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IN THE SUPREME COURT OF FLORIDA

CASE NO: 96,265

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IN RE:

**AMENDMENT TO THE FLORIDA RULES
OF JUDICIAL ADMINISTRATION**

**REPLY OF THE JUVENILE COURT RULES COMMITTEE
TO THE RESPONSE OF THE
RULES OF JUDICIAL ADMINISTRATION COMMITTEE
REGARDING THE PROPOSED AMENDMENT TO
FLORIDA RULE OF JUDICIAL ADMINISTRATION 2.052**

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Sarah H. Bohr, Chair, Juvenile Court Rules Committee,¹ and John F. Harkness, Jr., Executive Director, The Florida Bar, file this Reply to the Response filed by the Rules of Judicial Administration Committee of The Florida Bar and Opposition to Emergency Petition to Amend Florida Rule of Judicial Administration 2.052 (hereby “Judicial Administration Committee Response”). The Juvenile Court Rules Committee reaffirms its support of Frank A. Kreidler’s Emergency Petition to Amend FLORIDA RULE OF JUDICIAL ADMINISTRATION 2.052 (hereinafter “Rule 2.052”), as set forth in its previously filed Response, with one change. At its meeting held on October 28, 1999, the Juvenile Court Rules Committee voted unanimously to modify its proposed amendment to Rule 2.052 to delete the reference to uncontested termination of parental rights (hereinafter “TPR”) cases.² The Juvenile Court Rules Committee asks this Court to adopt the

¹The writer specifically recognizes the invaluable assistance provided by Deborah A. Schroth with the research and editing of this Reply. Ms. Schroth, a former member of the Juvenile Court Rules Committee, is an attorney with Florida Legal Services and is Chair-elect of the Public Interest Law Section.

²The Juvenile Court Committee’s proposed amendment to Rule 2.052 was revised as follows:

(a) **Priorities.** In resolving calendar conflicts between the state courts of Florida or between a state court and a federal court in Florida, the following case priorities must be considered:

(1) Contested termination of parental rights trials should prevail over jury and nonjury civil and criminal trials, other than capital trials.

changes to Rule 2.052, as modified herein.

In its Response, the Rules of Judicial Administration Committee (hereinafter “Judicial Administration Committee”) opposes any changes to Rule 2.052, asserting that this rule sets forth broad guidelines regarding the treatment of calendar conflicts and was never intended to address individual case priorities. See Judicial Administration Committee Response at 3-6. The Judicial Administration Committee further states that Rule 2.052, or any other rule should not contain any type of “ranking” or “prioritization” of different types of proceedings unless “all other types of proceedings with priorities established by the legislature or the courts are evaluated and compared.” *Id.* at 3.

The position of the Judicial Administration Committee ignores the fact that TPR cases, while technically civil in nature, are really a hybrid between criminal and civil proceedings. The unique nature of these cases is not addressed in the current Rule 2.052, where TPR cases are effectively accorded the lowest priority of all cases. Since these cases involve constitutionally protected rights, they

-
- (12) Criminal cases should prevail over civil cases.
 - (23) Jury trials should prevail over non-jury trials.
 - (34) Appellate arguments, hearings, and conferences should prevail over trial court proceedings.
 - (45) The case in which the trial date has been first set should take precedence.

warrant a much higher priority in scheduling before the trial court whenever conflicts arise.

Furthermore, this Court has already accomplished what the Rules of Judicial Administration Committee seeks to avoid: it has enacted a rule of appellate procedure which specifically recognizes that TPR cases deserve priority in appeals. *See Amendments to the Florida Rules of Appellate Procedure*, 685 So.2d 773, 777 (Fla. 1996) (enacting changes to Fla. R. App. P. 9.146(g)).³ Since the proposed changes to Rule 2.052 would be consistent with this Court's treatment of TPR cases before Florida's appellate courts, the Juvenile Court Rules Committee respectfully requests that this Court amend Rule 2.052, as indicated on the attached copy.

ARGUMENT

I. TERMINATION OF PARENTAL RIGHTS CASES, WHILE TECHNICALLY CIVIL CASES, ARE REALLY A HYBRID BETWEEN CRIMINAL AND CIVIL CASES, AND ARE NOT SPECIFICALLY ADDRESSED IN THE CURRENT RULE 2.052.

Termination of parental rights cases are technically civil cases.⁴ However,

³ This rule provides that the "court shall give priority to appeals" in TPR cases, as well in juvenile dependency and cases involving families and children in need of services.

⁴See *Department of Children and Family Services v. The Natural Parents of J.B.*, 736 So.2d 111, 114 (Fla. 4th DCA 1999); *Simms v. Department of Health & Rehabilitative Services*, 641 So.2d 957, 961 (Fla. 3rd DCA 1994), *rev. denied*, 649 So.3d 870 (Fla. 1994); *Julian v. Lee*, 473 So.2d 736, 739 (Fla. 5th DCA 1985).

given the unique nature of these proceedings, TPR cases are actually a hybrid between criminal and civil cases, warranting a differing treatment under Rule 2.052.

The unique nature of TPR proceedings is evidenced by the fact that the structure of TPR cases is very similar to the structure of criminal cases: an arraignment/advisory hearing on the “charges,” then an adjudicatory trial, and then a disposition/“sentencing” hearing. *See* §§ 39.808, 39.809, and 39.811, Florida Statutes (1999). Additionally, as discussed herein, TPR cases involve constitutionally protected rights. First, the court has the authority to deprive a parent, permanently, of a fundamental constitutional liberty interest, namely, the right to raise one’s children. *See* pages 5-6, *infra*. Second, in light of the degree of due process inherent in these cases, unlike other civil actions, the court is required to appoint counsel for indigent parents. *Id.* at 6. *See also In the Interest of M.M.N., et al v. Department of Children and Families*, 708 So.2d 990, 992 (Fla. 2nd DCA 1998) (stating that “[t]rial courts should understand that it is the task of trial counsel in a parental termination proceeding to file the notice of appeal in the trial court and to arrange for the preparation of the record, just as these functions are the task of trial counsel in a criminal case”).

The current Rule 2.052 simply fails to recognize the unique nature of TPR

cases, as they are effectively accorded the lowest priority of all cases. These cases are treated as civil, non-jury cases, and thus, receive the lowest priority under Rule 2.052(a)(1) and (2). Additionally, since TPR cases are required to be expedited, it is highly likely that the trial of these matters would be set more recently than other cases. *See* § 39.808(3), Florida Statutes (1999) (requiring the court to set the adjudicatory hearing in a termination of parental rights case within 45 days after the advisory hearing “unless all of the parties agree to some other hearing date”). Accordingly, TPR cases would also frequently have a lower priority under Rule 2.052(a)(4), which provides that the “case in which the trial date has been first set should take precedence.”

The unique nature of TPR cases is simply not recognized in the current Rule 2.052. The Juvenile Court Rules Committee believes that the unique nature of these cases warrants their differing treatment under Rule 2.052, as proposed herein.

II. TERMINATION OF PARENTAL RIGHTS CASES INVOLVE CONSTITUTIONALLY PROTECTED RIGHTS AND, AS SUCH, WARRANT THE HIGHEST PRIORITY IN SCHEDULING BEFORE THE TRIAL COURT.

Because TPR cases involve constitutionally protected rights, the Juvenile Court Rules Committee believes they deserve the highest priority in scheduling before the trial court. These rights include the fundamental right to raise one’s

children and the due process right to counsel which flows from this protected liberty interest.

This Court has recognized that “there is a constitutionally protected interest in preserving the family unit and raising one’s children.” *In Interest of D.B.*, 385 So.2d 83, 90 (Fla. 1980), citing *Moore v. East Cleveland*, 431 U.S. 494, 97 S.Ct. 1932, 52 L.Ed.2d 531 (1976); *Stanley v. Illinois*, 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972); *May v. Anderson*, 345 U.S. 528, 73 S.Ct. 840, 97 L.Ed. 1221 (1953); *Meyer v. Nebraska*, 262 U.S. 390, 399, 43 S.Ct. 625, 626, 67 L.Ed. 1042, 1045 (1923). The right to raise one’s children has long been recognized as one of the fundamental liberty interests protected by the Fourteenth Amendment. As the United States Supreme Court stated in 1923 in *Meyer v. Nebraska*, 262 U.S. 390, 399, 43 S.Ct. 625, 626, 67 L.Ed. 1042, 1045 (1923), “[w]ithout doubt, [liberty] denotes not only freedom from bodily restraint but also the right of the individual to . . . marry, establish a home and bring up children.” Because the interests involved in TPR cases are so “important and fundamental in nature,” this Court has held that the due process clause of the United States and Florida constitutions require the appointment of counsel in these proceedings. *In Interest of D.B.*, 385 So.2d at 90.

Termination of parental rights cases are also unique because of the profound

impact they have not only on the parents, but also on the lives of their children.

As recognized by the National Council of Juvenile and Family Court Judges:

Not only are parents' rights at stake in a termination proceeding, but whatever ruling the court makes can involve serious risks to the child as well. There are risks to the child in terminating parental rights because, if the decision is mistaken, the child may needlessly be deprived of the chance to return home, to keep in contact with the parents, and to have lifelong relationships with members of the extended family.

On the other hand, failure to terminate parental rights may deprive a child of the chance for a permanent substitute home. . . .

Delaying or deferring termination of parental rights decisions can create serious problems. Time frames and continuances that seem reasonable to adults and appropriate in other circumstances are unacceptable when a child's right to permanence is at stake. Delays often mean missed opportunities and consequences with devastating effects on the life of a child. When termination decisions are deferred or delayed, a child's emotional problems may worsen and the child may become more difficult to place.

Reasonable timetables must be imposed for termination of parental rights cases. Courts must be actively involved in managing the pace of the litigation, and take active steps to identify and eliminate unnecessary delay.

National Counsel of Juvenile and Family Court Judges, "Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases" 88 (Jan. 1995).⁵

Because TPR cases involve constitutionally protected rights that so directly impact the lives of Florida's children and their families, when calendar conflicts

⁵Pertinent excerpts from this publication are Exhibit A.

arise, they should not have a lower priority than auto accident cases and property disputes,⁶ as in the current Rule 2.052. Instead, TPR cases are much more akin to criminal cases, and should be treated as such in Rule 2.052. *See* pages 3-5, *supra*. Indeed, it is the position of the Juvenile Court Rules Committee that TPR cases deserve the highest priority of all cases, except capital cases, and seeks the adoption of the proposed changes.

III. THE PROPOSED CHANGES TO FLORIDA RULE OF JUDICIAL ADMINISTRATION 2.052 WOULD BE CONSISTENT WITH THIS COURT'S TREATMENT OF TERMINATION OF PARENTAL RIGHTS CASES BEFORE FLORIDA'S APPELLATE COURTS.

This Court has previously recognized that TPR cases deserve different treatment before the Florida appellate courts by the promulgation of Rule 9.146, FLORIDA RULES OF APPELLATE PROCEDURE (hereinafter "Appellate Rule 9.146"). *See Amendments to the Florida Rules of Appellate Procedure*, 685 So.2d at 777. This rule, entitled "Appeal Proceeding in Juvenile Dependency and Termination of Parental Rights Cases Involving Families and Children in Need of Services," states that "[t]he court shall give priority to appeals under this rule." Fla. R. App. P. 9.146(g).⁷ Significantly, a review of the FLORIDA RULES OF APPELLATE

⁶While these proceedings are both civil in nature, a litigant has the right to a jury trial to resolve these disputes, thereby permitting these cases to have a higher priority than TPR cases under Rule 2.052.

⁷As an example of this mandate, the First District Court of Appeal sets forth a policy in its docketing statement indicating that it will only grant extensions of time in

PROCEDURE reveals Appellate Rule 9.146 is the *only* appellate rule mandating expedited review of an entire class of cases. The proposed changes to Rule 2.052 at issue in this proceeding are totally consistent with Appellate Rule 9.146, and with this Court's recognition of the need to accord TPR appeals priority over other types of cases.

In *C.L.S. v. Department of Children and Families*, 724 So.2d 1181, 1186 (Fla. 1998), this Court stated that “[b]oth this Court and the legislature have mandated that priority be given to appeals in termination cases.” This Court noted that in such appeals, the life of a “young child is, in essence, being put on hold” that the “legislature has emphasized that rapid resolution of these cases protects the affected parties, especially the children.” *Id.*

The rapid resolution of these cases is not only needed at the appellate level, but at the trial court as well. The proposed changes to Rule 2.052 would assist in further accomplishing this goal, and are totally consistent with this Court's treatment of TPR cases before Florida's appellate courts.

CONCLUSION

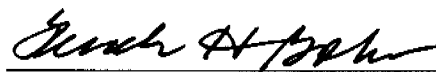
Federal and state law both mandate permanency for dependent children, and this permanency should be achieved within one year. *See* §§ 39.701(8)(f),

cases involving children in the event of an emergency. That court further encourages counsel to adopt an accelerated briefing schedule in such cases.

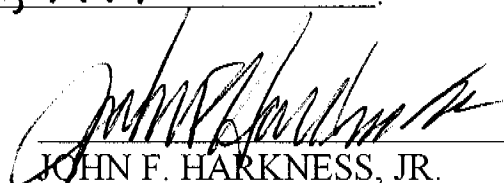
39.703(2), Florida Statutes (1999) and 42 U.S.C. § 675(5)(c). However, the permanency required by law simply cannot be achieved unless TPR cases are accorded a higher priority in scheduling than other civil cases when conflicts arise. Such conflicts are sure to arise, given the 298% increase in the filing of these cases since 1997.⁸

Since TPR cases involve constitutionally protected rights, they warrant the highest priority in scheduling before the trial court when conflicts arise. Accordingly, the Juvenile Court Rules Committee respectfully recommends that the Court amend Rule 2.052, as indicated on the attached copy.

Respectfully submitted Dec. 4, 1999



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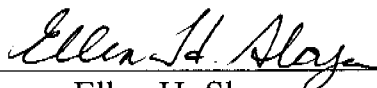


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⁸According to statistics maintained by the Summary Reporting System data base provided by the clerks of court offices in Florida, in 1997, 758 TPR cases were filed statewide. In 1999, based on the filing of 1,129 cases through June of 1999, the filings have increased by 298 percent. This increase was computed by first multiplying the figure for 1999 by two to arrive at a projected yearly figure ($1,129 \times 2 = 2,258$), and then dividing this figure by the filings in 1997 ($2,258 \div 758 = 2.9788$). Copies of these statistics are attached hereto as Exhibit B.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to Frank A. Kreidler, 1124 South Federal Highway, Lake Worth, FL 33460-5244; The Honorable Scott Jay Silverman, Chair, Rules of Judicial Administration Committee, 1351 N.W. 12th Street, Ste. 513, Miami, FL 33125-1629, Paul R. Regensdorf, Esquire, Las Olas Centre, Suite 950, 450 East Las Olas Boulevard, Fort Lauderdale, FL 33301, and to Carol A. Licko, General Counsel, Daniel J. Woodring, Assistant General Counsel, Executive Office of the Governor, The Capital, Room 209, Tallahassee, FL 32399-0001 by U.S. mail this 6th day of December, 1999.



Ellen H. Sloyer

Rule 2.052. CALENDAR CONFLICTS

(a) **Priorities.** In resolving calendar conflicts between the state courts of Florida or between a state court and a federal court in Florida, the following case priorities must be considered:

(1) Contested termination of parental rights trials should prevail over jury and nonjury civil and criminal trials, other than capital trials.

(12) Criminal cases should prevail over civil cases.

(23) Jury trials should prevail over non-jury trials.

(34) Appellate arguments, hearings, and conferences should prevail over trial court proceedings.

(45) The case in which the trial date has been first set should take precedence.

(b) **Additional Circumstances.** Factors such as cost, numbers of witnesses and attorneys involved, travel, length of trial, age of case, and other relevant matters may warrant deviation from these case priorities.

(c) **Notice and Agreement; Resolution by Judges.** When an attorney is scheduled to appear in 2 courts at the same time and cannot arrange for other counsel to represent the clients' interests, the attorney shall give prompt written notice of the conflict to opposing counsel, the clerk of each court, and the presiding judge of each case, if known. If the presiding judge of the case cannot be identified, written notice of the conflict shall be given to the chief judge of the court having jurisdiction over the case, or to the chief judge's designee. The judges or their designees shall confer and undertake to avoid the conflict by agreement among themselves. Absent agreement, conflicts should be promptly resolved by the judges or their designees in accordance with the above case priorities.

Committee Notes

1996 Adoption. The adoption of this rule was prompted by the Resolution of the Florida State-Federal Judicial Council Regarding Calendar Conflicts Between State and Federal Courts, which states as follows:

WHEREAS, the great volume of cases filed in the state and federal courts of Florida creates calendar conflicts between the state and federal courts of Florida which should be resolved in a fair, efficient and orderly manner to allow for judicial efficiency and economy; and

WHEREAS, the Florida State-Federal Judicial Council which represents the Bench and Bar of the State of Florida believes that it would be beneficial to formally agree upon and publish recommended procedures and priorities for resolving calendar conflicts between the state and federal courts of Florida;

NOW, THEREFORE, BE IT RESOLVED

In resolving calendar conflicts between the state and federal courts of Florida, the following case priorities should be considered:

1. Criminal cases should prevail over civil cases.
2. Jury trials should prevail over non-jury trials.
3. Appellate arguments, hearings, and conferences should prevail over trials
4. The case in which the trial date has been first set should take precedence.
5. Circumstances such as cost, numbers of witnesses and attorneys involved, travel, length of trial, age of case and other relevant matters may warrant deviation from this policy. Such matters are encouraged to be resolved through communication between the courts involved.

Where an attorney is scheduled to appear in two courts--trial or appellate, state or federal--at the same time and cannot arrange for other counsel in his or her firm or in the case to represent his or her client's interest, the attorney shall give prompt written notice to opposing counsel, the clerk of each court, and the presiding judge of each case, if known, of the conflict. If the presiding judge of a case cannot be identified, written notice of the conflict shall be given to

the chief judge of the court having jurisdiction over the case, or to his or her designee. The judges or their designees shall confer and undertake to avoid the conflict by agreement among themselves. Absent agreement, conflicts should be promptly resolved by the judges or their designees in accordance with the above case priorities.

In jurisdictions where calendar conflicts arise with frequency, it is recommended that each court involved consider appointing a calendar conflict coordinator to assist the judges in resolving calendar conflicts by obtaining information regarding the conflicts and performing such other ministerial duties as directed by the judges.

REVISED AND READOPTED at Miami, Florida, this 13th day of January, 1995.

RESOURCE GUIDELINES

Improving Court Practice in Child Abuse & Neglect Cases

**NATIONAL COUNCIL OF JUVENILE
AND FAMILY COURT JUDGES**

EXHIBIT A

RESOURCE GUIDELINES

Improving Court Practice in Child Abuse & Neglect Cases

Authored by the Publication Development Committee
Victims of Child Abuse Project
Honorable David E. Grossmann, Chairman

Spring 1995

National Council of Juvenile
and Family Court Judges
Louis W. McHardy, Executive Director
University of Nevada, Reno

Approved by National Council of Juvenile and Family Court Judges
Officers and Board of Trustees
January 1995

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A. Need for Guidelines

Victims of child abuse and neglect come before juvenile and family court judges for protection from further harm and for timely decision-making for their future. In response, judges make critical legal decisions and oversee social service efforts to rehabilitate and maintain families, or to provide permanent alternative care for child victims. These oversight responsibilities require a large portion of the court's attention, workload and resources as the reported number of child abuse and neglect cases grows each year. Public awareness of the tragedy of physical and sexual abuse of children has led to a recent explosion in court referrals. The problem has been exacerbated by poverty, the impact of drug-exposed mothers and infants, HIV Syndrome, the continuing dissolution of the family unit, and the growing recognition that child victims are often found in violent families.

Throughout the United States, child abuse and neglect proceedings in the juvenile and family courts have been transformed by new demands placed upon the courts. These demands have included escalating judicial caseloads, increasingly difficult cases, and a significant new role assigned to juvenile and family courts in abuse and neglect cases.

In the 1970's, juvenile and family courts were expected only to determine whether a child had been abused or neglected and, if so, whether the child needed to be removed from home or placed under court or agency supervision. At present, however, courts are expected to make sure a safe, permanent, and stable home is secured for each abused or neglected child. This change has been brought about by major federal foster care reform legislation, the Adoption Assistance and Child Welfare Act of 1980—boxed at right on page 11, (P.L. 96-272) and major revisions in state laws.

As a result of recent changes in federal and state law, juvenile and family courts now take a far more active role in decision-making in abuse and neglect cases. More complex issues are now decided in each case, more hearings are held, and many more persons are in-

involved. To perform their expanded oversight role, courts need to understand how public child welfare agencies operate and what services are available in the community for endangered children and their families.

Unfortunately, many courts have neither the ability nor the resources to meet these new demands. Judicial caseloads have actually risen at the same time that the number of issues, hearings, and parties have increased. As a result, in many jurisdictions, the quality of the court process has gravely suffered. Hearings are often rushed in child abuse and neglect cases. There are also frequent and unfortunate delays in the timing of hearings and decisions, causing children to grow up without permanent homes. Many courts know little about relevant agency operations or services. All too often, child welfare agency employees spend unnecessary hours waiting for court hearings while they could be "out working in the field."

The nation's juvenile and family courts need a clear description of ways to fulfill their responsibilities in child abuse and neglect cases. This description must explain the decision-making process in these cases and describe resources needed to create such a process.

What is needed is a clear vision of juvenile and family court procedures in child abuse and neglect cases, based upon the experiences of demonstration courts which already have been relatively successful in performing their new role. The new vision must be realistic, clarifying the resources necessary to meet 21st century demands.

The increased responsibilities and resultant administrative tasks which P.L. 96-272 requires of judges are taxing already overburdened people and systems. Juvenile and family court judges are the gatekeepers of our nation's foster care system. They must ultimately decide whether a family in crisis will be broken apart and children placed in foster care or whether placement can be safely prevented through the reasonable efforts of our social service system.

Duties Imposed by the Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272) on State Juvenile and Family Courts

Federal Requirements Applicable to State Juvenile and Family Courts:

- Evaluation of reasonableness of services to preserve families.
- Periodic review hearings in foster care cases.
- Adherence to deadlines for permanency planning decisions.
- Procedural safeguards concerning placement and visitation.

Indirect Impact on Courts of Federal Requirements:

- More termination of parental rights cases.
- More adoption, custody, and relative placement cases.

Some Additional Duties Often Imposed on Juvenile and Family Courts By State Statute or Court Rule

Everything Specified by Federal Law, Plus the Following:

- Prompt review of emergency placements.
- Strict deadlines for adjudication (trial).
- Strict deadlines for disposition.
- Oversight of agency case planning.
- Periodic review in all cases.
- Stricter deadlines for permanency planning decisions.
- Procedural safeguards stricter than those specified by federal law and provided through the courts.
- More termination of parental rights proceedings due to updated grounds.
- Oversight of agency efforts to place abused or neglected children with relatives.

Source: M. Hardin, *Judicial Implementation of Permanency Planning Reforms: One Court That Works* (ABA 1992).

If reasonable efforts to preserve or reunify families are not evaluated and ensured through effective judicial review, then families and children are unnecessarily harmed.

Note: Additional information on P.L. 96-272 is provided in Appendix C. "Improving the Implementation of the Federal Assistance and Child Welfare Act of 1980," by the Hon. Leonard P. Edwards, superior court judge in Santa Clara County, California.

B. Purpose of Guidelines

The purpose of these resource guidelines is to set forth the essential elements of properly conducted court hearings. The guidelines describe the requirements of juvenile and family courts in fulfilling the role now placed upon them by federal and state laws. These guidelines also describe how court calendars can be efficiently managed to achieve efficiency and avoid delays; explain the court staffing and organization necessary to make the judicial process run smoothly; and clarify costs associated with such reforms.

These guidelines are meant to influence future administrative and funding decisions concerning juvenile and family courts. They are intended to help correct the gaping discrepancies that presently exist between legislative demands and judicial resources for child abuse and neglect cases.

C. Scope of Guidelines

These guidelines set forth the elements of a high-quality judicial process in child abuse and neglect cases. They specify the necessary elements of a fair, thorough, and speedy court process in cases brought for the protection of abused and neglected children. The guidelines cover all stages of the court process, from the preliminary protective hearing until juvenile and family court involvement has ended. These guidelines assume that the court will remain

I. Introduction

involved until after the child has been safely returned home, placed in a new, secure and legally permanent home — whether through adoption or legal custody — or has reached adulthood.

These guidelines address the process itself rather than substantive law. They do not offer criteria for state agency or court intervention in the lives of families, but are limited to matters of judicial procedure, organization, staffing, and finances. The guidelines do not attempt to define child abuse and neglect, describe what kinds of child abuse or neglect justify a child's removal from home, specify when children can safely be returned home, or set forth suggested grounds for the termination of parental rights.

Instead of focusing on the criteria for judicial decisions, these guidelines set forth the characteristics of each hearing itself. The guidelines outline needed procedural steps for each hearing, describe key decisions that must be made, specify when each hearing needs to take place, and the role of each participant.

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The guidelines outline needed procedural steps for each hearing, describe key decisions that must be made, specify when each hearing needs to take place, and the role of each participant.

The guidelines also explain the necessary preconditions for conducting thorough, meticulous, and timely hearings. For example, courts need certain administrative supports to effectively manage the pace of litigation. To conduct proper hearings, courts must meet certain personnel requirements, provide necessary types of equipment, have adequate facilities and work space, have workable caseloads, and provide for diligent advocacy for the parties. These guidelines clarify such requirements with specific reference to child abuse and neglect litigation in juvenile and family courts.

These guidelines were not developed in a vacuum, but resulted instead from the working experience of many courts,

most notably the Hamilton County Juvenile Court in Cincinnati, Ohio. Throughout the deliberations resulting in the final document, Hamilton County experience was observed, measured and documented to provide a base of reality for understanding both the need for good practice and the requirements necessary to assure it can occur.

Technical information is provided in Appendix A - Time Resource Calculations to further guide court administrators and judges estimating docket time, judicial time and ancillary court staff time necessary to implement the Resource Guidelines. Estimates are provided of the annual time requirements for new cases from initial disposition through ongoing case review to termination.

D. Key Principles Underlying Guidelines

The most basic principle underlying these guidelines is the need for comprehensive and timely judicial action in child welfare cases. These guidelines recognize the need to assure safe and permanent homes for abused or neglected children and the prominent role of the judiciary in this process. Other key principles include:

1. Avoiding Unnecessary Separation of Children and Families

When the state is forced to intervene on behalf of abused and neglected children, it is not enough to protect them from immediate harm. When the state is deciding whether to place children outside the home, it must take into account not only the children's safety, but also the emotional impact of separation. Throughout its involvement, the state must strive to ensure that children are brought up in stable, permanent families, rather than in temporary and unstable foster placements under the supervision of the state.

The need to provide permanent homes for abused or neglected children is the fundamental principle behind the Adoption Assistance and Child Welfare Act of 1980.¹ The obligation to achieve permanency is also set forth in most

states' juvenile court acts and laws authorizing the termination of parental rights.

Statutory provisions designed to achieve permanency for abused or neglected children are based on several widely accepted principles of child development. First, many mental health professionals believe that stable and continuous care givers for children are very important to normal emotional growth.² According to these authorities, children need secure and uninterrupted emotional relationships with adults who are responsible for their care. Repeatedly disrupted placements and relationships can interfere with a child's ability to form close emotional relationships after reaching maturity.

Second, children need the security of having parents committed to their care. The lack of parents who provide unconditional love and care can profoundly insult a child's self-image.³

Third, having a permanent family adds predictability to a child's life. Foster care, with its inherent instability and impermanence, can impose great stress on a child. Weathering the normal situational changes of childhood in a permanent family enables a child to envision a more secure future.⁴

Fourth, the child-rearing competence of autonomous families is always superior to that of the state.⁵ Parents are likely to be capable of making the best, most timely decisions for a child, while decision-making concerning a child in state-supervised foster care can often be fragmented and inconsistent.

If it is important that children be raised in stable and secure families, it follows that the state should, when possible, protect the child without removing the child from home. Preventing unnecessary removal also helps to preserve the constitutional right of families to be free from unwarranted state interference.

To prevent unnecessary removal of children from their homes, the state must take strong, affirmative steps to assist families. Toward this end, federal law requires child welfare agencies to make "reasonable efforts" to prevent the

necessity of foster placement.⁶ States have reinforced this federal requirement through state statutes, regulations, and written policies.

2. Reunification

Achieving permanent homes for abused and neglected children also includes working toward the reunification of families that have had to be separated. When there has been no safe way to prevent the need for foster placement, states must make reasonable ef-

To prevent unnecessary removal of children from their homes, the state must take strong, affirmative steps to assist families.

orts to bring about the safe reunification of children and their families.⁷ States have spelled out this obligation through state statutes, regulations, and policies. Among the requirements are the following: individual written case plans specifying state efforts to reunify families; placement in the least disruptive setting possible; actual services pursuant to the case plans; and periodic review of each case to ensure timely progress toward reunification.

3. When Reunification is Not Feasible

Of course, some children in foster care cannot safely be returned home in spite of the state's best efforts to assist the family. The best state efforts to assist families do not always improve parental behavior or enable parents to care for their children. In cases where family reunification is not feasible, the search for a new, permanent home for the child supersedes that as a goal.

Federal law makes it clear that permanent homes are to be arranged for children unable to be reunited with their families within a reasonable time.⁸ State laws and policies on such issues as case review, termination of parental rights, custody, adoption of children with special needs, and adoption subsidy reinforce this concept.

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4. The Need to Make Timely Decisions in Child Abuse and Neglect Litigation

Court delays can be a major obstacle to achieving permanency for abused and neglected children. Even where the pace of litigation is tightly managed, decision-making in child abuse and neglect cases can extend for many months. When juvenile or family court proceedings are allowed to proceed at the pace of other civil litigation, children spend years of their childhood awaiting agency and court decisions concerning their future.

Children have a very different sense of time from adults. Short periods of time for adults seem interminable for children, and extended periods of uncertainty exacerbate childhood anxiety. When litigation proceeds at what attorneys and judges regard as a normal pace, children often perceive the proceedings as extending for vast and infinite periods.

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When juvenile or family court proceedings are allowed to proceed at the pace of other civil litigation, children spend years of their childhood awaiting agency and court decisions concerning their future.

The passage of time is magnified for children in both anxiety levels and direct effect. Three years is not a terribly long period of time for an adult. For a six-year-old, it is half a lifetime, for a three-year-old, it is the formative stage for trust and security, and for a nine-year-old, it can mean the difference between finding an adoptive family and failing to gain permanence because of age. If too much time is spent in foster care during these formative years, lifetime problems can be created.⁹

Court delays caused by prolonged litigation can be especially stressful to abused and neglected children. The uncertainty of not knowing whether they will be removed from home, whether and when they will go home, when they might be moved to another

foster home, or whether and when they may be placed in a new permanent home are frightening.

The law requires courts to make timely decisions for abused or neglected children. Under federal law, a decision concerning the permanent placement of each child is to take place within 18 months of when a child is first placed into foster care.¹⁰ Many states set stricter deadlines. To be able to meet such deadlines in making a permanent placement decision for a child, the earlier stages of the litigation must also occur in a timely manner.

Combatting delays in juvenile court, where there are many stages to the litigation and many participants in the process, can be more difficult than in other courts. Yet efforts to speed litigation in child welfare can be successful. There are great variances in court delays from jurisdiction to jurisdiction, and while differences in caseloads can be the cause, docketing practices and case flow management have their effect. Some courts have very successfully used case flow management to reduce delays in child welfare litigation. To do so, however, the courts have had to make timely litigation a high priority.

5. The Oversight Role of the Juvenile and Family Court

Child welfare cases impose a special obligation on juvenile and family court judges to oversee case progress. Case oversight includes two requisites: state fulfillment of its responsibilities and parental cooperation with the state.

The oversight obligation of judges in child welfare cases is necessary because special circumstances apply: (1) court involvement in child welfare cases occurs simultaneously with agency efforts to assist the family; (2) the law assigns to the juvenile court a series of interrelated and complex decisions that shape the course of state intervention and determine the future of the child and family; and (3) because of the multitude of persons dealing with the child and family, there is increased potential for delay and error.

Unlike most litigation, child abuse and neglect cases deal with an ongoing and

I. Introduction

changing situation. In a criminal case, by contrast, the trial usually deals with whether specific criminal acts took place at a specified time and place. But in a child welfare case, the court must focus on agency casework and parental behavior over an extended period of time. In making a decision, the court must take into account the agency's plan to help the family and anticipated changes in parental behavior. At the same time, the court must consider the evolving circumstances and needs of each child.

The juvenile court or family court judge is required to remain actively involved over a period of time in child welfare litigation. The judge does not simply make a one-time decision concerning the care, custody, and placement of a child, but rather makes a series of decisions over time. In effect, step-by-step the judge must determine how best to assure the safe upbringing of the child, and that the child is eventually placed in a safe and permanent home.

The decisions that must be made in child welfare litigation are not merely litigation management decisions, but decisions governing the lives and futures of the parties. For example, over time a court may order, in a single child welfare case: the child's emergency placement into shelter care; the child's placement into extended foster care; the parents' participation in treatment; the parents' submission to evaluation or testing; the parents' participation in a revised treatment plan; a schedule for parent-child and sibling visitation; termination of parental rights; and the child's adoption. The length, scope, and continuous nature of these determinations involves the court in the lives of the parties and the operations of the agency to a degree unlike other court cases.

All decisions in a child welfare case are interrelated. Just as the findings at the adjudication (trial) shape the disposition (the decision concerning the child's custody, placement, and services), subsequent review hearings typically focus on how the parties have reacted to the court's decision at disposi-

tion. Termination of parental rights proceedings rely heavily upon the court's findings during all earlier stages of the case.

In child welfare cases, the judge is not merely the arbiter of a dispute placed before the court, but, rather, sets and repeatedly adjusts the direction for state intervention on behalf of each abused and neglected child. These decisions encompass not only the issues of custody, placement, and visitation, but also, in many states, the case plan for the child, including exactly which services are to be provided to the child and family.

Combatting delays in juvenile court, where there are many stages to the litigation and many participants in the process, can be more difficult than in other courts.

Because its decisions in child welfare cases are interlocking and sequential, the court performs a more managerial and directive function than in other litigation. Court decisions shape agency actions by identifying dangers and defining the agency's approach to each case, and related delivery of services to the child and family. Regular court review of each case refines and redefines agency involvement. Because of the nature of this decision-making in child welfare cases, the judge has a distinct impact on the course of agency work with each family.

Each of the key principles underlying these Resource Guidelines emphasizes the tremendous responsibility undertaken by judges hearing child abuse and neglect cases. This judicial responsibility gives rise to a number of general issues involved in court organization and operation. The most pertinent of these general issues are examined in the following section.

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E. Endnotes

1. Public Law 96-272 (enacted June 17, 1980) repealed the old foster care provisions of Title IV-A of the Social Security Act, added a new Title IV-E (Foster Care and Adoption Assistance), and amended Title IV-B (Child Welfare Services) of the Social Security Act, see 42 USC §§620 et seq. and §§ 670 et seq.
2. See, e.g., J. Goldstein, A. Freud and A. Solnit, *Beyond the Best Interests of the Child* (New York: Free Press, Macmillan 1973); Leon A. Rosenberg, "The Techniques of Psychological Assessment as Applied to Children in Foster Care and Their Families," *Foster Children in the Courts*, 550-74 (Boston: Butterworth Legal Publishers, 1983); M. Rutter, *Maternal Deprivation Reassessed*, 179-97 (1981).
3. See David Fanshel and Eugene B. Shinn, *Children in Foster Care: A Longitudinal Investigation*, 479-82 (New York: Columbia University Press, 1978); Michael Wald, *State Intervention on Behalf of "Neglected" Children: Standards for Removal of Children from Their Homes, Monitoring the Status of Children in Foster Care, and Termination of Parental Rights*, 28 *Stanford Law Review* 623, 645 (1976); E. Weinstein, *The Self-Image of the Foster Child* (1960).
4. See V. Pike, et al., *Permanent Planning for Children in Foster Care: A Handbook for Social Workers*, 1-2 (Portland: Regional Research Institute for Human Services, Portland State University, 1977); M. Allen and J. Knitzer, *Children Without Homes: An Examination of Public Response to Children in Out-of-Home Care*, 41 (Washington, D.C.: Children's Defense Fund, 1978).
5. See J. Goldstein, A. Freud and A. Solnit, *supra*, at 51-52; I. White, *Federal Programs for Young Children, Review and Recommendations* (1973); Institute for Judicial Administration/American Bar Association Juvenile Justice Standards Project, *Standards Relating to Abuse and Neglect, Standard 1.1* (Washington, D.C.: American Bar Association, 1981); Michael Wald, *State Intervention on Behalf of "Neglected" Children: A Search for Realistic Standards*, 27 *Stanford Law Review* 985, 989-1000 (1975).
6. See 42 USC §671(a)(15); Debra Ratterman, G. Diane Dodson and Mark A. Hardin, *Reasonable Efforts to Prevent Foster Placement: A Guide to Implementation* 2d ed (Washington, D.C.: American Bar Association, 1987).
7. See 42 USC §§671(a)(15), 427(a)(2)(C).
8. See 42 USC §§427(a)(2)(C), 675(1)(B), 675(5)(B), 675(5)(C).
9. Pat O'Brien, *Youth Homelessness and the Lack of Adoption Planning for Older Foster Children: Are They Related?*, *Adoptalk Newsletter*, North American Council on Adoptable Children, 1821 University Avenue, Suite N-498, St. Paul, Minnesota 55104, (612) 644-3036.
10. See 42 USC § 675(5)(C); Marylee Allen, Carol Golubock, and Lynn Olson, "A Guide to the Adoption Assistance and Child Welfare Act of 1980," *Foster Children in the Courts*, 575-611 (Boston: Butterworth Legal Publishers, 1983).

VIII. Termination of Parental Rights Hearings

A. Introduction

Termination of parental rights cases arising from child abuse and neglect are among the most difficult and challenging a judge can face. Termination proceedings must be conducted with great care and with full procedural protections to parents and children. The complaint or petition must provide fair notice of the grounds for termination. It must be served in a time and manner allowing for adequate preparation and legal representation.

Termination eliminates parental rights to visit, communicate, and obtain information about the child. After termination, parents no longer are entitled to notice of future court proceedings concerning the child and effectively are denied further opportunity to regain custody. As a general rule, termination of parental rights ends the duty to provide child support, at least prospectively.

...if the (termination) decision is mistaken, the child may needlessly be deprived of the chance to return home, to keep in contact with the parents, and to have lifelong relationships with members of the extended family.

While the phrase "termination of parental rights" is the most common usage, other terms are used in many states. Among the most common are "severance," "guardianship with the power to consent to adoption" (typically granted to the child welfare agency), and "permanent commitment" of the child.

Not only are parents' rights at stake in a termination proceeding, but whatever ruling the court makes can involve serious risks to the child as well. There are risks to the child in terminating parental rights because, if the decision is mistaken, the child may needlessly be deprived of the chance to return home, to keep in contact with the parents, and to have lifelong relationships with members of the extended family.

On the other hand, failure to terminate parental rights may deprive a child of the chance for a permanent substi-

tute home. The preferred placement for most children who cannot return home is adoption. Many children, however, remain in foster care long after findings of the impossibility of family reunification. The longer children wait, the more difficult it becomes to find permanent homes, and the more likely that they will suffer serious emotional and psychological harm.

Delaying or deferring termination of parental rights decisions can create serious problems. Time frames and continuances that seem reasonable to adults and appropriate in other circumstances are unacceptable when a child's right to permanence is at stake. Delays often mean missed opportunities and consequences with devastating effects on the life of a child. When termination decisions are deferred or delayed, a child's emotional problems may worsen and the child may become more difficult to place.

Reasonable timetables must be imposed for termination of parental rights cases. Courts must be actively involved in managing the pace of the litigation, and take active steps to identify and eliminate unnecessary delay.

When parents cannot or will not be rehabilitated, the child urgently requires a timely decision and the provision of a permanent and secure new home. Timely decisions in termination of parental rights cases (assuming that they are also fair and correct) are ultimately more humane to parents and children than decisions that are repeatedly delayed.

Delaying or deferring termination of parental rights decisions can create serious problems.

The timeliness necessary in termination of parental rights cases at the trial level is also of great significance at the appellate level. The appellate court should give priority to appeals of abuse and neglect and termination of parental rights cases, and should establish and administer an accelerated schedule in each case to include the completion of the record, briefing, oral argument

VIII. Termination of Parental Rights Hearings

and decision. Appellate courts should understand that speedy decisions are uniquely important to abused and neglected children who are without permanent, stable families.

Initiation of termination of parental rights proceedings is appropriate in some cases when a child is first placed into foster care. This should occur if, at the time of placement, there is strong evidence that a child will never be able to safely be placed with parents and that adoption is in the child's best interests.

Termination of parental rights proceedings represent the most serious of responses to child abuse or neglect. Termination of parental rights is not appropriate in cases in which intensive, in-home services or rehabilitative measures can be safely attempted and results assessed within a reasonable period of time, but termination of parental rights may be the only appropriate response in cases in which services cannot be safely provided or prove unsuccessful.

The outcome of a termination of parental rights case depends heavily on earlier stages of the court process. First, whether the parties were properly notified and advised of their rights at earlier stages of the case and findings of

abuse or neglect is serious enough to require the removal of a child from home, there is a possibility that the problems necessitating removal will not be curable within a reasonable period of time, and it will be necessary for the child to be adopted. There is an even greater possibility that a case will result in termination of parental rights when intensive, in-home services cannot safely be provided or are attempted but fail to prevent removal.

B. Petition and Notice

1. Petition

As with an abuse or neglect petition, a termination of parental rights petition must be complete and definite, and provide fair notice to the parties. However, termination of parental rights petitions are different from neglect and abuse petitions. A neglect or abuse petition may describe a few incidents of neglect or abuse within a short period of time. A termination petition often includes information spanning a much wider range of issues and longer period of time. Termination petitions typically address issues such as agency efforts to work with parents; parents' cooperation with the agency; parents' condition, behavior, progress, and improvements after adjudication; and the effects of foster placement on the child.

A termination of parental rights petition may allege facts in summary form because of the breadth of material at issue, but there must be sufficient detail to clarify petitioners' legal and factual theory of the case. Allegations must be sufficiently precise to give the parties notice of the issues at stake. The court should require that the petition cite the statutory grounds relied upon and provide a summary of facts in support of each statutory ground.

2. Notice and Summons

Summons and notice requirements for termination of parental rights proceedings are similar to those for adjudication, with one significant difference. Efforts required to identify or locate parents, and constructive notice in termination, should be stricter than for adjudication.

Termination of parental rights should not be a rare occurrence in juvenile or family court even though it is rare in the population as a whole.

reasonable efforts to reunite the family, can affect the outcome of the case. Second, judicial notice may be taken of what occurred in earlier stages of the case. Third, prior court proceedings can provide important evidence such as in-court admissions by parents and instructions made to the parents by the judge. In some states, all evidence from prior stages of the process may be taken into account in the termination of parental rights decision.

Termination of parental rights should not be a rare occurrence in juvenile or family court even though it is rare in the population as a whole. Whenever child

**Summary Reporting System (SRS)
Termination of Parental Rights Petitions Filed
1987 - 1999**

<u>Circuit</u>	<u>Year</u>	<u>Number</u>	<u>Circuit</u>	<u>Year</u>	<u>Number</u>	<u>Circuit</u>	<u>Year</u>	<u>Number</u>
01	July - December, 1987	28	08	January - December, 1988	11	15	January - June, 1989	97
02		4	09		96	16		3
03		14	10		228	17		73
04		28	11		264	18		28
05		28	12		99	19		16
06		84	13		176	20		12
07		19	14		32	Total		1,129
08		18	15		119			
09		35	16		4			
10		75	17		279			
11		111	18		74			
12		30	19		38			
13		58	20		35			
14		10	Total		2,004			
15		58	01	January - June, 1999	44			
16		2	02		17			
17		98	03		18			
18		15	04		43			
19		15	05		20			
20		34	06		128			
Total		758	07		21			
01	January - December, 1998	40	08		25			
02		7	09		62			
03		22	10		151			
04		85	11		223			
05		48	12		47			
06		306	13		76			
07		61	14		25			

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