

**IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE**

FILED
JAN 13 2012
Clerk of the Courts

**IN RE: AMENDMENTS TO TENNESSEE
RULES OF JUVENILE PROCEDURE**

No. M2011-01820-SC-RL2-RL - Filed: January 13, 2012

ORDER

The Court adopts the attached amendments effective July 1, 2012, subject to approval by resolutions of the General Assembly. The rules amended are as follows:

- RULE 1 TITLE OF RULES – SCOPE – PURPOSE AND CONSTRUCTION – SITUATIONS NOT COVERED BY RULES
- RULE 2 DEFINITIONS
- RULE 4 REFEREES
- RULE 5 CUSTODY – WHEN CHILD MAY BE TAKEN INTO CUSTODY – PROCEDURES UPON TAKING CHILD INTO CUSTODY – RIGHTS OF CHILD
- RULE 8 INITIATION OF CASES
- RULE 11 ORDERS FOR THE ATTACHMENT OF CHILDREN
- RULE 13 INTAKE IN DEPENDENT AND NEGLECTED AND ABUSE CASES
- RULE 20 RESPONSIVE PLEADINGS AND MOTIONS
- RULE 21 PLEA OF GUILTY IN DELINQUENT AND UNRULY CASES
- RULE 23 PRETRIAL DIVERSION IN DELINQUENT AND UNRULY CASES
- RULE 24 TRANSFER TO CRIMINAL COURT IN DELINQUENT CASES
- RULE 29 PROCEDURE WHEN CHILD BELIEVED TO BE MENTALLY INCOMPETENT
- RULE 32 DISPOSITIONAL HEARINGS; ORDERS

RULE 32A PERMANENCY PLANNING
RULE 34 RELIEF FROM JUDGMENTS OR ORDERS –
MODIFICATION AND VACATION OF
ORDERS
RULE 36 APPEALS
RULE 38 PROTECTIVE ORDERS – JUDICIAL
CONSENT FOR TREATMENT.

The text of each amendment is set out in the attached Appendix.

IT IS SO ORDERED.

PER CURIAM

APPENDIX

**2012 AMENDMENTS TO THE
TENNESSEE RULES OF JUVENILE PROCEDURE**

In the attached amended rules, ~~overstriking~~ indicates deleted text
and underlining indicates added text.

TENNESSEE RULES OF JUVENILE PROCEDURE

RULE 1

TITLE OF RULES – SCOPE – PURPOSE AND CONSTRUCTION –
SITUATIONS NOT COVERED BY RULES

[Amend paragraph (c) as indicated (new text underlined; deleted text stricken):]

* * * *

(c) PURPOSE AND CONSTRUCTION. These rules are designed to implement the purposes of the juvenile court law as expressed in Tenn. Code Ann. § 37-1-101 by providing speedy and inexpensive procedures for the hearing of juvenile cases that assure fairness and equity and that protect the rights and interests of all parties; by promoting uniformity in practice and procedure; and by providing guidance to judges, ~~referees~~ magistrates, attorneys, youth services and probation officers, and others participating in the juvenile court.

* * * *

Advisory Commission Comment [2012]

The 2012 amendment substitutes the term "magistrates" for the term "referees," consistent with statutory changes enacted by the General Assembly.

TENNESSEE RULES OF JUVENILE PROCEDURE

RULE 2

DEFINITIONS

[Amend Rule 2 as indicated below (new text underlined; deleted text stricken):]

* * * *

(10.1) “Magistrate” means a person meeting the qualifications and serving the functions set forth in Tenn. Code Ann. § 37-1-107.

* * * *

(14) "Probation officer" means a person who performs the duties set forth in Tenn. Code Ann. § 37-1-105, particularly those of supervising and assisting children placed on probation or in the person's protective supervision or care by order of the court or other authority of law, whether such person is employed by the ~~Department of Correction~~ Department of Children's Services or so designated by the juvenile court.

* * * *

(17) ~~"Referee" means a person meeting the qualifications and serving the functions set forth in Tenn. Code Ann. § 37-1-107.~~ [Reserved.]

* * * *

Advisory Commission Comment [2012]

The 2012 amendments are housekeeping measures that substitute “Department of Children’s Services” for “Department of Correction” and “magistrate” for “referee,” consistent with statutory changes enacted by the General Assembly.

TENNESSEE RULES OF JUVENILE PROCEDURE

RULE 4

~~REFEREES~~MAGISTRATES

[Amend Rule 4, including the title above, as indicated (new text underlined; deleted text stricken):]

(a) HEARINGS BEFORE ~~REFEREES~~MAGISTRATES. The judge may direct that any case or class of cases of which the juvenile court has jurisdiction shall be heard in the first instance by the ~~referee~~ magistrate. Such cases shall be conducted in the same manner provided for the hearing of cases by the court except as otherwise specified herein. The ~~referee~~ magistrate in the conduct of the proceedings shall have the powers of a trial judge, and shall have the same authority as the judge to issue any and all process. Upon the conclusion of the hearing in each case, the ~~referee~~ magistrate shall transmit to the judge all papers relating to the case, together with the ~~referee's~~ magistrate's written findings and recommendations.

(b) REVIEW OF ~~REFEREE'S~~ MAGISTRATE'S ACTIONS. Any hearing by a ~~referee~~ magistrate on any preliminary matter shall be final and not reviewable by the judge of the juvenile court, except on the court's own motion. The setting of bond in detention hearings and any matter that is a final adjudication of a child shall not be construed to be preliminary matters under this section and are reviewable by the judge of the juvenile court upon request or upon the court's own motion, except as provided in section (c)(1) below.

(c) REQUEST FOR REHEARING BEFORE JUDGE.

(1) Any party may, within five judicial days of the transmittal to the judge of the written findings and recommendations of the ~~referee~~ magistrate, file a request

with the court for a hearing by the judge of the juvenile court. The judge may, on his or her own motion, order a rehearing of any matter heard before a ~~referee~~ magistrate, and shall allow a hearing if a request for such hearing is filed as herein prescribed. However, there shall be no rehearing in any delinquent or unruly case in which the petition is dismissed by the referee after a hearing on the merits.

(2) Each party shall be informed at the hearing before the ~~referee~~ magistrate of the right to a rehearing before the juvenile court judge, of the time limits within which a request for a rehearing must be perfected, and of the manner in which to perfect such request.

(3) Unless the judge orders otherwise, the recommendations of the ~~referee~~ magistrate shall be the decree of the court pending a rehearing.

(d) CONFIRMATION OF ~~REFEREE'S~~ MAGISTRATE'S FINDINGS AND RECOMMENDATIONS. In case no hearing before the judge is requested, or when the right to a hearing is waived, the findings and recommendations of the ~~referee~~ magistrate become the decree of the court when confirmed by an order of the judge. The final order of the court shall, in any event, be proof of such confirmation, and also of the fact that the matter was duly referred to the ~~referee~~ magistrate.

Advisory Commission Comment [2012]

The 2012 amendment substitutes the terms “magistrate” or “magistrates” for the terms “referee” or “referees,” consistent with statutory changes enacted by the General Assembly.

TENNESSEE RULES OF JUVENILE PROCEDURE

RULE 5

CUSTODY – WHEN CHILD MAY BE TAKEN INTO CUSTODY –
PROCEDURES UPON TAKING CHILD INTO CUSTODY – RIGHTS OF CHILD

[Amend Rule 5(d)(2), (3) and (5) as indicated (new text underlined; deleted text stricken):]

* * * *

(d) PROCEDURES IN DEPENDENT AND NEGLECTED AND ABUSE CASES.

(1) * * * *

(2) GROUNDS FOR EMERGENCY REMOVAL WITHOUT COURT ORDER.

Pursuant to Tenn. Code Ann. § 37-1-113, a law enforcement officer, a social worker of the ~~Department of Human Services~~ Department of Children's Services, or a duly authorized officer of the court may take a child into custody without a court order, if that person has reasonable grounds to believe that the conditions specified in Tenn. Code Ann. § 37-1-114 exist.

(3) PROCEDURES UPON TAKING CHILD INTO CUSTODY; NOTICE REQUIREMENTS. When a child is taken into custody upon an allegation that the child is dependent and neglected or abused, the person taking the child into custody shall bring the child before the court or deliver the child to a shelter care facility designated by the court or to a medical facility if the child is believed to suffer from a serious physical condition or illness which requires prompt treatment. The person shall give notice thereof, together with a reason for taking the child into custody, to the parents, guardian, or other custodian and to the court. Notice shall also

immediately be given to the ~~Department of Human Services~~ Department of Children's Services. As soon as practicable, notice shall also be given to the parents, guardian, or other custodian, and to the child if fourteen (14) years of age or older or if also alleged to be delinquent or unruly, of their right to a preliminary hearing as provided in Tenn. Code Ann. § 37-1-117 and Rule 16 of these rules; of the time, date, and place of the hearing; and of the factual circumstances necessitating the removal.

(4) * * * *

(5) ALTERNATIVES TO ORDERING EMERGENCY REMOVAL. In cases in which application is made for an order of emergency removal, the court may, as an alternative to emergency removal, authorize a representative of the ~~Department of Human Services~~ Department of Children's Services to remain in the child's home with the child until a parent, guardian, legal custodian, or adult relative of the child enters the home and expresses a willingness and apparent ability to resume permanent charge of the child, or in the case of a relative, to assume charge of the child until a parent or legal guardian enters the home and expresses such willingness and apparent ability.

Advisory Commission Comment [2012]

The 2012 amendments to paragraphs (d)(2), (3) and (5) substitute the term "Department of Children's Services" for the term "Department Human Services," consistent with statutory changes enacted by the General Assembly.

TENNESSEE RULES OF JUVENILE PROCEDURE

RULE 8

INITIATION OF CASES

[Amend Rule 8(c) as indicated (new text underlined; deleted text stricken):]

* * * *

(c) PRELIMINARY INQUIRY. Upon receipt of a complaint, a designated intake court officer shall conduct a preliminary inquiry to determine whether the facts alleged establish that the matter is within the jurisdiction of the court and whether the best interests of the child or of the public require that further court action be taken. However, all complaints alleging that a child is dependent and neglected or abused shall be referred to the ~~Department of Human Services~~ Department of Children's Services.

* * * *

Advisory Commission Comment [2012]

The 2012 amendment to paragraph (c) substitutes the term "Department of Children's Services" for the term "Department of Human Services," consistent with statutory changes enacted by the General Assembly.

TENNESSEE RULES OF JUVENILE PROCEDURE

RULE 11

ORDERS FOR THE ATTACHMENT OF CHILDREN

[Amend Rule 11 as indicated (new text underlined; deleted text stricken):]

(a) FAILURE TO APPEAR. When a child fails to appear at a hearing or conference to which the child has been properly summoned or personally notified to appear, the ~~referee~~ magistrate or judge may issue an order of attachment; or

(b) REQUIREMENTS FOR ISSUANCE OF ORDERS IN OTHER CASES. Where an order of attachment is sought to be issued in any other case, the following requirements must be met:

(1) The judge or ~~referee~~ magistrate must determine, from the juvenile court petition and the affidavit and/or sworn testimony presented, that there is probable cause to believe that an offense has been committed and that the child committed it or, in the case of a child alleged to be dependent and neglected, that the child is in need of the immediate protection of the court. In making this probable cause determination, the judge or ~~referee~~ magistrate shall be governed by the following:

(i) The statement of a person requesting an order of attachment must be reduced to writing and made upon oath;

(ii) The written affidavit must provide sufficient factual information to support an independent judgment that probable cause exists for the issuance of the order of attachment; and

(iii) If hearsay evidence is relied upon, the basis for the credibility of both the informant and the informant's information must also appear in the affidavit.

(2) Pursuant to Tenn. Code Ann. § 37-1-121, the judge or ~~referee~~ magistrate must also find that:

(i) The conduct, condition or surroundings of the child are endangering the child's health or welfare or that of others; or

(ii) The child may abscond or be removed from the jurisdiction of the court; or

(iii) Service of a summons would be ineffectual or the parties are evading service.

(3) If the judge or ~~referee~~ magistrate determines that both requirements (1) and (2) above have been satisfied, then he or she may order that the child be taken into custody immediately and brought before the court in accordance with Rule 5.

Advisory Commission Comment [2012]

The 2012 amendment substitutes the term “magistrate” for the term “referee,” consistent with statutory changes enacted by the General Assembly.

TENNESSEE RULES OF JUVENILE PROCEDURE

RULE 13

INTAKE IN DEPENDENT AND NEGLECTED AND ABUSE CASES

[Amend Rule 13(a) and (b) and the original Advisory Commission Comment as indicated below (new text underlined; deleted text stricken):]

(a) REFERRAL TO ~~DEPARTMENT OF HUMAN SERVICES~~ DEPARTMENT OF CHILDREN'S SERVICES. When a complaint or petition is filed in the juvenile court alleging a child to be dependent and neglected and/or abused, the court shall promptly refer the case to the ~~Department of Human Services~~ Department of Children's Services to investigate the social conditions of the child and to report the findings to the court to aid the court in its disposition of the child.

(b) REFERRAL TO LICENSED CHILD-PLACING AGENCY. If the child who is the subject of the complaint or petition is in the custody of a licensed child-placing agency, or if the complaint or petition is filed by a licensed child-placing agency, the referral may be made to such agency in addition to the ~~Department of Human Services~~ Department of Children's Services.

(c) * * * *

Advisory Commission Comments

Because of the intimate involvement in, and primary responsibility for, the types of cases covered by this rule on the part of the ~~Department of Human Services~~ Department of Children's Services, the committee deemed it inappropriate to draft a more specific rule on this subject. Regarding the informal adjustment of these cases, it should be noted that no such action should be undertaken without consultation with the ~~Department of Human Services~~ Department of Children's Services. See, in this regard, subsection (a)(4) of Rule 14, which suggests that the attitude of any affected agencies be taken into account in deciding whether to informally adjust any case.

Advisory Commission Comments [2012]

The 2012 amendment substitutes the term “Department of Children’s Services” for the term “Department of Human Services” in both the text of the rule and in the original Advisory Commission Comment, consistent with statutory changes enacted by the General Assembly.

TENNESSEE RULES OF JUVENILE PROCEDURE

RULE 20

RESPONSIVE PLEADINGS AND MOTIONS

[Add the following new Comment; the text of the Rule is unchanged:]

Advisory Commission Comment [2012]

Effective July 1, 2012, the Supreme Court adopted Tenn. Sup. Ct. R. 10B, governing motions seeking disqualification or recusal of a judge. Section 1 of Rule 10B provides a procedural framework for determining when the judge of a court of record should not preside over the case. In summary, Section 1 provides for the filing of a motion for disqualification or recusal and also provides for the judge's prompt ruling on the motion. Section 2 of Rule 10B governs appeals from the denial of such motions, and it provides that such appeals may be effected either by filing an interlocutory appeal as of right authorized by the rule or by raising the disqualification or recusal issue in an appeal as of right at the conclusion of the case. Under Section 2.01, those two methods of appeal are "the exclusive methods for seeking appellate review of any issue concerning the trial court's ruling on a motion filed pursuant to this Rule." (Emphasis added.) As a result, "neither Tenn. R. App. P. 9 nor Tenn. R. App. P. 10 may be used to seek an interlocutory or extraordinary appeal by permission concerning the judge's ruling on such a motion." Tenn. Sup. Ct. R. 10B, Explanatory Comment to Section 2.

The Explanatory Comment to Tenn. Sup. Ct. R. 10B, § 1 notes that juvenile courts are courts of record and that juvenile court judges therefore are included within Section 1 of the Rule. Section 4 of Tenn. Sup. Ct. R. 10B, however, governs motions for disqualification of judicial officers other than a judge of a court of record (e.g., magistrates, referees, and masters).

Attorneys or self-represented litigants should consult Tenn. Sup. Ct. R. 10B concerning the procedure for filing motions seeking the disqualification or recusal of a juvenile court judge or other judicial officer and for appealing from a denial of such a motion.

TENNESSEE RULES OF JUVENILE PROCEDURE

RULE 21

PLEA OF GUILTY IN DELINQUENT AND UNRULY CASES

[Amend the original Advisory Commission Comments as indicated (new text underlined; deleted text stricken); the text of the rule is unchanged.]

Advisory Commission Comments

In subsection (b) of Rule 21, the court is required to inquire about any prior discussions the child may have had regarding potential dispositions. The court should properly make itself aware of such interactions and "bargains," and of their effect of the child's willingness to plead guilty, before it makes a decision whether to accept any such plea. The court should also ascertain, through this inquiry, with whom any such discussions took place, and whether the child's attorney was present. While it would be within the province of the District Attorney General to initiate such discussions, and possibly within that of ~~Department of Correction~~ Department of Children's Services probation officers, the committee considers that it would represent a clear conflict of interest for any court employee such as a youth services officer to conduct such discussions. See the comments to Rules 2 and 8 for further insight on this issue.

The court may at any time prior to the beginning of a dispositional hearing permit a plea of guilty to be withdrawn, and if an adjudication has been entered thereon, set aside such adjudication and allow another plea to be substituted for the plea of guilty. In the subsequent adjudicatory hearing, the court may not consider the plea which was withdrawn as an admission. Evidence of a guilty plea, later withdrawn, or of statements made in connection therewith, would not be admissible in any proceeding against the respondent.

Advisory Commission Comment [2012]

The 2012 amendment modifies the original Advisory Commission Comments by substituting the term "Department of Children's Services" for the term "Department of Correction," consistent with statutory changes enacted by the General Assembly.

TENNESSEE RULES OF JUVENILE PROCEDURE

RULE 23

PRETRIAL DIVERSION IN DELINQUENT AND UNRULY CASES

[Amend the Advisory Commission Comments as indicated below (new text underlined; deleted text stricken); the text of the rule is unchanged.]

Advisory Commission Comments

Pretrial diversion is intended by the committee to replace the former practice of holding cases open for further action. The procedures set forth in this rule essentially allow for a process similar to informal adjustment, with no official finding as to guilt, except that the court in the person of the judge (or ~~referee~~ magistrate) is involved in that there must be court approval of any agreement.

Courts should develop written local procedures and criteria for initiating pretrial diversion. Such criteria might include a listing of the types of cases, or charges, which might be handled by pretrial diversion. Pretrial diversion might be initiated by the parties or by the court itself, through motion or through whatever other procedure the court determines is appropriate. Local rules and procedures should also address the issue of how the district attorney general will be notified of cases in which pretrial diversion is being considered, in light of the legitimate public interest in the disposition of more serious cases.

Under this rule, if the child completes the pretrial diversion agreement, the case is dismissed. If the court, or the designated court officer, determines that the case is serious enough that such dismissal should not occur, the case should proceed to court as in any other case warranting official court action, and, if the child readily admits guilt and wishes to negotiate a settlement based upon a plea of guilty, such negotiated settlement should be handled in accordance with Rule 21.

Advisory Commission Comment [2012]

The 2012 amendment modifies the original Advisory Commission Comments by substituting the term “magistrate” for the term “referee,” consistent with statutory changes enacted by the General Assembly.

TENNESSEE RULES OF JUVENILE PROCEDURE

RULE 24

TRANSFER TO CRIMINAL COURT IN DELINQUENT CASES

[Amend Rule 24 and the original Advisory Commission Comment as indicated below (new text underlined; deleted text stricken):]

When the allegations of the petition are so serious and/or the child's age or record is such that transfer of a child to the sheriff to be dealt with as an adult is likely or probable, the court should not hear the case on its merits, but shall proceed to conduct a probable cause hearing only, and announce that intention and purpose when the case is first presented.

(a) TRANSFER OF JURISDICTION OF CHILD TO CRIMINAL COURT. The court after notice, hearing, and a finding that the criteria for transfer as required by Tenn. Code Ann. § 37-1-134 exist, may transfer jurisdiction over a child to adult criminal court pursuant to Tenn. Code Ann. §§ 37-1-134 and 37-1-159.

(b) TRANSFER HEARING.

(1) The judge shall conduct a transfer hearing in all cases in which transfer to criminal court is sought under Tenn. Code Ann. § 37-1-134.

(2) At the transfer hearing:

(i) A prosecutor shall represent the state;

(ii) The child shall be represented by an attorney;

(iii) The child may testify as a witness in his or her own behalf and call and examine other witnesses and produce other evidence in his or her own behalf, however no plea shall be accepted by the court; and

(iv) Each witness shall testify under oath or affirmation and be subject to cross-examination.

(3) The same rules of evidence shall apply as are applicable to a general sessions preliminary hearing.

(4) Unless the child appears in any way to be mentally ill or ~~mentally retarded~~ intellectually disabled, and unless personally or through counsel, asserts that the child is mentally ill or ~~retarded~~ intellectually disabled, it shall be presumed that the child is not committable to an institution for the mentally ill or ~~mentally retarded~~ intellectually disabled, and the court may so find. If mental illness is alleged, the court shall order psychological or psychiatric examination at any stage of the proceeding.

(5) If, after considering the evidence including the factors set forth in Tenn. Code Ann. § 37-1-134, the court determines that the criteria for transfer as set forth in Tenn. Code Ann. § 37-1-134 have been satisfied and finds that there are reasonable grounds for transfer as required by Tenn. Code Ann. § 37-1-134, the child may be transferred to criminal court for trial as in the case of adults.

(6) If reasonable grounds are not found, the judge shall deny the motion for transfer and set the petition alleging a delinquent offense for trial on its merits in juvenile court or may immediately proceed to hold the adjudicatory hearing with the consent of the respondent. However, the judge shall not at any time preside over the adjudicatory hearing of a case in which the judge has conducted a transfer hearing, if any interested party objects.

(7) Any order of transfer shall specify the grounds for transfer and set bond if the offense is bailable pursuant to state law.

(c) APPEALS. Appeals ~~from an order of transfer shall be by motion for an acceptance hearing~~
in accordance with Tenn. Code Ann. § 37-1-159.

Advisory Commission Comments

Under Tenn. Code Ann. § 37-1-134 the court must find reasonable grounds to believe that (i) the child committed the delinquent act as alleged, (ii) the child is not committable to an institution for the ~~mentally retarded~~ intellectually disabled or mentally ill, and (iii) the interests of the community require that the child be put under legal restraint or discipline. Regarding § 37-1-134, and subsection (b)(4) of Rule 24, it has been held by both the Tennessee Court of Appeals and Court of Criminal Appeals that, although the burden of proof is on the prosecution on such issue, there is a presumption of noncommittability similar to that relating to sanity in criminal trials. Such presumption can be rebutted by evidence introduced by the defendant, and in such event the burden would shift back to the prosecution to persuade the court the child is not committable. *See Boyd v. State*, Tenn. Crim. App. (December 30, 1979); *State v. Miller*, Tenn. App. Middle Section (June 25, 1976). The committee suggests, however, that it is good practice in any case for the court to arrange for testing and evaluation, evidence of which may be introduced by either of the parties or the court on the issue of committability.

Regarding the provision in subsection (b)(6) of the rule, prohibiting the judge who conducted a transfer hearing from presiding over the adjudicatory hearing in the same case if any interested party objects, Tenn. Code Ann. § 37-1-134 also prohibits a judge who has conducted a transfer hearing from presiding at a hearing in the same case in criminal court. Such a situation might arise if a judge were sitting specially in criminal court, or if a person who was formerly the juvenile court judge were elected to the criminal court or to any other court which might hear such a case by special arrangement.

Advisory Commission Comment [2012]

The 2012 amendment amends paragraph (c), deleting language referring to an acceptance hearing, which the statute no longer requires. Due to changes in the pertinent statutory language, the amendment also substitutes the term “intellectually disabled” for the term “mentally retarded,” in both the text of the rule and in the original Advisory Commission Comments.

TENNESSEE RULES OF JUVENILE PROCEDURE

RULE 29

PROCEDURE WHEN CHILD BELIEVED TO BE MENTALLY INCOMPETENT

[Amend Rule 29 as indicated (new text underlined; deleted text stricken):]

(a) AT TIME OF ADJUDICATORY HEARING.

(1) * * * *

(2) During the pendency of any such proceeding in which a child is believed to be suffering from mental illness or ~~mental retardation~~ intellectual disability the court may order the child to be evaluated as provided in Tenn. Code Ann., Title 37.

(3) * * * *

(b) AT TIME OF THE OFFENSE. * * * *

(c) APPOINTMENT OF EXPERT WITNESSES; DETENTION OF CHILD FOR EXAMINATION.

(1) Where the child's sanity or competency is at issue and the court has set the matter for an adjudicatory hearing or a hearing to determine the mental condition of the child, the court may appoint as many as three (3) disinterested qualified experts to examine the child and testify at the hearing. If not performed by private practitioners, such examinations shall be performed at facilities designated by the Commissioner of Mental Health ~~and Mental Retardation~~ or Commissioner of Intellectual and Developmental Disabilities. Other competent evidence may be introduced at the hearing. The appointment of experts by the court shall not preclude

the state or the child from calling other expert witnesses to testify at the adjudicatory hearing or at the hearing to determine the mental condition of the child.

(2) * * * *

Advisory Commission Comment [2012]

The 2012 amendments substitute the term “intellectual disability” for the term “mental retardation” and also substitute “Commissioner of Mental Health or Commissioner of Intellectual and Developmental Disabilities” for “Commissioner of Mental Health and Mental Retardation,” consistent with statutory changes enacted by the General Assembly.

TENNESSEE RULES OF JUVENILE PROCEDURE

RULE 32

DISPOSITIONAL HEARINGS; ORDERS

[Amend the original Advisory Commission Comments as indicated (new text underlined; deleted text stricken); the text of the rule is unchanged:]

Advisory Commission Comments

In choosing among statutorily permissible dispositions in delinquent and unruly cases, the judge should select the least restrictive disposition both in terms of kind and duration that is appropriate to the seriousness of the offense, the degree of culpability indicated by the circumstances of the particular case, and the age and prior record of the child. A child should not be committed to any institution if, consistent with the public safety, the child can be treated and rehabilitated through community-level resources.

The committee intends that dispositional hearings and dispositional orders in unruly cases be in accordance with the federal "valid court order" regulations, found in the appendix to these rules. The committee further encourages the making of written findings of fact and reasons for ordering particular dispositions within the law.

At both the adjudicatory hearing and the dispositional hearing, it is appropriate that youth services and probation officers be witnesses regarding admissible evidence of which they have knowledge. However, neither youth services officers nor probation officers should present cases or otherwise act as prosecution for the state in any juvenile court hearing, except as provided in Tenn. Code Ann. § 37-1-128, regarding revocation of probation proceedings.

Local rules should provide procedures for the obtaining of the psychiatric and psychological evaluations discussed in subsection (f), including provisions for such evaluations in cases in which a person or child at issue is indigent, and including provisions for the subpoenaing of persons who may have prepared any such evaluations.

Regarding review of dispositional orders, all orders which place a child under court-directed supervision pursuant to Tenn. Code Ann. § 37-1-131 (delinquent child), § 37-1-132 (unruly child), or § 37-1-130 (dependent and neglected child), may be reviewed by the court in accordance with the provisions of Rules 34 and 35. The committee encourages courts to keep track of all such cases either informally, or formally as provided in Rule 34. In cases involving commitment of a child to the ~~Department of Correction~~ Department of Children's Services, review is governed by Tenn. Code

Ann. § 37-1-137. See also Rule 36 and Tenn. Code Ann. §§ 37-1-107, 37-1-138, 37-1-159, on the review of juvenile court cases.

Advisory Commission Comment [2012]

The 2012 amendment changes the last paragraph of the original Advisory Commission Comments by substituting the term “Department of Children’s Services” for the term “Department of Correction,” consistent with statutory changes enacted by the General Assembly.

TENNESSEE RULES OF JUVENILE PROCEDURE

RULE 32A

PERMANENCY PLANNING

[Amend Rule 32A as indicated (new text underlined; deleted text stricken):]

* * * *

(e) CONTINUANCES. A case may be continued to a date certain only upon good cause shown.

~~(e)~~(f) ORDER. At the conclusion of each ratification hearing, judicial review, and permanency hearing the court shall enter an order in writing and signed by the judge. The order shall include the name of the persons attending the hearing and their relationship to the child; if a parent is not represented by counsel, that the parent has waived his or her right pursuant to Rule 30; and, if a necessary person is not present, whether notice of the hearing was provided. If a parent's identity or whereabouts are unknown, the order shall include findings of the reasonable efforts made by the agency to identify the parent or to ascertain the whereabouts of the absent parent. The order shall include findings of fact that the permanency plan is in the best interest of the child and that the agency has or has not exercised reasonable efforts pursuant to T.C.A. § 37-1-166. In addition, the order shall include all other findings required by federal and state law.

~~(f)~~(g) RATIFICATION HEARING.

(1) The court shall review the permanency plan for each child in foster care pursuant to T.C.A. § 37-2-403. The court shall take such action as may be necessary to ensure the plan is in the child's best interest. The initial permanency plan must be ratified within sixty (60) days of a child's foster care placement. Permanency plans are subject to modification and shall be reevaluated and updated at least annually.

(2) The court shall explain on the record that the purpose of the ratification hearing is to review and approve the permanency plan. The court shall advise the parties that the consequences of failure to comply with the plan, visit or support the child will be termination of the parents' or guardians' parental rights, and that the parents or guardians may be represented by an attorney in any termination proceeding.

(3) If the permanency plan has been agreed upon by the parties, the court shall review and only ratify the plan if the court finds it to be in the best interest of the child. If the court finds the plan is not in the best interest of the child, the court shall hold an evidentiary hearing to develop and ratify a plan that is in the best interest of the child.

(4) If the parties are unable to agree on the permanency plan, the court shall hold an evidentiary hearing to develop and ratify a plan that is in the best interest of the child.

(5) In cases where the court ratifies the plan without modifications and the parent or guardian is not present at the ratification hearing and did not participate in the development of the permanency plan, the court shall determine the efforts made by the agency to notify the parent or guardian of the requirements of the plan. The court shall include findings of these efforts in the order. In cases where the parent or guardian is not present for the hearing and the court modifies any provisions of the plan, the judge shall instruct the agency in the order to timely notify the parent or guardian of the plan's provisions.

~~(g)~~(h) JUDICIAL REVIEW; FOSTER CARE REVIEW BOARD HEARINGS.

(1) The court shall review the permanency plan, or delegate the review to the foster care review board, within ninety (90) days of the child's date of foster care and no less often than every six (6) months thereafter until such time as the child is no longer in foster care. Reviews may be scheduled as often as determined necessary. The agency shall submit a report on the progress of the permanency plan to the court or foster care review board. In addition, the progress report shall be provided to the parents whose rights have not been terminated or surrendered, the parent's attorney, guardian ad litem and/or attorney for the child and the child who is a party to the proceeding. The hearings shall be held in accordance with T.C.A. §§ 37-2-404 and 406.

(2) When the review of the permanency plan is conducted by the foster care review board, the board shall prepare and submit an advisory report of its findings and recommendations in accordance with T.C.A. § 37-2-406(c)(1)(A). The court shall establish a procedure to receive the report from the foster care review board. The advisory report shall be filed with the clerk of the court who shall record the date and hour of the filing. The clerk of the court shall also mail a copy of the report to all parties and their attorneys of record. At the next hearing by the court, the court shall review the board's advisory report. The court shall determine whether the recommendations are in the best interest of the child and, if in the child's best interest, incorporate the recommendations into the child's permanency plan.

(3) The court shall also establish a procedure to receive, docket and conduct a hearing on a direct referral of the foster care review board within the time limits provided by T.C.A. § 37-2-406(c)(1)(B). The court shall ensure that the board is provided a copy of the order.

~~(h)~~(i) PERMANENCY PLANNING.

(1) The court shall conduct a permanency hearing within twelve (12) months of the child's date of foster care placement; or within thirty (30) days of a determination that reasonable efforts to reunify the family are not required pursuant to T.C.A. § 37-1-166(g)(4). The hearing shall be conducted pursuant to T.C.A. § 37-2-409.

(2) At this hearing the court shall make findings of fact whether reasonable efforts have been made to reunify the family or to finalize another permanent goal. These findings shall be included in the order.

(3) The court must determine the appropriate goal for the child to achieve permanency. Continuation of the goal of reunification should be allowed only in circumstances where the parent or guardian has substantially complied with the permanency plan. However, in determining whether the parent or guardian is in substantial compliance, the court must determine that the agency has provided reasonable efforts for the parent or guardian to comply with the responsibilities on the permanency plan. Additionally, the court shall determine whether the services for the child provided for in the plan are in the best interest of the child and if other services are required.

Advisory Commission Comment [2012]

The 2012 amendment adds new paragraph (e) regarding continuances (and re-letters the subsequent existing paragraphs). Continuances of foster care review board hearings shall only occur when absolutely necessary so as to not unduly delay permanency for youth in custody.

Paragraph (h)(2) is also amended to provide for the filing of the advisory report. As a result of the amendment, the advisory report shall be treated like any other court document. Therefore it must be file-stamped and placed in the judicial file. Further, the clerk of the court shall mail a copy of the report to all parties to the case and their attorney of record.

TENNESSEE RULES OF JUVENILE PROCEDURE

RULE 34

RELIEF FROM JUDGMENTS OR ORDERS –
MODIFICATION AND VACATION OF ORDERS

[Amend Rule 34(c) as indicated (new text underlined; deleted text stricken):]

* * * *

(c) ~~MODIFICATION FOR BEST INTEREST OF CHILD.~~ An order of the court may also be modified or vacated on the ground that changed circumstances so require in the best interest of the child, except an order committing a delinquent child to the ~~Department of Correction~~ Department of Children’s Services or an institution for delinquent children, an order terminating parental rights or an order of dismissal. An order granting probation to a child found to be delinquent or unruly may be revoked, according to the provisions of Rule 35, on the ground that the conditions of probation have not been observed. Placements after a child has been committed to the ~~Department of Correction~~ Department of Children’s Services shall be reviewed as provided in Tenn. Code Ann. § 37-1-137, and, in the case of termination of home placement, Rule 35.

* * * *

Advisory Commission Comment [2012]

The 2012 amendment substitutes the term “Department of Children’s Services” for the term “Department of Corrections,” consistent with statutory changes enacted by the General Assembly.

TENNESSEE RULES OF JUVENILE PROCEDURE

RULE 36

APPEALS

[Amend Rule 36(c) and the original Advisory Commission Comment as indicated (new text underlined; deleted text stricken):]

* * * *

(c) NOTIFICATION OF RIGHT TO APPEAL IN DELINQUENT AND UNRULY CASES. At the dispositional hearing on a petition alleging delinquent or unruly conduct, whether before the ~~referee~~ magistrate or judge and whether on a plea of guilty or not guilty, if the respondent is found guilty, he or she shall be informed of the right to appeal, the time limit for appeal, the manner in which to perfect an appeal, and the right to an appointed attorney on appeal if indigent.

* * * *

Advisory Commission Comments

Appeals which may be taken under Tenn. Code Ann. § 37-1-159 include appeals of orders revoking probation or terminating home placement, both of which may be considered "final dispositions" of children, as that section requires.

This rule requires that the juvenile court judge or ~~referee~~ magistrate inform any child found guilty of a delinquent or unruly offense of the right to appeal, etc., in subsection (c). Failure to so inform such a child may entitle the child to file a delayed appeal under the Juvenile Post Commitment Procedures Act, at Tenn. Code Ann. § 37-1-319. Subsection (d), while not mandatory, indicates the committee's strong intent that such notifications take place in all cases, both in the interest of informing parties of their rights, and in the interest of preserving the finality of judgments by avoiding any occasion for a writ of certiorari on the basis that a party was not so informed at the hearing or was without fault in being unaware of the right to appeal.

The constitutional prohibition against being placed twice in jeopardy for the same offense precludes the state from seeking de novo appeal in a delinquent or unruly case which has been dismissed following a hearing on the merits. For further discussion of this issue see the comment to Rule 4.

Advisory Commission Comments [2012]

The 2012 amendment substitutes, in paragraph (c) of the rule and in the original Advisory Commission Comments, the term “magistrate” for the term “referee,” consistent with statutory changes enacted by the General Assembly.

TENNESSEE RULES OF JUVENILE PROCEDURE

RULE 38

PROTECTIVE ORDERS – JUDICIAL CONSENT FOR TREATMENT

[Amend Rule 38(b) as indicated (new text underlined; deleted text stricken):]

(a) * * * *

(b) ~~ORAL AND TELEPHONE AUTHORIZATIONS.~~ Where the need for an emergency order under section (a) of this rule arises and the court is not in regular session, the judge or ~~referee~~ magistrate may give oral or telephone authorization to place a child in protective custody or to detain a child in a physical health care service, which authorization shall have the same force and effect as if written and which shall be followed by a written order on the first regular day of court thereafter.

(c) * * * *

(d) * * * *

Advisory Commission Comment [2012]

The 2012 amendment substitutes in paragraph (b) the term “magistrate” for the term “referee,” consistent with statutory changes enacted by the General Assembly.