON DEPT.

STATE OF UTAH, in the interest of:	Juvenile Case No. 555555
RICHARDS, Jason	Honorable Debra Jensen
Person between 30-40 year of age	

**EX PARTE MOTION TO SHORTEN TIME FOR EXPEDITED HEARING ON  
MOTION TO CHANGE GOAL TO REUNIFICATION AND TO REINSTATE  
REUNIFICATION SERVICES**

Martha Richards, Respondent Mother, by and through counsel undersigned, pursuant to Rule 19A(c)(1) hereby moves the court to shorten the time for responses and for an expedited hearing on Mother's motion to reinstate reunification services. In support thereof, Mother represents as follows:

1. On April 1, 2022 the Court terminated reunification services and changed the children's permanency goal to adoption.
2. The Mother was not present for the hearing.
3. On April 10, 2022 Mother contacted counsel and stated she was in a rehabilitation facility on April 1, 2022 and was not able to participate in the hearing (See letter from Ogden ACT Program).



# Court Rules

- Utah R. Juv. P. 19A
- (d) Name and content of reply memorandum.
- (d)(1) Within 7 days after the memorandum opposing the motion is filed, unless otherwise ordered by the Court, the moving party may file a reply memorandum, which must be limited to rebuttal of new matters raised in the memorandum opposing the motion. The moving party must title the memorandum substantially as “Reply memorandum supporting motion [short phrase describing the relief requested].” The memorandum must include under appropriate headings and in the following order:
  - (d)(1)(A) A concise statement of the new matter raised in the memorandum opposing the motion;
  - (d)(1)(B) One or more sections that include a concise statement of the relevant facts claimed by the moving party not previously set forth that respond to the opposing party’s statement of facts and argument citing authority rebutting the new matter
  - (d)(1)(C) Objections to evidence in the memorandum opposing the motion, citing authority for the objection; and
  - (d)(1)(D) Response to objections made in the memorandum opposing the motion, citing authority for the response.
- (d)(2) If the moving party cites any documents or materials, relevant portions of those documents or materials must be attached to or submitted with the memorandum.
- (d)(3) The reply memorandum may not exceed 15 pages, not counting attachments, unless a longer reply memorandum is permitted by the court.

# Court Rules

- Utah R. Juv. P. 19A
- (e) Objection to evidence in the reply memorandum; response. If the reply memorandum includes an objection to evidence, the nonmoving party may file a response to the objection no later than 7 days after the reply memorandum is filed, unless otherwise ordered by the court. If the reply memorandum includes evidence not previously set forth, the nonmoving party may file an objection to the evidence no later than 7 days after the reply memorandum is filed, and the moving party may file a response to the objection no later than 7 days after the objection is filed, unless otherwise ordered by the court. The objection or response may not be more than 3 pages.

# Court Rules

- Utah R. Juv. P. 19A
- (f) Request to Submit for Decision. When briefing is complete or the time for briefing has expired, either party may file a “Request to Submit for Decision” but if no party files a request, the motion will not be submitted for decision. The request to submit for decision must state whether a hearing has been requested.
- (g) Hearings. The court may hold a hearing on any motion. A party may request a hearing in the motion, in a memorandum or in the request to submit for decision. A request for hearing must be separately identified in the caption of the document containing the request.
- (h) The court may decide any motion at a hearing without a Request to Submit for Decision.

# Types of Motions

## Pre-Adjudication Motions

- Before answering, the respondent may move to dismiss the petition as insufficient to state a claim upon which relief can be granted. The court shall hear all parties and rule on said motion before requiring a party to answer. Utah R. Juv. P. Rule 19(b).
- A Rule 12(b)(6) may be made before answering the petition. Essentially, these motions must demonstrate that, even if the State's allegations are true, it still does not constitute abuse, neglect, or dependency.
- A Rule 56 Motion for Summary Judgment may be made before, or after, answering the petition.

Dealing with CPS and trial.  
: Pre-adjudication motions

# CPS Workers



# Pre-adjudication Motions

- Dispositive Motions. Must be made at least 14-days prior to trial. Utah R. Juv. P. 19A(j).
- Dispositive Motion: Motion to Dismiss under Utah R. Civ. P. 12(b)(6) or A Motion for Summary Judgment under Utah R. Civ. P. Rule 56.
- Summary Judgment Motions:
  - The court shall grant summary judgment if the moving party shows that there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion. The motion and memoranda must follow Rule 7 as supplemented below.
  - (a)(1) Instead of a statement of the facts under Rule 7, a motion for summary judgment must contain a statement of material facts claimed not to be genuinely disputed. Each fact must be separately stated in numbered paragraphs and supported by citing to materials in the record under paragraph (c)(1) of this rule.
  - (a)(2) Instead of a statement of the facts under Rule 7, a memorandum opposing the motion must include a verbatim restatement of each of the moving party's facts that is disputed with an explanation of the grounds for the dispute supported by citing to materials in the record under paragraph (c)(1) of this rule. The memorandum may contain a separate statement of additional materials facts in dispute, which must be separately stated in numbered paragraphs and similarly supported.
  - (a)(3) The motion and the memorandum opposing the motion may contain a concise statement of facts, whether disputed or undisputed, for the limited purpose of providing background and context for the case, dispute and motion.
  - (a)(4) Each material fact set forth in the motion or in the memorandum opposing the motion under paragraphs (a)(1) and (a)(2) that is not disputed is deemed admitted for the purposes of the motion.

# Pre-adjudication Motions

- Things to watch for: Utah R. Juv. P. Rule 33
- (a) Pre-adjudication evaluations and examinations.
- (a)(1) On the motion of the petitioner or any other party in open court in a post-petition hearing, or by written motion filed with the court with a proposed order attached, the court may, prior to adjudication, order that the minor be examined or evaluated by a physician, surgeon, psychiatrist, psychologist or other competent specialist, and may order that the minor be placed in a hospital or other facility for such purpose. The motion shall state the reasons for the examination or evaluation and the need for an examination prior to adjudication.
- (a)(2) The court may order a similar examination of the minor's parent, guardian or custodian who is a party to the proceedings and whose ability to care for the minor is at issue, or where it is alleged that the physical, mental or emotional condition of the person is a factor in the alleged neglect, abuse or dependency of the minor. Such an order shall be issued only after notice and a hearing unless waived in writing or on the record.



# Pre-adjudication Motions

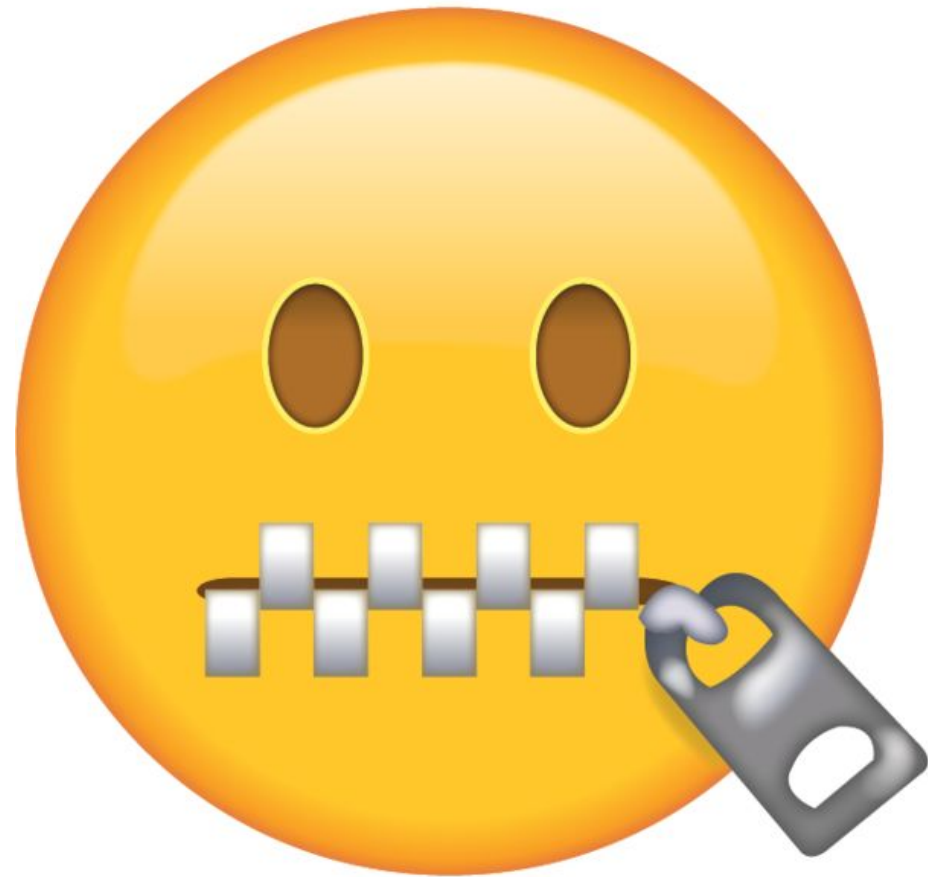
- Motions in Limine: Limit testimony, exclude evidence, etc.
- The term "in limine" is a Latin phrase which may be translated "on the threshold" or "at the outset." A motion in limine is a preliminary or pretrial procedural device. It not intended to be a dispositive motion but has been used primarily to prevent the proponent of potentially prejudicial matter from displaying it to the jury in any manner until the trial court has ruled upon its admissibility in the context of the trial itself.

75 Am. Jur. 2d Trial § 39

# Pre-adjudication Motions

- What to raise?
- We need more motions in limine, because that is how you develop a good record for appeal.
- Don't concede on the State's exhibits (drug test results, ORS payments, prior convictions, etc.)
- Use the Rules of Evidence to challenge the State's proposed exhibits in pre-trial motions.

Client: To Testify or Not to Testify?



# Should Homer talk to the Judge?



# The All Elusive Negative Inference

- In a pickle? Take the nickel.
- How often do we hear “If you decide to not testify, the court will take a negative inference about your failure to testify.”
- While a trial court *may* draw a negative inference from a witness's assertion of the Fifth Amendment in a civil case, *see Chen v. Stewart*, 2005 UT 68, ¶ 31 n. 4, 123 P.3d 416, we do not think it is mandatory that a trial court draw a negative inference from such an assertion.

In re Adoption of A.F.K., 2009 UT App 198, 216 P.3d 980, 987

# Other Motions

- Motion to correct findings, involuntary dismissal (directed verdict). Utah R. Civ. P. 52.
- See: Utah R. Juv. P. 44(c) “The court may at any time during or at the conclusion of any hearing, dismiss a petition and terminate the proceedings relating to the minor if such action is in the interest of justice and the welfare of the minor. **The court shall dismiss any petition which has not been proven.**”
- Motion for a new trial; Utah R. Civ. P. 59 (May have to do this for appeal)
- Motion for relief from judgment; Utah R. Civ. P. 60
- All incorporated by Utah R. Juv. P. 48

# Post-Adjudication Motions

Almost always fact-based motions. Probably the ones you'll use most often.

- Motions related to services: Utah R. Juv. P. 47
- Motions related to family-time/parent-time.
- Motion for a trial home placement.
- Motion for a finding of no reasonable efforts.

# Reasonable Efforts

- Motion for a Finding of No Reasonable Efforts
- Utah Code Ann. 80-4-301(3)(a)

Except as provided in Subsection (3)(b), in any case in which the court has directed the division to provide reunification services to a parent, the court must find that the division made reasonable efforts to provide those services before the court may terminate the parent's rights under Subsection (1)(b), (c), (d), (e), (f), or (h).

- A no reasonable efforts finding is the nuclear option for all termination petitions not alleging abandonment (subsection 1(a)).
- Doesn't apply to a Voluntary Relinquishment (subsection 1(g)).

ALWAYS raise as an affirmative defense at a termination trial.



# Reasonable Efforts

- ...DCFS would comply with its statutory obligation to make reasonable efforts toward reunification if it makes a fair and serious attempt to reunify a parent with a child prior to seeking to terminate parental rights. *See also In re Eden F.*, 48 Conn.App. 290, 710 A.2d 771, 782–83 (1998) (noting that “the word 'reasonable' is the linchpin on which the department's efforts in a particular set of circumstances are to be adjudged” and that “reasonableness is an objective standard and whether reasonable efforts have been proven depends on the careful consideration of the circumstances of each individual case” (citation omitted)), *rev'd on other grounds*, 250 Conn. 674, 741 A.2d 873 (1999); *accord In re J.D.*, 2001 WL 1042577, at \*7–8, 2001 Conn. Super LEXIS 2358, at \*21–22 (Conn.Super.Ct. Aug. 8, 2001).

State ex rel. A.C., 2004 UT App 255, ¶ 14, 97 P.3d 706, 712

# Preserve Your Record for Appeal

- Pre-trial discovery in a termination cases is crucial.
- Use formal discovery tools to preserve your record.

Utah R. Juv. P. 20A anticipates formal discovery tools (request for admissions, depositions, interrogatories, etc.)

- Don't just call a witness on the phone to get a good idea of their testimony. Or talk to someone with your investigator present. These are civil cases, and the civil rules anticipate a record to be developed.

# Motions related to Dispositional Orders

# Parenting Class



# Motions Related to Modifications of Orders

- Utah R. Juv. P. 47:
- (b) Review hearings.
- (b)(1) Any party in a case subject to review may request a review hearing. The request must be in writing and the request shall set forth the facts believed by the requesting party to warrant a review by the court. If the court determines that the alleged facts, if true, would justify a modification of the dispositional order, a review hearing shall be scheduled with notice, including a copy of the request, to all other parties. The court may schedule a review hearing on its own motion.
- (b)(2) The court may modify a prior dispositional order in a review hearing upon the stipulation of all parties and upon a finding by the court that such modification would not be contrary to the best interest of the minor and the public.
- (b)(3) The court shall not modify a prior order in a review hearing that would further restrict the rights of the parent, guardian, custodian or minor if any party objects to the modification. Upon objection, the court shall schedule the matter for a motion hearing and require that a motion be filed with notice to all parties. A party requesting an evidentiary hearing shall state the request in the motion to modify the prior order or the response to the motion.
- Editorial Comment: (Motions to modify dispositional orders can restrict the rights of parents. **For Example: ordering a mental health assessment at Month 10 of a reunification case**). But- you can also use Rule 47 to ask for additional services, even if DCFS objects. You can use Rule 47 to ask to reinstate reunification services