

Ethics of Motion Practice

Arman Miri & Chad Shook

“In civilized life, law floats in a sea of ethics.”
– Chief Justice Earl Warren

In the practice of law, particularly in public defense, people often forget that parents who are not able to provide basic necessities for their children or an individual who is accused of a crime are a part of our civilized life despite those issues they face.

As those who represent parents in the child welfare space or the accused in the criminal law context – or in some cases both - we start out behind LEOs, prosecutors, child welfare workers, and judges who may not grant our clients a fair shake out of the gate.

THE MISSISSIPPI BAR A LAWYER'S CREED

To my clients, I offer faithfulness, competence, diligence, and good judgment. I will strive to represent you as I would want to be represented and to be worthy of your trust.

To the opposing parties and their counsel, I offer fairness, integrity, and civility. I will seek to fairly resolve differences and, if we fail to reconcile disagreements, I will strive to make our dispute a dignified one.

To the courts, and other tribunals, and to those who assist them, I offer respect, candor, and courtesy. I will strive to do honor to the search for justice.

To my colleagues in the practice of law, I offer concern for your reputation and well being. I will extend to you the same courtesy, respect, candor and dignity that I expect to be extended to me. I will strive to make our association a professional friendship.

To the profession, I will strive to keep our business a profession and our profession a calling in the spirit of public service.

To the public and our systems of justice, I offer service. I will strive to improve the law and our legal system, to make the law and our legal system available to all, and to seek the common good through effective and ethical representation of my clients.

Guidelines for Professional Conduct in Litigation

Attorneys who engage in litigation should strive for prompt, efficient, ethical, fair and just disposition of litigation. In fulfilling this obligation the lawyer should adhere to the standards of practice as set out below.

1. In fulfilling his or her primary duty to the client, a lawyer must be ever conscious of the broader duty to the judicial system that serves both attorney and client.
2. A lawyer owes to the judiciary, candor, diligence and utmost respect.
3. A lawyer owes, to opposing counsel, a duty of courtesy and cooperation, the observation of which is necessary for the efficient administration of our system of justice and the respect of the public it serves.
4. A lawyer unquestionably owes, to the administration of justice, the fundamental duties of personal dignity and professional integrity.

5. Lawyers should treat each other, the opposing party, the court, and members of the court staff with courtesy and civility and conduct themselves in a professional manner at all times.

6. A client has no right to demand that counsel abuse the opposite party or indulge in offensive conduct. A lawyer shall always treat adverse witnesses and suitors with fairness and due consideration.

7. In adversary proceedings, clients are litigants and though ill feeling may exist between clients, such ill feeling should not influence a lawyer's conduct, attitude or demeanor towards opposing lawyers.

8. A lawyer should not use any form of discovery, or the scheduling of discovery, as a means of harassing opposing counsel or counsel's client.

9. Lawyers will be punctual in communications with others and in honoring scheduled appearances, and will recognize that negligence and tardiness are demeaning to the lawyer and to the judicial system.

10. If a fellow member of the Bar makes a just request for cooperation, or seeks scheduling accommodation, a lawyer will not arbitrarily or unreasonably withhold consent.

11. Effective advocacy does not require antagonistic or obnoxious behavior and members of the Bar will adhere to the higher standard of conduct which judges, lawyers, clients, and the public may rightfully expect.

Key Mississippi Court Rules

Civil and Criminal Procedure Rules

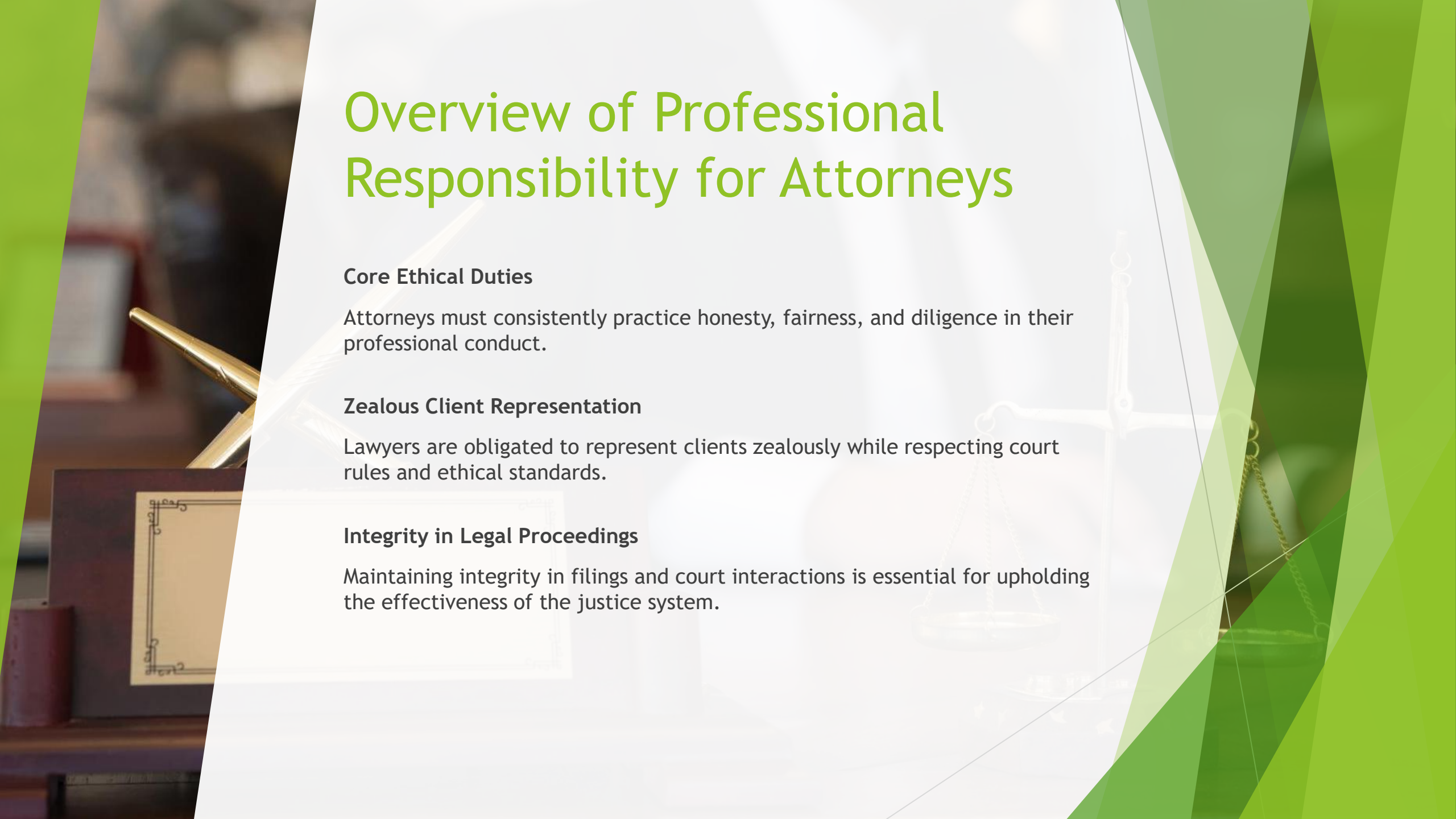
Mississippi Rules of Civil Procedure and Mississippi Rules of Criminal Procedure provide guidelines for handling civil and criminal cases within the circuit and county courts.

Youth and Trial Court Rules

Uniform Youth Court Rules guide youth court proceedings and rules exist for Chancery and Circuit and County Courts.

Federal and Local Jurisdiction Rules

Federal and Local Rules regulate procedures for cases heard in federal courts or under local jurisdiction within Mississippi.



Overview of Professional Responsibility for Attorneys

Core Ethical Duties

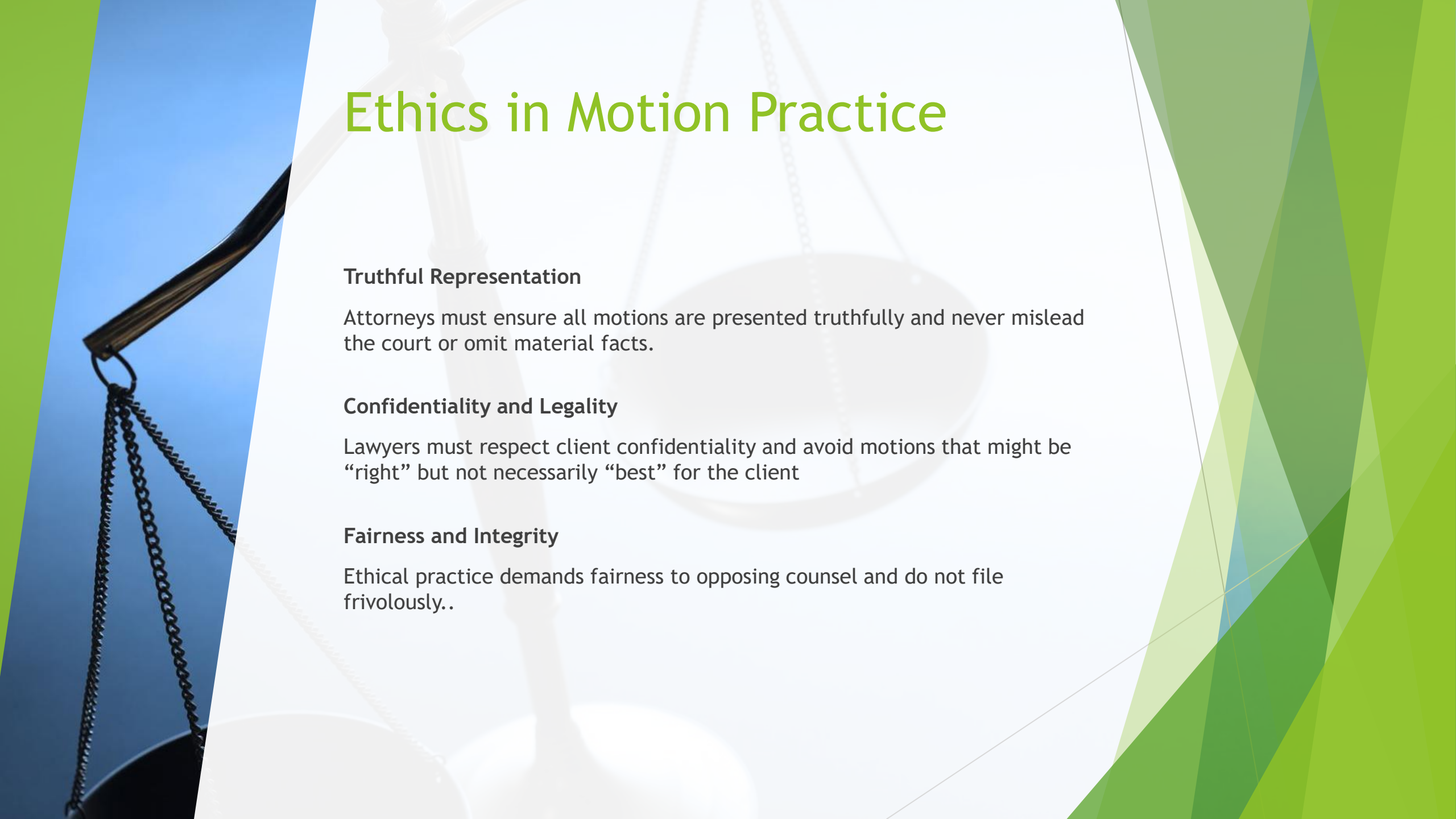
Attorneys must consistently practice honesty, fairness, and diligence in their professional conduct.

Zealous Client Representation

Lawyers are obligated to represent clients zealously while respecting court rules and ethical standards.

Integrity in Legal Proceedings

Maintaining integrity in filings and court interactions is essential for upholding the effectiveness of the justice system.



Ethics in Motion Practice

Truthful Representation

Attorneys must ensure all motions are presented truthfully and never mislead the court or omit material facts.

Confidentiality and Legality

Lawyers must respect client confidentiality and avoid motions that might be “right” but not necessarily “best” for the client

Fairness and Integrity

Ethical practice demands fairness to opposing counsel and do not file frivolously..

Ethics in Motion Practice



Correct Citations in Submissions

Attorneys must submit motions with proper legal citations to maintain integrity.



Respecting Legal Procedures

Lawyers are expected to follow all court procedural rules and avoid filings do not account for these procedures.



Promoting Fairness and Trust

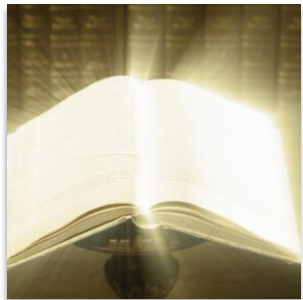
Ethical motion practice ensures fairness, builds trust in the legal system, and supports just outcomes for clients.

Ethical Motion Practice in Child Welfare Youth Court



Balancing Advocacy for Parent in Context

Attorneys should advocate strongly for parents ensuring that intake officers, CPS investigators and CPS social workers do not take strange twists and turns in an effort to unfairly bolster their written materials submitted to the Court.



Honesty and Transparency

Lawyers must honestly present their client's case in a child welfare case; motions, written or *ore tenus*, must be in good faith understanding that you are making a record in the event an appeal or mandamus is necessary,



Making Sure Parents Understand the End Goal

Parents may not understand the youth court process; therefore, it is imperative that you ensure a client understands or at least has a “big picture” understanding. A parent must grasp that the best interests of the child is the key. It's not about personalities. The long term goal is reunification which is a process.

Ethics of Chancery Court Motions



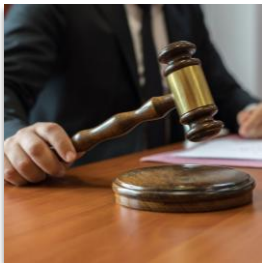
Purpose of Chancery Court Motions

Family court motions enable parties to seek legal decisions on important issues before or during court cases.



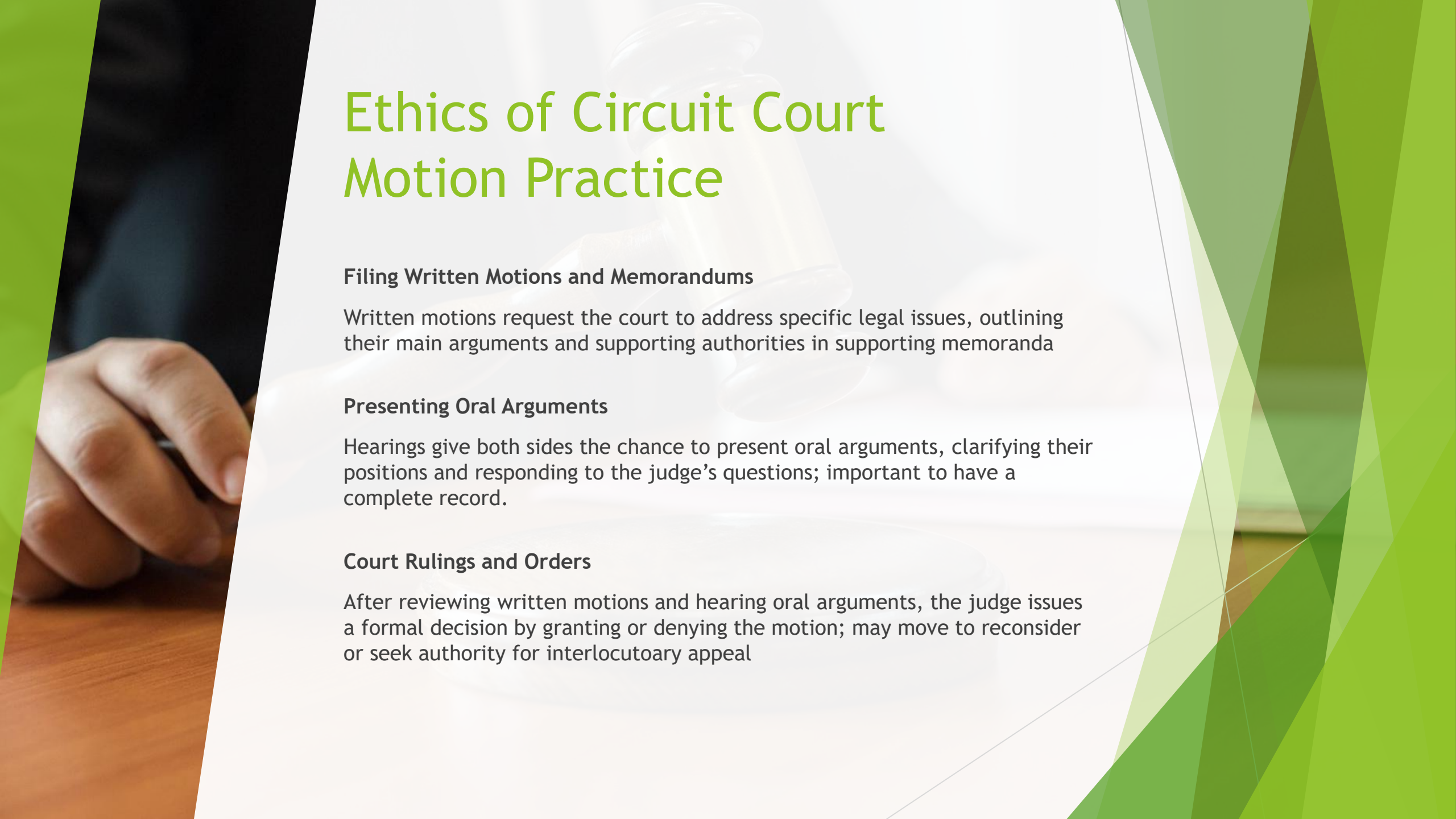
Common Issues Addressed

Motions often focus on matters like child custody, child support, and visitation arrangements between parents.



Court Motion Process

The process includes submitting written motion , presenting arguments, attending hearings, and having chancellor make a decision. Be cautious about permitting chancellors to decide important motions on the papers; it is often worth the time delay to be able to make a record



Ethics of Circuit Court Motion Practice

Filing Written Motions and Memorandums

Written motions request the court to address specific legal issues, outlining their main arguments and supporting authorities in supporting memoranda

Presenting Oral Arguments

Hearings give both sides the chance to present oral arguments, clarifying their positions and responding to the judge's questions; important to have a complete record.

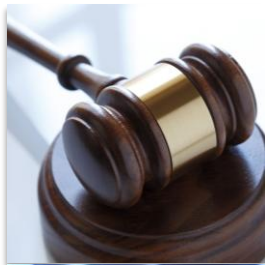
Court Rulings and Orders

After reviewing written motions and hearing oral arguments, the judge issues a formal decision by granting or denying the motion; may move to reconsider or seek authority for interlocutory appeal

WHY DO WE DO IT?



What Motions can I file for my clients?



Motion to Dismiss

This motion can remove unsupported claims early, saving time and reducing unnecessary litigation for the parties involved.



Motion for Funds

Used when no material facts are disputed, it expedites resolution and conserves resources in the case.



Discovery Motions

These motions, like to compel or protect, organize evidence and improve your client's litigation stance. ASK FOR THE CFA (COMPREHENSIVE FAMILY ASSESSMENT)!!

E.H. and J.H., Appellants, v. Lee County Department of Child Protection Services, by Marcus D. Davenport, X.M.H., and J.E.H., Minors, through their Next Friend, Marcus D. Davenport, Appellees—2025 Court of Appeals; 2025 WL 2649786

- ▶ The youth court's denial of the Hansons' Rule 60 motion was not erroneous.
- ▶ ¶52. The Hansons argued in their Rule 60 motion that the GAL failed to zealously represent the children's best interests, and at the hearing on the motion, they suggested that there were issues with the accuracy of the drug testing used. CPS noted that the Hansons had not raised concerns with the drug testing in their motion, and CPS argued that the Rule 60 motion was not filed in a reasonable time and did not present any extraordinary reason that the Hansons were entitled to relief.
- ▶ ¶53. The GAL testified at the hearing that she had not interviewed Jaden and Xane because they were too young, and she maintained that she had been heavily and thoroughly involved in the case. The court found that there were no “compelling circumstances” to warrant overturning the original judgment and that the Hansons were trying to relitigate other issues, which was not a proper basis for Rule 60 relief. The court denied the Hansons' motion.
- ▶ ¶54. Generally, we review the denial of a Rule 60(b) motion for an abuse of discretion. Smith v. Doe, 268 So. 3d 457, 461 (¶8) (Miss. 2018). Under Rule 60(b), a party can seek relief from a judgment for the following reasons:
 - ▶ (1) fraud, misrepresentation, or other misconduct of the adverse party;
 - ▶ (2) accident or mistake;
 - ▶ (3) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
 - ▶ (4) the judgment is void;
 - ▶ (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application;
 - ▶ (6) any other reason justifying relief from the judgment.
- ▶ M.R.C.P. 60(b).

- ▶ “[A] Rule 60 motion does not concern the merits of the underlying claim, only whether the movant is entitled to relief from the judgment for one of the limited grounds permitted by the rule.” In re Est. of Wylie, 226 So. 3d 114, 120 (¶16) (Miss. Ct. App. 2017). Additionally, “Rule 60(b) is not an escape hatch for litigants who had procedural opportunities afforded under other rules and who without cause failed to pursue those procedural remedies.” City of Jackson v. Jackson Oaks Ltd. P’ship, 792 So. 2d 983, 986 (¶5) (Miss. 2001). A motion for relief under Rule 60(b) “should be denied where it is merely an attempt to relitigate a case.” McNeese v. McNeese, 119 So. 3d 264, 272 (¶20) (Miss. 2013).
- ▶ ¶55. In their supplemental brief to this Court, the Hansons do not claim that the **youth court** erred by denying their Rule 60 motion. Instead, they argue again that the GAL failed to protect the children's best interests, specifically noting that the GAL did not interview the children, their foster parents, or the children's doctors. They argue that the GAL did not provide any information regarding the children's health, education, or general welfare.

WHAT IS DURABLE LEGAL CUSTODY??

¶35. Durable legal custody “means the legal status created by a court order which gives the durable legal custodian the responsibilities of physical possession of the child and the duty to provide him with care, nurture, welfare, food, shelter, education and reasonable medical care. All these duties as enumerated are subject to the residual rights and responsibilities of the natural parent(s) or guardian(s) of the child or children.” Miss. Code Ann. § 43-21-105(y).

“Under durable legal custody, unlike termination of parental rights or adoption, the natural parents retain residual rights and responsibilities as to the child.” *In re S.A.M.* 826 So. 2d at 1276 (¶26). Durable legal custody “is not permanent and is, therefore, subject to further review and modification by the courts.” *Id.* at 1279 (¶39).

► I. Appellate Jurisdiction

- 45¶11. MDCPS argues that P.S.’s issue with the **youth court’s** finding to terminate his parental rights is not properly before this Court. Specifically, MDCPS contends that the issue is premature and this Court should decline to decide it. However, we have exercised appellate jurisdiction over appeals from similar orders. “Generally, an order or judgment is final ‘if it ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.’” In other words, “[a] final, appealable, judgment is one that adjudicates the merits of the controversy and settles all the issues as to all the parties and requires no further action by the lower court.” ” In re L.C., 394 So. 3d at 528 (¶29) (citations omitted). In the case before us, the permanency order finding that reasonable efforts to reunify were not required and ordering MDCPS to begin terminating P.S.’s parental right is a final, appealable order because it settles all the issues as to all the parties and requires no further action by the trial court. See id. at 528 (¶29). Further, this Court has held that this issue may not be “re-litigated in a subsequent TPR proceeding.” Id. at 529 (¶33) (citing R.B. v. Winston Cnty. Dep’t of Child Prot. Servs., 291 So. 3d 1116, 1120-22 (¶¶10-15) (Miss. Ct. App. 2019)); see also Miss. Code Ann. § 93-15-115(c) (Rev. 2021). Therefore, we find that we have jurisdiction over P.S.’s appeal.

► “REASONABLE EFFORTS”

- Mississippi Code Annotated section 43-21-105(gg) (Rev. 2023) defines reasonable efforts as
- the exercise of reasonable care and due diligence by the Department of Human Services, the Department of Child Protection Services, or any other appropriate entity or person to use services appropriate to the child's background, accessible, and available to meet the individualized needs of the child and child's family to prevent removal and reunify the family as soon as safely possible consistent with the best interests of the child. Reasonable efforts **must** be made **in collaboration** with the family and **must** address the individualized needs of the family that brought the child to the attention of the Department of Child Protection Services and **must not** consist of required services that are not related to the family's needs.

► “REASONABLE EFFORTS”

- What are we really talking about?
- Is providing a list of names, reasonable efforts?
- Can you terminate someone for being poor or incarcerated?
- Do you have to sign the FSP?
- Can you negotiate the FSP?
- Reasonable efforts = reasonable services?

OSPD 2025 Fall Family Defender Certification Training

Session Two: Ethics in Motion Practice

Wednesday, September 17,
2025

3:20 p.m. – 4:50 p.m.

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