

Principles of Motions Practice

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Which motions to file depend on:

- Strength of the evidence
- The legal strategy



Benefits

- ▣ Dismissal
- ▣ Exclusion of government evidence
- ▣ Discovery technique
- ▣ Aid in evaluation of a plea
- ▣ Impeach witnesses

Benefits

- ▣ Ruling is source of reversible error
- ▣ Exposing improper police conduct may persuade prosecutor to drop charge
- ▣ Client sees you fighting for him or her in court
- ▣ Flesh out legal arguments

Reasons to use Pretrial Motions

- ❑ Dismissal
- ❑ Dispositive suppression
- ❑ Weaken prosecution morale
- ❑ Gain discovery
- ❑ Lock-in witnesses
- ❑ Judge shopping
- ❑ Preview favorable evidence
- ❑ Very technical legal issues
- ❑ Look aggressive



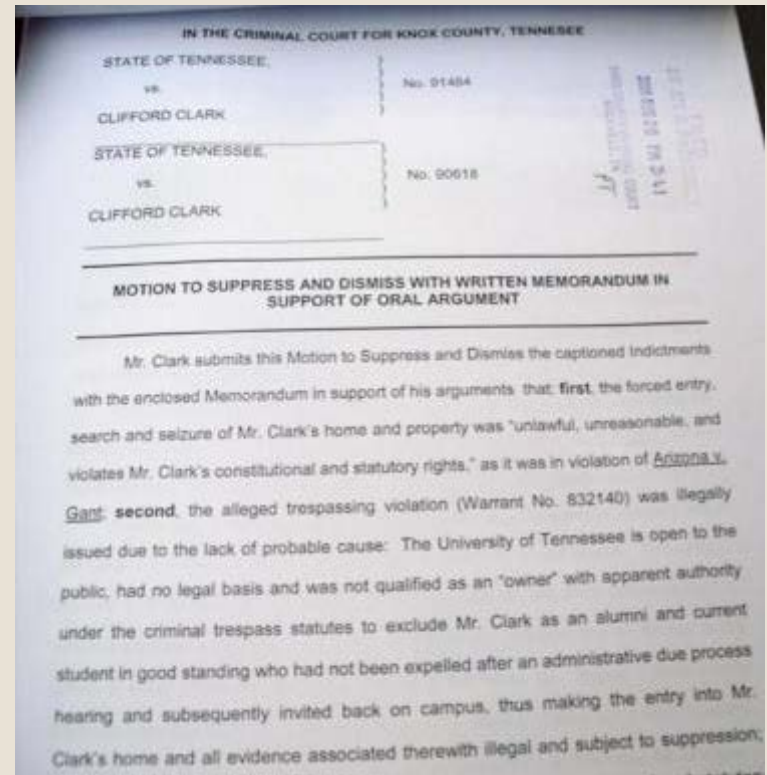
Reasons to litigate at trial



- ▣ Issue more compelling at trial
- ▣ Prevent prosecutor from obtaining appellate review
- ▣ Jeopardy attaches
- ▣ Difficult to appeal during trial
- ▣ Avoids giving preview of defense theory
- ▣ Avoids raising issues that may otherwise not come up

Form of the Motion

- ▣ Written motions are preferable
 - ▣ Preserves record
 - ▣ More compelling
- ▣ Individualized
 - ▣ Notice pleading
 - ▣ Fact pleading





Basic Principles for Motions

- State the relief wanted with clarity
- State the source of law relied on
- Use storytelling method in motions!



Basic Principles for Motions

- Disclose as little as possible
- Use a sound legal analysis

Evidentiary Hearing v. Affidavits?

Persuasiveness?

Pretrial discovery in a hearing?

Lock-in government witness testimony

Previewing defense theory?

Will government will lock-in defense witnesses?

Delay of trial?

Which judge?



File written motions

Ask for separate and distinct hearing in advance of trial date

Ensure proceedings are recorded

Preserving Record for Appeal



Ensure judge makes a decision on every motion and objection

Make offers of proof of facts the court refused to consider or admit

Move to re-open or reconsider rulings

Preserving Record for Appeal



File motion to reconsider a ruling

Object to admission of evidence **at trial**
and note **running objections**

Federalize all issues

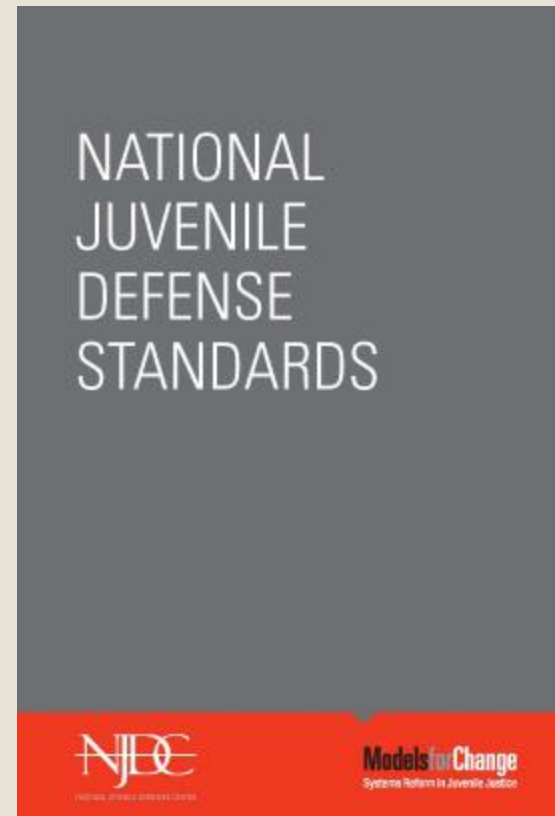
Trial Stage - Preserving Record for Appeal



National Juvenile Defense Standards

4.7 Represent Client through Pre-Trial Motions Practice

- Pre-trial motion practice is a cornerstone of effective defense advocacy.
- Counsel needs to be aware of how developmental differences between adolescents and adults may impact motions practice.



WA Performance Guidelines for Juvenile Offense Representation - Motions

- Guiding principles – “As used in these Guidelines, “must” and “shall” are intended to describe mandatory requirements.”
- Guiding principles – “Should” is not mandatory....”
- 4.12 Investigation, Pretrial Motions and Pleas – e. Pre-Trial Motions Practice – “In addition to the duties in 2011 Guideline 5, counsel **shall** make all colorable motions. Motions **should** be made in writing.” (emphasis added.)
- 5 – Juveniles Facing Adult Prosecution

Rules of Professional Responsibility

Rule 1.1 - Competence

Some courts have found failure to engage in necessary motions practice to be a violation worthy of sanction under this rule.



Forensic Exercise