



## 2023 OCR SPRING CONFERENCE | MOTIONS PRACTICE | TIP SHEET

### Written versus Oral

- The more substantial or important the ask, the more likely it should be written.
- Keep in mind if this is an issue that will likely be appealed or relevant to a future appeal (i.e., appeal of termination where reasonable efforts is an issue).

### Preparing to Draft Motion

- Use template when available
  - Look in Litigation Toolkit
  - Similar motion in prior case
  - Other attorneys / Listserv
- Cite check template and independently research the legal issue. Don't assume law cited in template is still good law.
- Conferral: Ensure you are conferring with other parties – ideally with enough time for them to consult with their own clients and respond.

### Drafting Your Motion

- Start with statutes and then supporting case law.
  - Highlight your compelling facts and be prepared to deal with your bad facts.
    - Be sure you can back up the facts you want to come before the judge with testimony.
  - Remember that the judge is human
    - Make your argument resonate from a legal and emotional standpoint. Use good storytelling.
    - Show the judge the impact of this decision on your child. (i.e. in the case scenario, this placement will facilitate a possible lifelong connection to sibling and other bio family.)
    - Keep as concise as possible.

### General Best Practices

- Forthwith v. Standard
  - If it is an issue that is going to immediately impact your child in a way that cannot be remedied by future action, file a forthwith motion (i.e. DHS intends to move your teen client to a different foster home by the end of the week and your client wishes to stay in their current home).
- When another party files a motion, it is best practice to file a response.
- For any hearing, consider whether issues of privilege need to be litigated prior to the hearing. For example, a party endorses your child's therapist for testimony, you hold therapeutic privilege, but you have not waived privilege.
- Ensure you are consulting with your own client on conferrals.

- Explain to your client your strategy with motions and offer to provide them a copy of or let them read what you have written. (Unlike some other things in the case file, this is something written about their life by their own attorney so they likely have a greater interest in having a copy of the document).