

Rule 55A. Motion to remand for findings necessary to determination of ineffective assistance of counsel claim

(a) Grounds for motion; notice and time. An appellant in a child welfare case in juvenile court or in a parental termination case in district court may move the appellate court to remand the case to the trial court for entry of findings of fact necessary for the appellate court's determination of a claim of ineffective assistance of counsel. The motion will be available only upon a nonspeculative allegation of facts, not fully appearing in the record on appeal, which, if true, could support a determination that counsel was ineffective.

(1) The motion must be filed before or at the time of the filing of the appellant's brief.

A motion may not be filed unless the matter is set for full briefing.

(b) Content of motion. The content of the motion must conform to the requirements of [Rule 27](#). The motion must include or be accompanied by affidavits or declarations alleging facts not fully appearing in the record on appeal that show the claimed deficient performance of the attorney. The affidavits or declarations must also allege facts that show the claimed prejudice suffered by the appellant as a result of the claimed deficient performance. If an appellant seeks to admit evidence of photographs, tests, reports, or other documentary evidence, the proposed evidence must be attached to the motion. The motion must not exceed 7,000 words, excluding the affidavits or declarations, or the proposed documentary evidence required by this paragraph.

(c) Orders of the court; response; reply. Any appellee, including the Guardian ad Litem, may file a response to the appellant's motion. If a motion under this rule is filed at the same time as appellant's principal brief, any response and reply must be filed within the time for the filing of the parties' respective briefs on the merits, unless otherwise specified by the court. If a motion is filed before appellant's brief, the court may elect to defer ruling on the motion or decide the motion prior to briefing. The response must not exceed 7,000 words. Any reply in support of the motion must not exceed 3,500 words.

(1) If the court defers the motion, the time for filing any response or reply will be the same as for a motion filed at the same time as appellant's brief, unless otherwise specified by the court.

(2) If the court elects to decide the motion prior to briefing, it will issue a notice that any response must be filed within 30 days of the notice or within such other time as the court may specify. Any reply in support of the motion must be filed within 21 days after the response is served or within such other time as the court may specify.

(3) If the requirements of paragraphs (a) and (b) of this rule have been met, the court may order that the case be temporarily remanded to the trial court to enter findings of fact relevant to a claim of ineffective assistance of counsel. The order of remand will identify the ineffectiveness claims and specify the factual issues relevant to each such claim to be addressed by the trial court.

(d) Effect on appeal. If a motion is filed at the same time as appellant's brief, the briefing schedule will not be stayed unless ordered by the court. If a motion is filed before appellant's brief, the briefing schedule will be automatically stayed until the court issues notice of whether it will defer the motion or decide the motion before briefing.

(e) Proceedings before the trial court. Upon remand, the trial court will promptly conduct hearings and take evidence as necessary to enter the findings of fact necessary to determine the claim of ineffective assistance of counsel. Any claims of ineffectiveness not identified in the order of remand will not be considered by the trial court on remand, unless the trial court determines that the interests of justice or judicial efficiency require consideration of issues not specifically identified in the order of remand. Evidentiary hearings will be conducted as soon as practicable after remand. The burden of proving a fact will be upon the proponent of the fact. The standard of proof will be a preponderance of the evidence. The trial court will enter written findings of fact concerning the claimed deficient performance by counsel and the claimed prejudice suffered by appellant as a result, in accordance with the order of remand. The evidentiary hearing on remand must

54 be completed within 45 days of entry of the order of remand, unless the trial court finds
55 good cause for a delay of reasonable length.

56 **(f) Appellate court determination.** Errors claimed to have been made during the
57 proceedings on remand are reviewable under the same standards as the review of errors
58 in other appeals. The findings of fact entered pursuant to this rule are reviewable under
59 the same standards as in other appeals.