IN THE SUPREME COURT OF FLORIDA

IN RE: IMPLEMENTATION OF COMMISSION ON DISTRICT COURT OF APPEAL PERFORMANCE AND ACCOUNTABILITY RECOMMENDATIONS

CASE NO.:

REPORT OF THE APPELLATE COURT RULES, JUVENILE COURT RULES, AND RULES OF JUDICIAL ADMINISTRATION COMMITTEES

John S. Mills, Chair, Appellate Court Rules Committee, David N. Silverstein, Chair, Juvenile Court Rules Committee, Scott M. Dimond, Chair, Rules of Judicial Administration Committee, and John F. Harkness, Jr., Executive Director, The Florida Bar, pursuant to Florida Rule of Judicial Administration 2.140(f), file this report of the Committees in response to the Court's referral of recommendations by the Commission on District Court of Appeal Performance and Accountability (DCAP&A or Commission). On October 9, 2007, Chief Justice R. Fred Lewis asked the Committees to consider the recommendations contained in the Commission's report along with draft rules forwarded by the Court. The Chief Justice further asked the Committees to "provide the Court with any proposed amendments to the rules or forms deemed necessary to implement the Commission's recommendations," which were intended to reduce delay in juvenile dependency and termination of parental rights appeals. The Court directed that the proposed rules be filed by May 1, 2008. (*See* Appendix A.) On April 8, 2008, the Committees filed a motion for extension of time until July 15, 2008. The motion was granted April 10, 2008. (*See* Appendix B.)

The Committees have studied the proposals and recommend the following amendments for the reasons stated below. As required by *Rule* 2.140(b)(3), the proposals have been reviewed by The Florida Bar Board of Governors Executive Committee. The voting record of the Committees and the Board of Governors is shown on Appendix C. The proposals have not been published in The Florida Bar *News* or posted on the Bar's website. The full page legislative format of the proposed rules and forms is found in Appendix D and the two-column format is found in Appendix E.

The proposed amendments and reasons for change are as follows:

***Fla. R. Jud. Admin.* 2.250:** The draft rule enclosed with the letter from Chief Justice Lewis (*see* Appendix A) proposed the following amendment to *Rule* 2.250(a)(2):

> **(2) Supreme Court and District Court of Appeal Time Standards:** Rendering a decision — within 180 days of either oral argument or the submission of the case to the court panel for a decision without oral argument, <u>except in juvenile dependency or termination of parental rights cases, in which a decision should be rendered within 60 days of either oral argument or submission of the case to the court panel for a decision without oral argument.</u>

The Commission stated that "[p]roviding a limited time standard for preparation of a decision provides a policy statement that the expedition of these cases is important to the judiciary of the state." The Rules of Judicial Administration Committee adopted the proposed rule with no change. The Juvenile Court Rules and Appellate Court Rules Committees concurred.

***Fla. R. Jud. Admin.* 2.535:** Recommendation 9 of the DCAP&A report (*see* Appendix A) recommended that the Rules of Judicial Administration be amended to give priority to transcription of hearings in dependency and termination of parental rights proceedings over "transcription of all other proceedings both in the trial and appellate courts." Members of the Rules of Judicial Administration Committee expressed concern that the proposal would result in a conflict with *Rule* 2.535(h)(4), which provides that, in capital cases, court reporters are required to ensure that transcript production is given a priority.

Concerns were also expressed that the proposed rule would conflict with *Rule* 2.215(g), which states that "[e]very judge has a duty to expedite priority cases to the extent reasonably possible" and defines the term "priority cases" to include "those cases that have been assigned a priority status or assigned an expedited disposition schedule by statute, rule of procedure, case law, or otherwise."

To avoid these potential conflicts, the following proposed rule was adopted by the Rules of Judicial Administration Committee:

> **(i) Juvenile Dependency and Termination of Parental Rights Cases.** Transcription of hearings for appeals of orders in juvenile dependency and termination of parental rights cases should, to the extent reasonably possible, be given priority consistent with rule 2.215(g).

The Appellate Court Rules Committee concurred. However, the Juvenile Court Rules Committee did not concur with the Rules of Judicial Administration Committee's addition of the words "to the extent reasonably possible" and believed that the priority proposed by the Commission should remain in the rule.

***Fla. R. Juv. P.* 8.276:** This amendment creates a new rule advising the parties in a dependency or termination of parental rights proceeding that appeals are governed by *Florida Rule of Appellate Procedure* 9.146. It conforms to Recommendation 1 of the DCAP&A report, that "[a]ppellate rules should be cross-referenced in the juvenile rules so that attorneys are aware of the requirements in filing appeals." *See* Appendix A. The Appellate Court Rules and Rules of Judicial Administration Committees concurred.

***Fla. R Juv. P.* 8.330. Adjudicatory Hearings.** Before it began work on rules recommended by the DCAP&A report, the Juvenile Court Rules Committee had approved amendments to *Rule* 8.330 to be submitted with its three-year cycle report in 2009. Similar to amendments to *Rules* 8.235 and 8.310 that will be submitted with the Committee's three-year cycle, subdivision (e) has been amended to permit a finding that the allegations of the petition against one party have not been sustained. It also provides that that party should continue to receive pleadings, notices, and documents and have the right to be heard. *See* § 39.502(1), Fla. Stat.; *C.L.R. v. Dept. of Children & Families*, 913 So. 2d 765 (Fla. 5th DCA 2005), *rev. den.* 924 So. 2d 806. Subdivision (f) has been amended to permit dismissal of the allegations against one party on a finding that there is an insufficiency of the evidence or that the allegations have not been sustained.

Subdivision (g) has been deleted because its contents have been transferred to proposed *Rule* 8.332(a), (d), and (e).

The Appellate Court Rules and Rules of Judicial Administration Committees concurred.

***Fla. R. Juv. P.* 8.332:** Before it began work on rules recommended by the DCAP&A report, the Juvenile Court Rules Committee had approved a new *Rule* 8.332, Order Finding Dependency, to be filed with the 2009 three-year cycle. Section 39.507(5), Florida Statutes, allows the court to enter an order withholding adjudication. The Juvenile Rules, however, do not contain a similar provision. Many courts use the withhold of adjudication option. Section 39.601, Florida Statutes, requires the Department of Children and Family Services to develop and file for approval a case plan for each child receiving services. However, the Juvenile Rules do not currently mention the filing and review of a case plan after a withhold of adjudication. There is confusion regarding whether the court should hold a disposition hearing following an order withholding adjudication. The statutes and rules are clear that a disposition hearing must be held after an adjudication of dependency, which a withhold of adjudication is not. This new rule creates a procedure for the court when withholding adjudication in a dependency case.

Rather than amend existing *Rule* 8.330, the Juvenile Court Rules Committee chose to amend new *Rule* 8.332. The last sentence of proposed *Rule* 8.332(a), regarding inclusion of the dates of the adjudicatory hearing in the court order finding dependency, was added in response to DCAP&A Recommendation 2 (*see* Appendix A), that "[t]he adjudication of dependency or final judgment of termination of parental rights should set forth all of the specific days that the hearing occurred."

The Appellate Court Rules and Rules of Judicial Administration Committees concurred.

***Fla. R. Juv. P.* 8.525:** *Rule* 8.525(i)(2) has been amended to add a sentence providing that the court should include the dates of the adjudicatory hearing

in an order terminating parental rights. This conforms to DCAP&A Recommendation 2 (*see* Appendix A), that "[t]he adjudication of dependency or final judgment of termination of parental rights should set forth all of the specific days that the hearing occurred."

The Appellate Court Rules and Rules of Judicial Administration Committees concurred.

***Fla. R. Juv. P. Form* 8.983:** Adjudicatory hearings often occur over more than one day. The first paragraph of this form has been amended to require that all dates of the adjudicatory hearing be included in the order terminating parental rights. This conforms to DCAP&A Recommendation 2 (*see* Appendix A), that "[t]he adjudication of dependency or final judgment of termination of parental rights should set forth all of the specific days that the hearing occurred."

Grammatical/style corrections have been made in item 1 of the findings section and in the "Therefore" paragraph at the conclusion of the form.

The Appellate Court Rules and Rules of Judicial Administration Committees concurred.

***Fla. R. Juv. P. Form* 8.984:** Before beginning work on rules recommended by the DCAP&A report, the Juvenile Court Rules Committee had approved amendments to this form, to be submitted with the 2009 three-year cycle. The revisions largely conform the form to amendments made to *Form* 8.983 in 2006. *See Amendments to the Florida Rules of Juvenile Procedure*, 939 So. 2d 74, 89 (Fla. 2006). They include a check-off list of those present for the hearing, breaking the finding on execution of voluntary surrenders into

separate paragraphs for the mother and father(s), and adding each specific finding that the court is required to make under section 39.810(1)–(11), Florida Statutes. A grammatical/style correction has also been made in the "Notice" section at the end of the form.

The first paragraph of this form has also been amended to require that all dates of the adjudicatory hearing be included in the order terminating parental rights. This conforms to DCAP&A Recommendation 2 (*see* Appendix A), that "[t]he adjudication of dependency or final judgment of termination of parental rights should set forth all of the specific days that the hearing occurred."

The Appellate Court Rules and Rules of Judicial Administration Committees concurred.

***Fla. R. App. P.* 9.130:** The Appellate Court Rules Committee has proposed amending *Rule* 9.130 to conform to proposed amendments to *Rule* 9.146. Because the Juvenile Court Rules Committee did not concur in the listing of non-final orders in *Rule* 9.146(c)(2), it also did not concur in this amendment. The Rules of Judicial Administration Committee concurred.

***Fla. R. App. P.* 9.146:** Extensive revisions to this rule are being proposed by the Appellate Court Rules Committee, encompassing not only the Commission's recommendations but also proposals from within the Appellate Court Rules Committee and from Jay Thomas, an attorney at the District Court of Appeal, Second District. *See* Appendix F. Specific amendments and the reasons for them are as follows:

Rule 9.146(a) Applicability. Although the Commission did not suggest any amendments to *Rule* 9.146(a), the Appellate Court Rules

Committee examined the provision because a wholesale revision of the rule was being considered. Minor changes to the wording are recommended; the substance of the subdivision has not changed.

Rule 9.146(b) Who May Appeal. Attorney Jay Thomas proposed that the term "legal custodian of the child" be deleted from *Rule* 9.146(b). (*See* Appendix F.) As he explained in his memorandum, after the rule was promulgated, the statute defining parties in juvenile proceedings, section 39.01(50), Florida Statutes, was amended to delete "legal custodian" from the definition. The rule has never been amended to reflect the change in the statute. After discussing Mr. Thomas's memorandum and reviewing the statutory changes, it was agreed that the term "legal custodian of the child" should be removed from this subdivision. *See also In re K.M. (D.M. v. Dept. of Children & Families)*, 978 So. 2d 211 (Fla. 2d DCA 2008).

Rule 9.146(c) Appealable Orders. Appellate Court Rules Committee member Tom Young proposed that *Rule* 9.146 list the orders appealable as final orders and the orders appealable as nonfinal orders. The Commission had considered this topic (*see* Appendix A) and, although it did not favor enumerating the appealable orders, noted the issue was more properly debated in the Appellate Court Rules and Juvenile Court Rules Committees. Mr. Young prepared a memorandum advocating his position and discussing the inconsistencies in the district courts over whether review of nonfinal orders was by appeal or by a petition for writ of certiorari. Porsche Shantz, another member of the Appellate Court Rules Committee, prepared a memorandum in opposition to the proposed rule change. (*See* Appendix F.)

Those in favor of enumerating the appealable orders believed it would promote consistency in the districts. But some members believed lists of orders were not appropriate in the rules and thought that the inconsistencies

in the districts would eventually be remedied through the court system. Ultimately, those favoring enumeration prevailed.

The adoption of the proposed *Rule* 9.146(c) obviated the need for the Commission's suggestion that rule 9.146(b) "be amended to state that only non-final orders listed in Rule 9.130 are authorized appeals." (Appendix A at 14.)

The Juvenile Court Rules Committee did not concur with the listing of non-final orders in *Rule* 9.146(c)(2) because it felt the list was not comprehensive and would preclude appeals from other types of non-final orders.

Rule 9.146(d) Stay of Proceedings. The Appellate Court Rules Committee considered whether *Rule* 9.146(d)(2) (stays in termination of parental rights appeals – presently numbered 9.146(c)(2)) should be moved to the new subdivision (h). After discussion, it was decided to leave the provision in its current placement. But the Committee noted several problems with the existing rule. First, subdivision (d)(1) does not mirror the general stay rule, *Rule* 9.310. A sentence was added to that subdivision stating that a stay entered in the lower tribunal was reviewable by motion in the appellate court. Second, because the language of subdivision (d)(2) was not clear, a slight change in wording was approved.

Rule 9.146(h)(1) Applicability. Proposed subdivision (h) specifically addresses new procedures applicable in appeals of final orders in dependency and termination of parental rights cases. It was noted that the suggested *Rule* 9.146(h) did not address jurisdictional briefs filed in the supreme court. Subdivision (1) was added to subdivision (h), which states that the procedures in subdivision (h) apply only to appeals filed in the district courts of appeal.

Rule 9.146(h)(2) The Record. Unlike the draft rules referred by the Court, the general civil appellate rules include designations to the court reporter and directions to the clerk under the rubric of "The Record." *See Fla. R. App.* 9.200. The Appellate Court Rules Committee decided to use *Rule* 9.200 as a template for proposed *Rule* 9.146(h)(2). First, the members adopted subdivision (h)(2)(A), which states that, unless modified by *Rule* 9.146(h)(2), the record shall be prepared in accordance with *Rule* 9.200.

Proposed *Rule* 9.146(h)(2)(B) addresses the directions to the court reporter and the preparation of transcripts. The Commission believed that the preparation of transcripts in juvenile dependency and termination of parental rights appeals must be expedited to move these appeals more swiftly through the district courts. *See* DCAP&A Recommendations 7–10 in Appendix A. The Appellate Court Rules Committee members agreed. Several members related that they had experienced difficulty in obtaining transcripts in a timely manner. The Commission recommended that the court reporter be required to prepare the transcripts within 20 days of the designation and that the name(s) of the individual reporter(s) be included on the designation. *See* Recommendation 8 in Appendix A. The Committee members agreed but also thought that the designation should state that the appeal is from a dependency or termination or parental rights order. The members reasoned that this additional requirement would alert both the reporter and the circuit court clerk that the transcripts must be prepared in a limited time frame.

The Committee members noted that the rule proposed in the Supreme Court's referral letter did not contain a procedure for the court reporter to file a motion for an extension of time. It was agreed that in some cases, a transcript could not be prepared within such a short time frame. Language

was added that did not appear in the proposal: the final sentence of proposed *Rule* 9.146(h)(2)(B) allows a reporter to seek an extension, but only in extraordinary circumstances that must be described in the motion.

The proposed rule required the court reporter to file sufficient copies of the transcripts for the clerk to provide copies to the Department of Children and Family Services and to indigent parties. The members of the Appellate Court Rules Committee suggested that the guardian ad litem should also receive a copy of the transcript and adopted this additional provision. The Juvenile Court Rules Committee voted to suggest that the "attorney for the child" also be added to the list of those receiving the transcript.

Proposed *Rule* 9.146(h)(2)(C) concerns directions to the clerk and preparation of the record. The Commission proposed that the circuit court clerk serve the record on the appellate court and other parties within five days of receipt of the transcript. Again, the Committee members agreed with the proposed time requirement. But the members also thought that the language in the rule should comport with the language in *Rule* 9.200. Thus, in the Committee's proposed rule, the clerk "transmits" the record to the appellate court and "serves" the record on the parties. A proviso was also added that if transcripts are not designated, the record must be transmitted and served within five days from the filing of the notice of appeal. The guardian ad litem was also included in the list of entities to be served with the complete record on appeal, not merely the index. The Juvenile Court Rules Committee approved this subdivision but suggested that "attorney for the child" should be added to the list of those to receive the record.

Rule 9.146(h)(3) Briefs. The Appellate Court Rules Committee again turned to the general civil appellate rules for guidance in crafting the briefs

rule, and used *Rule* 9.210 as a template. The Commission had merely proposed shortened time limits for filing briefs. (*See* Recommendation 11 in Appendix A.) The Committee members thought it was important to incorporate all the brief rules, such as page limitations, fonts, etc., into *Rule* 9.146. Therefore, *Rule* 9.146(h)(3)(A) was added, which states that all briefs must be prepared in accordance with particular subdivisions of *Rule* 9.210. The Committee was aware that incorporation of another rule can present problems when the incorporated rule is amended. But because of the overriding policy that *Rule* 9.146 would provide all needed information to lawyers in juvenile appeals, the Committee believed it was important to reference *Rule* 9.210.

Concerning the timing of the briefs, the Committee agreed with the Commission's proposal. *See* Recommendation 11 in Appendix A. The proposed language was conformed to that of the present rules. Thus, the proposed rule states that briefs will be "served" not "filed" as stated in the draft rule received from the supreme court.

Rule 9.146(h)(4) Motions. Recommendation 6 (*see* Appendix A) regarding motions for payment of appellate counsel and payment of transcription costs was considered. Although a stand-alone rule was suggested on this topic, the Appellate Court Rules Committee believed that it should be included in a subdivision addressing motions. After making minor revisions to the proposed language, the Committee approved the proposed rule as 9.146(h)(4)(A). The Committee Note explains the decision to insert the words "when authorized by general law" into the proposal.

Proposed *Rule* 9.146(h)(4)(B) governs motions to withdraw as appellate counsel. This rule contemplates counsel's withdrawal when he or she finds no meritorious issues that would support reversal. It implements

the Court's holding in *N.S.H. v. Florida Dept. of Children & Family Services*, 843 So. 2d 898, 903-904 (Fla. 2003). The Committee's rule adopts the proposal with only minor changes in wording. *See also* Recommendation 18 in Appendix A.

Proposed *Rule* 9.146(h)(4)(C) governs motions for extensions of time. The proposal contained two subdivisions, (A) and (B), but the Committee believed they should be combined in one provision. Additionally, subdivision (A) stated that motions must be "in writing." The Committee thought this language was superfluous because all motions filed in appellate courts must be in writing. Proposed subdivision (A) also referenced *Florida Rule of Judicial Administration* 2.545(e). The Committee believed that the appellate rules should not refer to other court rules, and decided to delete this reference from the proposed rule.

Many members were concerned with the last sentence in the proposed subdivision (B): "The total time allowed for continuances or extensions of time may not exceed 60 days within any 12-month period for proceedings under this rule." Members pointed out that this language could include requests for extensions by court reporters, and that such extensions could exhaust the 60-day period, thus depriving the parties of the ability to request extensions when needed. Others opined that the courts themselves could restrict extensions of time and that a more flexible approach was preferable. This provision was deleted from the proposed rule.

The rest of the Commission's proposal was included in the rule approved by the Committee, including the statement that extensions will be granted only in extraordinary circumstances when the extension is necessary to preserve constitutional rights or when the child's rights will be harmed.

Rule 9.146(h)(5) Oral Argument. The proposed rule stated that requests for oral argument be filed with a party's first brief. The Appellate Court Rules Committee agreed with this recommendation. The proposed rule makes only minor language changes to the suggested rule.

Rule 9.146(h)(6) Rehearing. The proposed rule would not permit a response to a motion for rehearing unless requested by the court. This was a controversial topic. A number of the members argued that a response should always be allowed, while another group posited that, under the Commission's proposal, frivolous rehearing motions could be quickly denied without the delay attendant in waiting for a response. These members believed that a court would ask for a response if it were even considering granting rehearing. Eventually, the latter position prevailed.

Many members thought that the rule should apply not only to motions for rehearing but also to motions seeking rehearing en banc and clarification. Proposed *Rule* 9.146(h)(6) includes all the described motions and references the general civil appellate rules addressing these motions. It also includes the prohibition on responses, unless requested by the court.

Rule 9.146(h)(7) The Mandate. The Committee agreed with the proposal concerning issuance of the mandate. The proposed rule makes only minor language changes to the proposal.

The Rules of Judicial Administration Committee concurred in all of the amendments to this rule. The Juvenile Court Rules Committee concurred, with the exceptions noted above.

***Fla. R. App. P.* 9.340:** The DCAP&A report (*see* Appendix A) recommended amending *Florida Rule of Appellate Procedure* 9.340(b), and the draft rule referred by the Court provided as follows:

(b) Extension of Time for Issuance of Mandate. Unless otherwise provided by these rules, i~~I~~f a timely motion for rehearing, clarification, or certification has been filed, the time for issuance of the mandate or other process shall be extended until 15 days after rendition of the order denying the motion, or, if granted, until 15 days after the cause has been fully determined.

The Commission stated that once a motion for rehearing is decided, "the mandate can issue and the child can be adopted." The Committee concurred with the Commission's recommendation and the language of the draft rule.

The Rules of Judicial Administration and Juvenile Court Rules Committees concurred.

***Fla. R. App. P.* 9.430:** Recommendation 3 of the DCAP&A report (*see* Appendix A) suggested that *Rule* 9.430 be amended to provide "that a parent's indigent status shall be presumed to continue for purposes of appeal unless revoked by the trial court." The Committee has adopted this recommendation, but placed the appropriate language in a new subdivision (c).

The Rules of Judicial Administration and Juvenile Court Rules Committees concurred.

The Committees respectfully request that the Court amend the rules of procedure as outlined in this report.

Respectfully submitted _____.

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APPENDIX A

Supreme Court of Florida

500 South Duval Street
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October 9, 2007

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The Honorable Robert T. Benton II
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Re: Implementation of Commission on District Court of Appeal Performance and Accountability Recommendations

Dear Judge Benton, Mr. Brannock, and Mr. Mason:

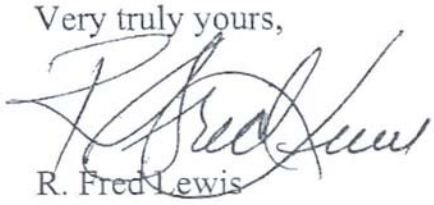
I am writing to you as Chairs of the Appellate Court Rules Committee, the Juvenile Court Rules Committee, and the Rules of Judicial Administration Committee to ask your committees to consider the enclosed rough draft of rule amendments intended to implement the recent recommendations of the Commission on District Court of Appeal Performance and Accountability. The report, which also is enclosed,

contains a number of recommendations the Commission believes will help to avoid delay in juvenile dependency and termination of parental rights appeals.

The Court would like your committees to analyze the enclosed materials and provide the Court with any proposed amendments to the rules or forms deemed necessary to implement the Commission's recommendations. Your committees should work together to the extent necessary to address this important matter. Your comprehensive report and proposed amendments should be filed with the Clerk's Office no later than May 1, 2008, with copies to your liaison justices and the director of central staff.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,



R. Fred Lewis

RFL/dm/mb
Enclosures
cc: The Honorable Charles T. Wells, Liaison to Appellate Court Rules Com.
The Honorable Peggy A. Quince, Liaison to the Juvenile Court Rules Com.
The Honorable Kenneth B. Bell, Liaison to Rules of Jud. Admin. Com.
Mr. Thomas D. Hall, Clerk of Court
Mr. Craig Shaw, Bar Staff Liaison to Rules of Jud. Admin. Com.
Ms. Ellen Sloyer, Bar Staff Liaison to Juvenile Court Rules Com.
Ms. Joanna Mauer, Bar Staff Liaison to Appellate Court Rules Com.
Ms. Deborah J. Meyer, Director of Central Staff

DRAFT AMENDMENTS TO IMPLEMENT COMMISSION ON DISTRICT COURT OF APPEAL PERFORMANCE & ACCOUNTABILITY RECOMMENDATIONS

Rule 2.250. Time Standards for Trial and Appellate Courts and Reporting Requirements

(a) Time Standards. The following time standards are hereby established as a presumptively reasonable time period for the completion of cases in the trial and appellate courts of this state. It is recognized that there are cases that, because of their complexity, present problems that cause reasonable delays. However, most cases should be completed within the following time periods:

(1) [No Change]

(2) Supreme Court and District Courts of Appeal Time Standards: Rendering a decision -- within 180 days of either oral argument or the submission of the case to the court panel for a decision without oral argument, except in juvenile dependency or termination of parental rights cases, in which a decision should be rendered within 60 days of either oral argument or submission of the case to the court panel for a decision without oral argument.

(3) – (4) [No Change]

(b) [No Change]

Rule 2.535. Court Reporting

(a) – (h) [No Change]

(i) Juvenile Dependency and Termination of Parental Rights Cases. Transcription of hearings for appeals of orders in juvenile dependency and termination of parental rights cases should be given priority over the transcription of all other proceedings.

Rule 8.276. Appeal Procedures. Florida Rule of Appellate Procedure 9.146 generally governs appeals in juvenile dependency and termination of parental rights cases.

Rule 8.330. Adjudicatory Hearings

(a) – (f) [No Change]

(g) Findings and Orders. In all cases in which dependency is established:

(1) The court shall enter a written order specifying all dates on which the adjudicatory hearing occurred, stating the legal basis for a finding of dependency, specifying the facts upon which the finding of dependency is based, and stating whether the court made the finding by a preponderance of the evidence or by clear and convincing evidence.

(2) – (3) [No Change]

Committee Notes
[No change]

Rule 8.525. Adjudicatory Hearings

(a) – (h) [No Change]

(i) Final Judgment.

(1) Terminating Parental Rights. If the court finds after all of the evidence has been presented that the elements and one of the grounds for termination of parental rights have been established by clear and convincing evidence, the court shall enter a final judgment terminating parental rights and proceed with dispositional alternatives as provided by law. The order must specify all dates on which the adjudicatory hearing occurred and contain the findings of fact and conclusions of law on which the decision was based. The parties may stipulate, or the court may order, that parents or relatives of the parent whose rights are terminated be allowed to maintain some contact with the child. If the court orders continued contact, the nature and frequency of this contact must be stated in a written order. The visitation order may be reviewed on motion of any party, including a prospective adoptive parent, and must be reviewed by the court at the time the child is placed for adoption.

(2) – (3) [No Change]

Rule 9.146. Appeal Proceedings in Juvenile Dependency and Termination of Parental Rights Cases and Cases Involving Families and Children in Need of Services

(a) [No Change]

(b) Who May Appeal. Any child, any parent, guardian ad litem, or legal custodian of any child, any other party to the proceeding affected by an order of the lower tribunal, or the appropriate state agency as provided by law may appeal to the appropriate court within the time and in the manner prescribed by these rules. Appeals from non-final orders are limited to those set forth in rule 9.130(a).

(c) –(g) [No Change]

(h) Juvenile Dependency and Termination of Parental Rights Cases. The following procedures apply only in juvenile dependency and termination of parental rights appeals.

(1) Motion for Appointment of Appellate Counsel; Authorization of Payment of Transcription Costs. A motion for appointment of appellate counsel and authorization of payment of transcription costs, when appropriate, shall be filed with the notice of appeal. The motion shall be served on the trial judge with a copy of the notice of appeal. The trial judge shall promptly enter an order on the motion.

(2) Directions to Clerk; Designation to Reporter. The directions to the clerk and the designation to the court reporter, including the name(s) of the individual court reporter(s), if applicable, shall be filed with the notice of appeal. The designation shall be served on the court reporter and shall provide 20 days for transcription.

(3) Record. The clerk of the lower tribunal shall prepare and serve the record prescribed by rule 9.200 within 5 days of receiving the transcript.

(A) Transcripts. Within 20 days of service of the designation, the court reporter shall transcribe and file with the clerk of the lower tribunal the original transcripts for the court and sufficient copies for the Department of Children and Family Services and all indigent parties.

(B) Service of Copies. The clerk of the lower tribunal shall serve copies of the record to the court, the Department of Children and Family Services, and indigent parties or counsel appointed to represent indigent parties. The clerk of the lower tribunal shall simultaneously serve copies of the index to all non-indigent parties and, upon their request, copies of the record or portions thereof at the cost prescribed by law.

(4) Briefs. The initial brief shall be filed within 20 days of service of the record on appeal. The answer brief shall be filed within 20 days of service of the initial brief. The reply brief, if any, shall be filed within 10 days of service of the answer brief.

(5) Withdrawal of Counsel. Where appellate counsel seeks leave to withdraw from representation of an indigent parent, the motion to withdraw shall be served on the client and contain a certification that after a conscientious review of the record, the attorney has determined in good faith that there are no meritorious grounds on which to base an appeal. The parent shall be permitted to file a brief pro se, or through subsequently retained counsel, within 20 days of issuance of the order granting the motion to withdraw.

(6) Extensions of Time.

(A) Motions. A motion for continuance or extension of time must be in writing and must clearly identify the priority status of the case and explain what effect the motion will have on the progress of the case, as required by Florida Rule of Judicial Administration 2.545(e).

(B) Disposition. A continuance or extension of time may be granted only for extraordinary circumstances in which it is necessary to preserve the constitutional rights of a party or if substantial evidence exists to demonstrate that without granting a continuance or extension of time the child's best interests will be harmed. A continuance or extension of time must be limited to the number of days absolutely necessary in order to preserve the rights of a party or the best interests of the child. The total time allowed for continuances or extensions of time may not exceed 60 days within any 12-month period for proceedings under this rule.

(7) **Oral Argument.** Any request for oral argument must be served with the first brief filed by the party.

(8) **Response to Motion for Rehearing.** No response to a motion for rehearing shall be allowed unless ordered by the court.

(9) **Mandate.** Mandate shall be issued as soon as is practicable after an order or decision is rendered.

Committee Notes

1996 Adoption. [No change]

2006 Amendment. The title to subdivision (b) was changed from "Appeals Permitted" to clarify that this rule addresses who may take an appeal in matters covered by this rule. The amendment is intended to approve the holding in *D.K.B. v. Department of Children & Families,* 890 So. 2d 1288 (Fla. 2d DCA 2005), that non-final orders in these matters may be appealed only if listed in rule 9.130.

Court Commentary

2007. Under new subdivision (h)(3)(a), the court reporter must transcribe and file the transcript within 20 days of service of the designation. Because of this limited time for production of the transcripts, parties are encouraged to also serve the designation electronically on the court reporter.

New subdivision (h)(4) requires that initial briefs be filed within 20 days of service of the record, answer briefs be filed within 20 days of service of the initial brief, and the reply brief be filed within 10 days of service of the answer brief. Because the briefs must be filed with the court within the applicable period after service, parties also should serve briefs electronically on opposing parties.

New subdivision (h)(5) addresses withdrawal of counsel for an indigent parent. *See N.S.H. v. Fla. Dep't of Children and Family Serv's*, 843 So. 2d 898 (Fla. 2003).

Rule 9.340. Mandate

(a) [No Change]

(b) Extension of Time for Issuance of Mandate. Unless otherwise provided by these rules, ~~I~~if a timely motion for rehearing, clarification, or certification has been filed, the time for issuance of the mandate or other process shall be extended until 15 days after rendition of the order denying the motion, or, if granted, until 15 days after the cause has been fully determined.

(c) [No Change]

Committee Notes
[No change]

Rule 9.430. Proceedings by Indigents

(a) – (b) [No Change]

(c) Indigent Parents in Juvenile Dependency and Termination of Parental Rights Cases. A parent who has been declared indigent for purposes of juvenile dependency or termination of parental rights proceedings in the trial court shall be presumed indigent for purposes of appeal, unless the parent's indigent status is revoked by the trial court.

Committee Notes
[No change]

Commission on District Court of Appeal
Performance & Accountability

Study of Delay in Dependency/Parental Termination Appeals

Supplemental Report & Recommendations

June 2007

In June, 2006, the Commission on District Court of Appeal Performance and Accountability submitted a report to the Florida Supreme Court on Delay In Child Dependency/Termination of Parental Rights Appeals. The Court accepted the report and subsequently requested that the Commission further study the issue and propose timelines along with any rule changes necessary to expedite these appeals. Since that time the Commission has gathered and analyzed additional information, and conducted five district-wide workshops and one statewide workshop. The purpose of these workshops was to collect the views of participants in the development of a timeline and proposed rules that would reduce delay yet constitute realistic time parameters for attorneys, court reporters, and the courts. Based on the analyses conducted by the Commission and the input of workshop participants, this report is submitted in compliance with the Court's direction.

In its first report the Commission examined the problem of appellate delay, reviewed how national organizations and other states have addressed the issue, and collected information on the steps that the district courts have taken to address it. The Commission recommended that specific expedited rules be adopted to achieve the goal of reducing time on appeal. The creation of specific rules would "reinforce the importance the courts attach to resolving these issues expeditiously for the children's sake." In addition to rules, the Commission's report noted that such cases required active case management and monitoring on appeal with reporting mechanisms to assure that time parameters are being met.

Executive Summary

In this report the Commission proposes specific policies and rule changes intended to expedite dependency and termination of parental rights cases. These changes would result in a timeline for the appellate process of 195 days, measured from rendition of the final judgment to rendition of the opinion on appeal.

The Commission found that improvements in two areas in particular would be essential to the success of such a timeline: reduction in the time expended in obtaining an order of appointment of appellate counsel, and reduction in the time expended in securing the transcript of proceedings.

To insure that the transcript is received in a timely fashion, court reporters or transcriptionists must be made aware that these cases are to be given priority over other cases. Such directives must be made in the rules and enforced by the judges.

Reduction in the time currently allowed for preparation of a brief is not recommended for reasons explained within this report.

The Commission also seeks to reinforce recent efforts by all of the appellate courts to adopt practices to advance child cases on their calendars and to expedite the publication of decisions by recommending new reporting requirements for the courts.

Finally, with respect to non-final appeals, the Commission recommends that only those non-final orders which could be appealed under Rule of Appellate Procedure 9.130 should be permitted as appealable orders. All other orders should be reviewed by petition for certiorari, which is a more expeditious form of review.

Updated Information on Delay in the District Courts

The Commission reviewed time on appeal statistics of dependency and termination appeals during fiscal year 2005-06. Appendix A. During that time, the district courts commenced various case management measures to reduce time on appeal for these cases, although many of those steps were not in place during the entire year. As illustrated in the accompanying tables, the median time on appeal for termination of parental rights cases was generally down slightly in all courts, except in the third district where it was up significantly. However, at the 90th percentile, both the second and third districts showed a substantial decrease in time on appeal, indicating that those courts had been successful in their efforts to clear out their older cases. Similarly, with respect to dependency appeals, all courts except the fourth district experienced a decline in time on appeal, and at the 90th percentile, all courts showed a decrease in time on appeal.

Statewide, 69% of the termination of parental rights cases filed were not disposed of within 180 days; the median time to disposition for those cases was 264 days on appeal. For dependency cases, 58% of cases filed were not disposed of within 180 days; the median time for those cases was 267 days on appeal.

In addition, when the overall time on appeal is broken down into segments representing the time prior to perfection, from perfection to conference or oral argument, and from conference or oral argument to disposition, it is clear that those activities that must occur prior to perfection continue to account for the greatest percentage of time on appeal. This data is presented in Appendix B.

District Wide Workshops

The Commission recognized that issues with respect to the appeals process would differ from circuit to circuit and thus district to district. To explore these local variations the Commission scheduled a workshop in each of the five districts to bring together representatives of all of the stakeholders in the process. Each workshop was attended by 35-40 people. Attendees included: 1) district courts of appeal judges; 2) district courts of appeal clerks; 3) trial court judges; 4) trial court case managers; 5) trial court deputy clerks; 6) circuit court reporter managers; 7) Department of Children and Families attorneys; 8) parents' attorneys; 9) guardian ad litem program attorneys; and 10) the Statewide Guardian ad Litem appellate attorneys.

At each workshop the participants outlined the causes of delay in their jurisdiction and made suggestions as to how delay might be reduced. The consolidated notes from each session are included at Appendix C. While there is some local variation, discussions at the district workshops indicate general agreement as to the causes of delay. To a large degree, causes of delay identified in the Commission's 2006 report were confirmed by the individual district workshops. In addition, participants in all districts described interaction with the Justice Administrative Commission, which must approve payment of attorney's fees and court reporter costs, as problematic. In particular participants describe the process of obtaining the necessary documentation as time-consuming and a contributor to delay in the appeals process.

Statewide Workshop

On May 11, 2007, the Commission hosted a statewide workshop to develop recommendations for rules to expedite the dependency/termination appeals. Each of the districts sent representatives from among attendees at district workshops. In addition, representatives of the Juvenile Court Rules Committee and the Appellate Court Rules Committees attended. The general counsel of the Justice Administrative Commission was also present. The list of participants is attached in Appendix D.

Participants in the statewide workshop discussed each stage of the appellate process. Based upon the previous district discussions, participants were able to reach a considerable degree of consensus on recommendations for rules revisions to expedite appeals. Non-final appeals and writs were also discussed, albeit briefly.

The Commission reviewed the recommendations developed at the statewide workshop and made modifications to them in some respects. Non-final appeals and writs are addressed after the recommendations. A draft of the report and recommendations was furnished to the statewide workshop participants for their review. Their comments have been included in this final report.

Rule or Administrative Order

The Commission suggests that the recommendations in this report be submitted to the respective court rules committees for inclusion in the rules of appellate procedure, juvenile procedure, and judicial administration, where appropriate. However, understanding that the rule-making process may take substantial time to complete, the Commission also recommends that the chief justice modify the current rules by administrative order to incorporate these proposals. This measure would also permit the recommendations to be tested prior to their final incorporation into a rule. Through an administrative order, each district court should be directed to notify the chief judges and family court judges in their districts of the administrative order and the changes that it will bring about in the method and manner of appeals of dependency and termination orders.

Recommendations

The proposed time for processing an appeal under these recommendations would be 195 days from the rendition of the final judgment to the publication of the opinion. Time consumed in filing a motion for rehearing would increase the time on appeal. The Commission recommends that a performance goal be set that 90% of cases filed be handled within these time parameters.

1. **Appellate rules should be cross-referenced in the juvenile rules so that trial attorneys are aware of the requirements in filing appeals.**

   Trial attorneys in dependency and parental termination cases typically refer to the Rules of Juvenile Procedure and may not review the Rules of Appellate Procedure when filing appeals. Often they simply file the prescribed notice, which can be found in any form book. If the Court chooses to impose additional requirements for filing notices of appeal, they would be more effective if they appear or are referenced in the

Rules of Juvenile Procedure and coordinated with the Rules of Appellate Procedure.

2. **The adjudication of dependency or final judgment of termination of parental rights should set forth all of the specific days that the hearing occurred.**

   Delay in obtaining the transcript is a problem in all districts. It often begins with difficulty for court reporters in determining the actual days on which the hearing took place. The present forms in the Juvenile Court Rules of Procedure provide for the inclusion of the date of the adjudicatory hearings. Either the form or the rule should provide that the trial court specify *all* dates on which the hearing occurred. The present form for orders of adjudication in the Florida Rules of Juvenile Procedure have a space for this information. However, explicit direction should be given to include this information in any adjudication of dependency or final judgment terminating parental rights.

3. **Appellate Rule of Procedure 9.430(a) should be amended to provide that a parent's indigent status shall be presumed to continue for purposes of appeal unless revoked by the trial court.**

   A determination of indigence is made by the trial court at the beginning of a proceeding when counsel is appointed for the parents. It is a rare case where the indigence of the parent, once determined, does not continue for purpose of appeal. However, obtaining the necessary documentation and processing it through the Justice Administrative Commission in order to continue the representation consumes time and causes delay. The general counsel of the Justice Administrative Commission agreed at the workshop that a court rule providing a continuing presumption of indigence for appeal was a workable solution and would be honored by the Justice Administrative Commission. This would be an effective measure in expediting appeals.

4. **No change should be made to the thirty-day time period for filing a notice of appeal.**

   Although the American Bar Association and National Conference of Juvenile and Family Court Judges recommended a reduction, and several states have reduced the time for filing an appeal to ten or twenty days from the final judgment, the consensus of the workshop was to maintain the period for filing a notice of appeal at thirty days. Participants expressed a general concern that by shortening the period of time parents have to evaluate their options with their attorneys, more appeals may be filed as a precautionary measure. Lawyers representing parents also often have a difficult time communicating with their clients, who are frequently unavailable even by telephone. Attorneys also felt that having different time periods for different types of cases would ultimately lead to confusion. In addition, unlike other rules, the time for filing of an appeal is not suspended by the filing of a motion for rehearing.

   While the various groups agreed not to recommend shortening the time for filing a notice of appeal, participants who do not represent parents took the position that an inability to locate or communicate with the parent is not a sound reason for extending time periods, as the parents have responsibility to keep in touch with their attorneys.

5. **Further study should be given to a general requirement which recognizes that a lawyer has authority to file an appeal on behalf of a client.**

   Some states require a parent to sign the notice of appeal in order to assure that cases are not delayed due to unauthorized appeals. Attorneys at the workshop who represent parents strenuously objected to such a requirement in Florida, arguing that parents are often unavailable because they are incarcerated, out of the country, or without transportation to the attorney's offices. Requiring their signatures on the notice of appeal would be impractical and needlessly deny them effective access to the courts. Alternatively, they suggest that attorneys could certify that the client has authorized the appeal, and this would prevent the lawyer from filing the notice when the client could not be reached at all.

The Rules of Professional Conduct provide that "(a) lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation." Rule 4-1.2(a). Not only in dependency and termination cases but in other types of cases, lawyers may feel compelled to file a notice of appeal even if he or she has not received specific authorization from the client, simply because failure to do so would waive the client's right to appeal. A general provision of the appellate rules stating that the rules assume that a lawyer has authority to file an appeal and that a lawyer must notify the court when he or she does not have specific authority may be something that the Appellate Rules Committee could study. Although no consensus was reached at the workshop on this issue, the Commission believes that assuring that appeals in this area are not pursued simply out of a concern that such action is required by the Rules of Professional Conduct has merit and will reduce the number of appeals and thus the delay.

The Third District explained an attorney's duty where the parent has become unavailable to expressly authorize an appeal. *In W.J.E. v. Dept. of Children and Family Services*, 731 So. 2d 850 (Fla. 3d DCA 1999), where an attorney filed a cautionary appeal for a father who had disappeared, the court, in dismissing the appeal, stated:

> We conclude that the father, by not responding to his counsel's efforts to contact him, has abandoned his appeal (if he ever intended to pursue one), and we therefore grant the Department's latest motion to dismiss.
>
> In order to avoid this situation, the counsel for the father, before filing this appeal without knowing the father's wishes, should have written to the father at his last known address, advising him of the deadline for appeal and seeking confirmation of his desires regarding it. If the father had not responded prior to the expiration of the appeal period, counsel, having fulfilled all his ethical obligations and duties, should not have filed the appeal. The interests of all concerned would thereby have been adequately protected and there would have been no delay affecting the daughter's future.

This issue is also impacted by Chapter 2007-62, Florida Statutes. In enacting the law providing for regional offices of conflict counsel, the legislature allowed for appointment of private counsel in termination of parental rights cases where the regional counsel had a conflict. A request for payment of fees to the Justice Administrative Commission must include trial counsel's certification that: "a. Counsel discussed grounds for appeal with the parent or that counsel attempted and was unable to contact the parent; and b. No appeal will be filed or that a notice of appeal and a motion for appointment of appellate counsel, containing the signature of the parent, have been filed." Chapter 2007-62, §11. Thus, some attorneys will be required to obtain a parent's signature authorizing an appeal in order for counsel to be compensated even if no requirement is contained in the rule.

6. **A motion for appointment of appellate counsel and authorization of payment of transcription costs, when appropriate, should be filed with the notice of appeal. The trial judge should be served with a copy of the notice of appeal and the motion for appointment of appellate counsel, and shall promptly enter an order appointing counsel.**

   The trial judge is not always aware that an appeal has been filed. In order to expedite appeals, it is necessary that trial judges enter orders for the appointment of counsel and authorizing the transcription of proceedings for purposes of payment. The judge may also need to assist in expediting transcript production. Therefore, it is appropriate to make the judge aware of an appeal at the earliest possible opportunity. The Commission also recommends that each circuit chief judge develop a circuit plan to insure that orders appointing counsel are entered on an expedited basis.

7. **The directions to the clerk and the designations to the court reporter shall be filed at the same time the notice of appeal is filed and the designations shall be served on the court reporter.**

   There is no reason to delay the commencement of the preparation of the transcript by five or ten days after the filing of the notice of appeal. Some workshop participants suggested that the circuit clerk prepare the designations to the reporter, as the clerk would also have the date or dates of the final hearing. However, the Commission does not

recommend requiring the clerk to prepare the designations because of the ongoing concerns about the division of responsibilities between clerks and judicial staff since passage of Revision 7.

Because the Commission is also recommending reducing the time for filing transcripts, consideration should be given for requiring designations to be e-mailed to the court reporter as well as transmitted by mail.

There was some discussion of a special rule that would require the clerk to prepare a more limited record than currently required under Rule of Appellate Procedure 9.200(a)(1). The Commission endorses this proposal, as frequently the records include voluminous and duplicative documents that are unnecessary to the appeal. The best group to determine what documents should be included may be a joint committee from both the Rules of Juvenile Procedure and the Rules of Appellate Procedure.

8. **The designation to the reporter must include the name of the individual court reporter, if applicable and provide 20 days for transcription.**

   The participants at the statewide workshop agreed that these appeals should be given the utmost priority in transcription. The court reporter managers at the workshop did not object to a shortened timeline for producing a transcript so long as rules or orders were put in place to require priority. Too often transcripts are delayed because the reporter has a substantial backlog of work and no orders of priority. Trial judges may require overnight production of transcript in other cases, and court reporters feel they cannot refuse such demands without some written policies on which they can rely.

9. **The Rules of Judicial Administration should include a provision requiring that transcription of hearings for appeal of dependency and parental termination orders, and any other similar proceedings needing the transcription of hearings, shall be given priority over the transcription of all other proceedings both in the trial and appellate court.**

Without a rule providing that transcripts in child case appeals are a priority, transcription of the proceedings will constitute a major source of delay. The Commission further suggests that the rule enabling the chief judge of a circuit to enforce this provision when necessary, including the availability of sanctions. A rule requiring these proceedings to be given priority provides the court reporters with the ability to prioritize these transcripts in the face of demands for other transcripts or court appearances. By placing the priority in the rule, it shows the importance the Supreme Court places on expediting these appeals.

10. The clerk of the circuit court shall complete and file the record on appeal within five days after receiving the transcript on appeal, and shall serve copies of the record on the parties as is done in criminal cases.

Because the clerk should have been working on preparing the record during the twenty days allowed for preparation of the transcript, the clerk representatives in attendance at the workshop believed that a rule requiring that the record be finalized within five days of receiving the transcript would be reasonable. As to service, the participants noted that the clerks in each county vary in how they treat the production of the record in dependency and termination cases. In some counties these cases are treated as civil cases, and only the index is sent to the parties. They must view the court filings at the courthouse. Other counties treat these like criminal cases, where the clerk sends the entire record to the state and non-indigent parties. See Rule of Appellate Procedure 9.140(f)(4). The Commission recommends that the rule require service of the record as in the criminal rules.

11. The initial brief shall be filed within 20 days of the service of the record on appeal; the answer brief shall be filed within 20 days of service of the initial brief; and the reply brief, if any, shall be filed within 10 days of service of the answer brief.

All of the lawyers, particularly those who represent parents, requested that the time for filing the briefs not be reduced, except for the filing of the reply brief. Allowing the appellant, usually the parent, 20 days to file the initial brief is consistent with the ABA proposed timeline, although the ABA proposal allows only 15 days for the filing of the

appellee's brief. Note that the recommendation requires filing and not serving the brief within the time period, thus reducing the time for mailing. Further, because of the reduction of time for filing by mail, the Commission recommends that briefs shall be served electronically on opposing parties.

Attendees at the workshop were concerned that decreasing the time for briefs could have a negative impact on the number of attorneys who will do this work, and could negatively impact the quality of the briefs themselves.

12. The appellate rules should provide that motions for extension of time should be granted only for good cause shown and only for the amount of time necessary.

The workshop participants debated what a proposed rule should state with respect to motions for extension of time. While they agreed that such motions should not be routinely made, they could not agree on what a rule should say about extensions of time. Section 39.0136, Florida Statute, enacted in 2006, provides legislative direction regarding time periods and continuances in dependency and termination proceedings. It provides:

> (1) The Legislature finds that time is of the essence for establishing permanency for a child in the dependency system. Time limitations are a right of the child which may not be waived, extended, or continued at the request of any party except as provided in this section.
>
> * * *
>
> (3) Notwithstanding subsection (2), in order to expedite permanency for a child, the total time allowed for continuances or extensions of time may not exceed 60 days within any 12-month period for proceedings conducted under this chapter. A continuance or extension of time may be granted only for extraordinary circumstances in which it is necessary to preserve the constitutional rights of a party or if substantial evidence exists to demonstrate that without

granting a continuance or extension of time the child's best interests will be harmed.

(4) Notwithstanding subsection (2), a continuance or an extension of time is limited to the number of days absolutely necessary to complete a necessary task in order to preserve the rights of a party or the best interests of a child.

These specific legislative directions should be adhered to in drafting a rule regarding extensions on appeal. The Commission recommends that a rule on extensions restate subsections 3 and 4 of the statute.

13. The rules should provide that any request for oral argument must be served with the first brief filed by the party.

Serving the request for oral argument with the first brief permits the appellate court to schedule oral argument in an expeditious manner.

14. The appellate court shall expedite the disposition of cases by advancing them on their calendars and giving priority to rendering opinions.

All of the district courts have adopted practices which have expedited the scheduling of dependency and parental termination cases on their calendars. All courts should adopt written procedures to assure that cases are set on an oral argument or conference calendar to be heard within 30 days of the filing of the answer brief. These cases should also be given priority in opinion writing by every judge, and the decision in the case should be published (or served on the parties) within 60 days of conference or oral argument.

15. Rule of Judicial Administration 2.080(f)(2) should be amended to require that decisions be rendered in dependency and termination cases within 60 days of either oral argument or the submission of the case to the court panel (conference) without oral argument. This will require reporting of cases over that time limit under Rule 2.250(b).

Providing a limited time standard for preparation of a decision provides a policy statement that the expedition of these cases is important to the

judiciary of the state. Reporting of cases decided over that time period also provides accountability for such cases. The preparation of such a list also assists both the chief judges and chief justice in monitoring older cases.

16. **The parties shall be permitted 15 days to file a motion for rehearing, and no response shall be required unless ordered by the court.**

    Participants at the workshop felt that few motions for rehearing are filed in these cases, and the lawyers objected to reducing the time. By eliminating the response except upon order of the court, a motion may be disposed of at the earliest possible time.

17. **The additional 15 days for issuance of the mandate after denial of rehearing as provided in Rule 9.340(b) should be eliminated for dependency/termination appeals.**

    Once the motion for rehearing is decided, the mandate can issue and the child can be adopted. Neither the Commission nor the members of the workshop found any reasons to delay return of jurisdiction to the trial court.

18. **Where counsel files a no-merit brief, all appellate courts should follow the process set forth in *N.S.H. v. Florida Dept. of Children and Family Services*, 843 So. 2d 898 (Fla. 2003), permitting a parent 20 days in which to file his or her own brief.**

    The supreme court has already adopted the procedure for handling a no-merit appeal in dependency/termination cases. The Commission recommends that in all courts the time for which a parent is required to file his or her own brief be limited to 20 days. In most cases no brief is filed, and the case can be dismissed for failure to prosecute.

Non-final Appeals and Petitions for Writ of Certiorari

The Supreme Court requested that the Commission study how other types of orders in dependency and termination cases come to the appellate courts. In Appendix E the number and type of orders are listed, as well as types of appeal filed, and how the courts classify the filings. Many orders,

other than final orders, were appealed as final or non-final orders and converted to petitions for writ of certiorari.

An examination of these filings indicates that except in the second district, there are few non-final appeals or certiorari petitions filed. It is also apparent that, to date, the courts have been fairly inconsistent in how various appeals are to be handled. Some courts have handled similar proceedings in several different ways. When filed as non-final appeals, not all of the courts accord them the expedited procedures that they deserve, leading to substantial delay in a pending proceeding.

Representatives of the Statewide Guardian ad Litem Program raised the processing of appeals from non-final orders as a significant issue to be addressed. Chief Appellate Counsel Thomas Young prepared a detailed memorandum of law addressing the inconsistent methods by which orders are appealed. This memorandum is attached as Appendix F. We thank Mr. Young for his work. He concludes by recommending that the rules be amended to designate the various types of orders which may be appealed by non-final appeal. Any other order should be reviewed by petition for certiorari. He lists nine orders which may be appealed as non-final, appealable orders.

Rule 9.146(b) provides that "any parent ... affected by an order of the lower tribunal ... may appeal to the appropriate court within the time and in the manner prescribed by these rules." The Second District has held that this rule "provides no exception or expansion to the appeals permitted under rule 9.130." *In re R.B.*, 890 So. 2d 1288 (Fla. 2d DCA 2005). The Commission considers this to be the proper understanding of the rule, and the recent amendment of the title of this section is intended to accomplish this. *See In Re Amendments to the Florida Rules of Appellate Procedure*, 941 So. 2d 352 (Fla. 2006). However, in order to assure that practitioners understand the limited non-final orders which can be appealed, Rule 9.146(b) should be amended to state that only non-final orders listed in Rule 9.130 are authorized appeals.

Rule 9.130 provides for the appeal of specific non-final orders, very few of which are the type which would emanate from a dependency or termination case. Even Rule 9.130(a)(3)(C)(iii), permitting appeals from orders determining the right to immediate monetary relief or child custody in family law matters, does not apply to dependency/termination cases, because

family law is governed by a separate subset of rules and statutes from dependency and termination cases.

The Commission disfavors an expansion of Rule 9.130 to provide a list of specific orders to be appealed. Generally, the list of non-final orders which may be appealed tends to get longer with time, thus increasing the possibility of delay on appeal as more orders can result in appeal. Chapter 2007-62 may also impact the number of non-final appeals or petitions for certiorari which are filed, as the law requires trial counsel to file any non-final appeals in dependency and termination proceedings and does not allow additional compensation for such appeals. No separate appointment of appellate counsel for such appeals is permitted.

If the primary goal is to avoid delay, then review of all non-final proceedings by petition for writ of certiorari, other than those specifically set forth in Rule 9.130, will be more expeditious than any appeal. However, review by certiorari presently carries with it a different standard of review. We believe that this debate as to what types of orders should be appealed by way of non-final appeal, or whether to handle review of non-final orders by way of petition for certiorari, are issues more properly debated in the Juvenile Court Rules and Appellate Court Rules Committees, as those bodies have more experience with the nature of the orders. However, it is the Commission's position that the types of non-final orders which may be appealed should be very limited.

APPENDIX B

IN THE SUPREME COURT OF FLORIDA

IN RE: IMPLEMENTATION OF COMMISSION ON DISTRICT COURT OF APPEAL PERFORMANCE AND ACCOUNTABILITY RECOMMENDATIONS

CASE NO.:

MOTION FOR EXTENSION OF TIME

Steven L. Brannock, Chair, Appellate Court Rules Committee, Robert W. Mason, Chair, Juvenile Court Rules Committee, Hon. Robert T. Benton II, Chair, Rules of Judicial Administration Committee, and John F. Harkness, Jr., Executive Director, The Florida Bar, file this motion for an extension of time until July 15, 2008, for the committees to respond to the District Court of Appeal Performance and Accountability Report recommendations.

On October 9, 2007, Chief Justice R. Fred Lewis asked the Committees to consider recommendations contained in the Commission's report to amend various rules of procedure to avoid delay in juvenile dependency and termination of parental rights appeals. (See Appendix A.) A response was requested by May 1, 2008. The three Committees have been working individually on the recommendations in the report. In addition, representatives from the Juvenile Court Rules Committee have been working with the Appellate Court Rules Committee and the Rules of Judicial Administration Committee. However, additional time is needed to allow each Committee to review the other's work and to obtain review by The Florida Bar Board of Governors. The extension requested will also allow the issue to be discussed at the Committees' meetings in June, rather than having to be accomplished by conference call and email.

The Committees respectfully request that the Court grant this motion for extension.

Respectfully submitted _____.

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April 10, 2008

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Re: Implementation of Commission on District Court of Appeal Performance and Accountability Recommendations

Dear Judge Benton, Mr. Brannock, and Mr. Mason:

I have received your joint motion for extension of time. Please be advised that your request is granted and your committees are allowed to and including July 15, 2008, in which to file their comprehensive report.

Most cordially,

By: Tanya Carroll
Chief Deputy Clerk
Thomas D. Hall

TDH/vm
cc: Joanna Mauer, Bar Liaison Ellen Sloyer, Bar Liaison Craig Shaw, Bar Liaison

APPENDIX C

VOTING RECORD

Fla. R. Jud. Admin. 2.250. Time Standards for Trial and Appellate Courts and Reporting Requirements

Rules of Judicial Administration Committee vote: 22-0
Appellate Court Rules Committee vote: 38-5
Juvenile Court Rules Committee vote: 22-0
Board of Governors Executive Committee vote: 9-0

Fla. R. Jud. Admin. 2.535. Court Reporting

Rules of Judicial Administration Committee vote: 20-2
Appellate Court Rules Committee vote: 38-5
Juvenile Court Rules Committee vote: 22-0
Board of Governors Executive Committee vote: 9-0

Fla. R. Juv. P. 8.276. Appeal Procedures

Juvenile Court Rules Committee vote: 16-0-1
Appellate Court Rules Committee vote: 44-1
Rules of Judicial Administration Committee vote: 23-3
Board of Governors Executive Committee vote: 9-0

Fla. R. Juv. P. 8.330. Adjudicatory Hearings

Juvenile Court Rules Committee vote:
(c), (f): 33-0-0
(g): 22-0-0
Appellate Court Rules Committee vote: 44-1
Rules of Judicial Administration vote: 23-3
Board of Governors Executive Committee vote: 9-0

Fla. R. Juv. P. 8.332. Order Finding Dependency

Juvenile Court Rules Committee vote:
Creation of new rule: 30-0-2
DCAP&A amendment: 16-0-1
Appellate Court Rules Committee vote: 44-1
Rules of Judicial Administration Committee vote: 23-3
Board of Governors Executive Committee vote: 9-0

Fla. R. Juv. P. 8.525. Adjudicatory Hearings

Juvenile Court Rules Committee vote: 16-0-1
Appellate Court Rules Committee vote: 44-1
Rules of Judicial Administration Committee vote: 23-3
Board of Governors Executive Committee vote: 9-0

Fla. R. Juv. P. Form 8.983. Adjudication Order and Judgment of Involuntary Termination of Parental Rights

Juvenile Court Rules Committee vote: 16-0-1
Appellate Court Rules Committee vote: 44-1
Rules of Judicial Administration Committee vote: 23-3
Board of Governors Executive Committee vote: 9-0

Fla. R. Juv. P. Form 8.984. Judgment of Voluntary Termination of Parental Rights

Juvenile Court Rules Committee vote:
General amendments to form: 17-0-0
DCAP&A amendment: 16-0-1
Appellate Court Rules Committee vote: 44-1
Rules of Judicial Administration Committee vote: 23-3
Board of Governors Executive Committee vote: 9-0

Fla. R. App. P. 9.130. Proceedings to Review Non-final Orders and Specified Final Orders.

Appellate Court Rules Committee vote: 41-2
Juvenile Court Rules Committee vote: 20-0-2
Rules of Judicial Administration Committee vote: 23-3
Board of Governors Executive Committee vote: 9-0

Fla. R. App. P. 9.146. Appeal Proceedings in Juvenile Dependency and Termination of Parental Cases and Cases Involving Families and Children in Need of Services

Appellate Court Rules Committee vote: 41-2
Juvenile Court Rules Committee vote:
(c)(2) 15-6-2
(h)(2)(B) and (h)(2)(C) 15-0-8
Rules of Judicial Administration Committee vote: 23-3
Board of Governors Executive Committee vote: 9-0

Fla. R. App. P. 9.340. Mandate

Appellate Court Rules Committee vote: 41-3
Juvenile Court Rules Committee vote: 15-0-1
Rules of Judicial Administration Committee vote: 23-3
Board of Governors Executive Committee vote: 9-0

Fla. R. App. P. 9.430. Proceedings by Indigents

Appellate Court Rules Committee vote: 43-0
Juvenile Court Rules Committee vote: 24-0
Rules of Judicial Administration Committee vote: 23-3
Board of Governors Executive Committee vote: 9-0

APPENDIX D

RULE 2.250. TIME STANDARDS FOR TRIAL AND APPELLATE COURTS AND REPORTING REQUIREMENTS

(a) Time Standards. The following time standards are hereby established as a presumptively reasonable time period for the completion of cases in the trial and appellate courts of this state. It is recognized that there are cases that, because of their complexity, present problems that cause reasonable delays. However, most cases should be completed within the following time periods:

(1) Trial Court Time Standards.

(A) Criminal.

Felony — 180 days (arrest to final disposition)

Misdemeanor — 90 days (arrest to final disposition)

(B) Civil.

Jury cases — 18 months (filing to final disposition)

Non-jury cases — 12 months (filing to final disposition)

Small claims — 95 days (filing to final disposition)

(C) Domestic Relations.

Uncontested — 90 days (filing to final disposition)

Contested — 180 days (filing to final disposition)

(D) Probate.

Uncontested, no federal estate tax return — 12 months (from issuance of letters of administration to final discharge)

Uncontested, with federal estate tax return — 12 months (from the return's due date to final discharge)

Contested — 24 months (from filing to final discharge)

(E) Juvenile Delinquency.

Disposition hearing — 120 days (filing of petition or child being taken into custody to hearing)

Disposition hearing (child detained) — 36 days (date of detention to hearing)

(F) Juvenile Dependency.

Disposition hearing (child sheltered) — 88 days (shelter hearing to disposition)

Disposition hearing (child not sheltered) — 120 days (filing of petition for dependency to hearing)

(G) Permanency Proceedings.

Permanency hearing — 12 months (date child is sheltered to hearing)

(2) Supreme Court and District Courts of Appeal Time Standards: Rendering a decision — within 180 days of either oral argument or the submission of the case to the court panel for a decision without oral argument, except in juvenile dependency or termination of parental rights cases, in which a decision should be rendered within 60 days of either oral argument or submission of the case to the court panel for a decision without oral argument.

(3) Florida Bar Referee Time Standards: Report of referee — within 180 days of being assigned to hear the case

(4) Circuit Court Acting as Appellate Court: Ninety days from submission of the case to the judge for review

(b) Reporting of Cases. The time standards require that the following monitoring procedures be implemented:

All pending cases in circuit and district courts of appeal exceeding the time standards shall be listed separately on a report submitted quarterly to the chief justice. The report shall include for each case listed the case number, type of case, case status (active or inactive for civil cases and contested or uncontested for domestic relations and probate cases), the date of arrest in criminal cases, and the original filing date in civil cases. The Office of the State Courts Administrator will provide the necessary forms for submission of this data. The report will be due on the 15th day of the month following the last day of the quarter.

RULE 2.535. COURT REPORTING

(a) Definition. "Court reporting" means the act of making a verbatim record of the spoken word, whether by the use of written symbols, stenomask equipment, or electronic devices, in any proceedings pending in any of the courts of this state, including all discovery proceedings conducted in connection therewith, and all proceedings required by statute to be reported by a certified or official court reporter. It does not mean either the act of taking witness statements not intended for use in court as substantive evidence, or the act of electronic recording and transcription of proceedings as provided for in subdivision (g)(3).

(b) When Court Reporting Required. Any proceeding shall be reported on the request of any party. The party so requesting shall pay the reporting fees, but this requirement shall not preclude the taxation of costs as authorized by law.

(c) Record. When trial proceedings are being reported, no part of the proceedings shall be omitted unless all of the parties agree to do so and the court approves the agreement. When a deposition is being reported, no part of the proceedings shall be omitted unless all of the parties and the witness so agree. When a party or a witness seeks to terminate or suspend the taking of a deposition for the time necessary to seek a court order, the court reporter shall discontinue reporting the testimony of the witness.

(d) Fees. The chief judge shall have the discretion to adopt an administrative order establishing maximum fees for court reporting services not covered in the plan adopted pursuant to subdivision (g). Any such order must make a specific factual finding that the setting of such maximum fees is necessary to ensure access to the courts. Such finding shall include consideration of the number of court reporters in the county or circuit, any past history of fee schedules, and any other relevant factors.

(e) Transcripts. Transcripts of all judicial proceedings, including depositions, shall be uniform in and for all courts throughout the state. The form, size, spacing, and method of printing transcripts are as follows:

(1) All proceedings shall be printed on paper 8 1/2 inches by 11 inches in size and bound on the left.

(2) There shall be no fewer than 25 printed lines per page with all lines numbered 1 through 25, respectively, and with no more than a double space between lines.

(3) Font size or print shall be 9 or 10 pica, 12-point courier, or 12-point Times New Roman print with no less than 56 characters per line on questions and answers unless the text of the speaker ends short of marginal requirements.

(4) Colloquy material shall begin on the same line following the identification of the speaker, with no more than 2 spaces between the identification of the speaker and the commencement of the colloquy. The identification of the speaker in colloquy shall begin no more than 10 spaces from the left margin, and carry-over colloquy shall be indented no more than 5 spaces from the left margin.

(5) Each question and answer shall begin on a separate line no more than 5 spaces from the left margin with no more than 5 spaces from the "Q" or "A" to the text. Carry-over question and answer lines shall be brought to the left margin.

(6) Quoted material shall begin no more than 10 spaces from the left margin with carry-over lines beginning no more than 10 spaces from the left margin.

(7) Indentations of no more than 10 spaces may be used for paragraphs, and all spaces on a line as herein provided shall be used unless the text of the speaker ends short of marginal requirements.

(8) One-line parentheticals may begin at any indentation. Parentheticals exceeding 1 line shall begin no more than 10 spaces from the left margin, with carry-over lines being returned to the left margin.

(9) Individual volumes of a transcript, including depositions, shall be no more than 200 pages in length, inclusive of the index.

(10) Deviation from these standards shall not constitute grounds for limiting use of transcripts in the trial or appellate courts.

(f) Reporter as Officer of Court. A court reporter is an officer of the court for all purposes while acting as a reporter in a judicial proceeding or discovery proceeding. The court reporter shall comply with all rules and statutes governing the proceeding that are applicable to court reporters.

(g) Court Reporting Services Provided in Mental Health Proceedings or at Public Expense.

(1) When Reporting Required. All criminal and juvenile proceedings, and any other judicial proceedings required by law or court rule to be reported at public expense, shall be reported.

(2) Circuit Plan. The chief judge, after consultation with the circuit court and county court judges in the circuit, shall enter an administrative order developing and implementing a circuit-wide plan for the court reporting of all proceedings required to be reported at public expense using either full or part time court employees or independent contractors. The plan shall ensure that all court reporting services are provided by qualified persons. This plan may provide for multiple service delivery strategies if they are necessary to ensure the efficient provision of court reporting services. Each circuit's plan for court reporting services shall be developed after consideration of guidelines issued by the Office of the State Courts Administrator.

(3) Electronic Recording and Transcription of Proceedings Without Court Reporters. A chief judge may enter a circuit-wide administrative order, which shall be recorded, authorizing the electronic recording and subsequent transcription by persons other than court reporters, of any judicial proceedings, including depositions, that are otherwise required to be reported by a court reporter. Appropriate procedures shall be prescribed in the order which shall:

(A) set forth responsibilities for the court's support personnel to ensure a reliable record of the proceedings;

(B) provide a means to have the recording transcribed, either in whole or in part, when necessary for an appeal or for further use in the trial court; and

(C) provide for the safekeeping of such recordings.

The presiding judge in a specific case, however, may require a court reporter, if available, or either party may provide and pay for the cost of a court reporter. Such court reporter shall be subject to the orders of the court and directions to transcribe the record from all parties.

(4) Grand Jury Proceedings. Testimony in grand jury proceedings shall be reported by a court reporter, but shall not be transcribed unless required by order of court. Other parts of grand jury proceedings, including deliberations and voting, shall not be reported. The court reporter's work product, including stenographic notes, electronic recordings, and transcripts, shall be filed with the clerk of the court under seal.

(h) Court Reporting Services in Capital Cases. On or before January 1, 2001, the chief judge, after consultation with the circuit court judges in the circuit, shall enter an administrative order developing and implementing a circuit-wide plan for court reporting in all trials in which the state seeks the death penalty and in capital postconviction proceedings. The plan shall require the use of all measures necessary to expedite the preparation of the transcript, including but not limited to:

(1) where available, the use of a court reporter who has the capacity to provide real-time transcription of the proceedings;

(2) if real-time transcription services are not available, the use of a computer-aided transcription qualified court reporter;

(3) the use of scopists, text editors, alternating court reporters, or other means to expedite the finalization of the certified transcript; and

(4) the imposition of reasonable restrictions on work assignments by employee or contract court reporters to ensure that transcript production in capital cases is given a priority.

(i) Juvenile Dependency and Termination of Parental Rights Cases. Transcription of hearings for appeals of orders in juvenile

dependency and termination of parental rights cases should, to the extent reasonably possible, be given priority consistent with rule 2.215(g).

RULE 8.276. APPEAL PROCEDURES

Florida Rule of Appellate Procedure 9.146 generally governs appeals in juvenile dependency and termination of parental rights cases.

RULE 8.330. ADJUDICATORY HEARINGS

(a) Hearing by Judge. The adjudicatory hearing shall be conducted by the judge, without a jury, utilizing the rules of evidence in use in civil cases. At this hearing the court shall determine whether the allegations of the dependency petition have been sustained by a preponderance of the evidence. If the court is of the opinion that the allegations are sustained by clear and convincing evidence, it may enter an order so stating.

(b) Examination of Witnesses. A party may call any person as a witness. A party shall have the right to examine or cross-examine all witnesses. However, the child and the parents, caregivers, or legal custodians of the child may be examined separately and apart from each other.

(c) Presence of Parties. All parties have the right to be present at all hearings. A party may appear in person or, at the discretion of the court for good cause shown, by an audio or audiovisual device. No party shall be excluded from any hearing unless so ordered by the court for disruptive behavior or as provided by law. If a person appears for the arraignment hearing and the court orders that person to personally appear at the adjudicatory hearing for dependency, stating the date, time, and place of the adjudicatory hearing, then that person's failure to appear for the scheduled adjudicatory hearing constitutes consent to a dependency adjudication.

(d) Joint and Separate Hearings. When 2 or more children are alleged to be dependent children, the hearing may be held simultaneously when the several children involved are related to each other or involved in the same case, unless the court orders separate hearings.

(e) Motion for Judgment of Dismissal. In all proceedings, if at the close of the evidence for the petitioner the court is of the opinion that the evidence is insufficient to warrant a finding of dependency, it may, and on the motion of any party shall, enter an order dismissing the petition for insufficiency of the evidence <u>or find that the allegations in the petition against a party have not been sustained. If the court finds that the allegations in the petition against a party have not been sustained but does not dismiss the petition, the parties, including all parents, shall continue to receive pleadings, notices, and documents and to have the right to be heard</u>.

(f) Dismissal. If the court shall find that the allegations in the petition have not been sustained, it shall enter an order dismissing the case for insufficiency of the evidence or find that the allegations in the petition against a party have not been sustained. If the court finds that the allegations in the petition against a party have not been sustained but does not dismiss the petition, the parties, including all parents, shall continue to receive pleadings, notices, and documents and to have the right to be heard.

~~**(g) Findings and Orders.** In all cases in which dependency is established:~~

~~(1) The court shall enter a written order stating the legal basis for a finding of dependency, specifying the facts upon which the finding of dependency is based, and stating whether the court made the finding by a preponderance of the evidence or by clear and convincing evidence.~~

~~(2) The court shall advise the parents that if the parents fail to substantially comply with the case plan, their parental rights may be terminated.~~

~~(3) If the child is in out-of-home placement, the court shall inquire of the parents whether the parents have relatives who might be considered as placement for the child. The parents shall provide to the court and all parties identification and location information for the relatives.~~

Committee Notes

1991 Amendment. (a) This change gives the court the option of making a finding based on a higher burden of proof to eliminate the need for a repetitive hearing on the same evidence if a termination of parental rights petition is filed.

RULE 8.332. ORDER FINDING DEPENDENCY

(a) Finding of Dependency. In all cases in which dependency is established, the court shall enter a written order stating the legal basis for a finding of dependency, specifying the facts upon which the finding of dependency is based, and stating whether the court made the finding by a preponderance of the evidence or by clear and convincing evidence. The court shall include the dates of the adjudicatory hearing, if any, in the order.

(b) Adjudication of Dependency. If the court finds that the child named in the petition is dependent, the court shall enter an order adjudicating the child dependent if the child is placed or will continue to be placed in an out-of-home placement. The court may enter an order adjudicating the child dependent if the child remains in or is returned to the home. The court shall conduct a disposition hearing.

(c) Withhold of Adjudication of Dependency.

(1) If the court finds that the child named in the petition is dependent, but finds that no action other than supervision in the child's home is required, it may enter an order briefly stating the facts on which its finding is based, but withholding an order of adjudication and placing the child in the child's home under the supervision of the department. The department shall file a case plan and the court shall review the case plan pursuant to these rules.

(2) If the court later finds that the parents of the child have not complied with the conditions of supervision imposed, including the case plan, the court may, after a hearing to establish the noncompliance, but without further evidence of the state of dependency, enter an order of adjudication and shall thereafter have full authority under this chapter to provide for the child as adjudicated. If the child is to remain in an out-of-home placement by order of the court, the court must adjudicate the child dependent. If the court adjudicates the child dependent, the court shall then conduct a disposition hearing.

RULE 8.525. ADJUDICATORY HEARINGS

(a) Hearing by Judge. The adjudicatory hearing shall be conducted by the judge without a jury using the rules of evidence for civil cases. At this hearing the court shall determine whether the elements required by law for termination of parental rights have been established by clear and convincing evidence.

(b) Time of Hearing. The adjudicatory hearing shall be held within 45 days after the advisory hearing, unless all necessary parties stipulate to some other hearing date. Reasonable continuances may be granted for purposes of investigation, discovery, procuring counsel or witnesses, or for other good cause shown.

(c) Examination of Witnesses. A party may call any person, including a child, as a witness. A party shall have the right to examine or cross-examine all witnesses.

(d) Presence of Parties. All parties have the right to be present at all termination hearings. A party may appear in person or, at the discretion of the court for good cause shown, by an audio or audiovisual device. No party shall be excluded from any hearing unless so ordered by the court for disruptive behavior or as provided by law. If a parent appears for the advisory hearing and the court orders that parent to personally appear at the adjudicatory hearing for the petition for termination of parental rights, stating the date, time, and location of this hearing, then failure of that parent to personally appear at the adjudicatory hearing shall constitute consent for termination of parental rights.

(e) Examination of Child. The court may hear the testimony of the child outside the physical presence of the parties as provided by rule 8.255. Counsel for the parties shall be present during all examinations. The court may limit the manner in which counsel examine the child.

(f) Previous Testimony Admissible. To avoid unnecessary duplication of expenses, in-court testimony previously given at any properly noticed hearing may be admitted, without regard to the availability of the witnesses, if the recorded testimony itself is made available. Consideration of previous testimony does not preclude the parties from calling the witness to answer supplemental questions.

(g) Joint and Separate Hearings. When 2 or more children are the subject of a petition for termination of parental rights, the hearings may be held simultaneously if the children are related to each other or involved in the same case, unless the court orders separate hearings.

(h) Motion for Judgment of Dismissal. In all termination of parental rights proceedings, if at the close of the evidence for the petitioner the parents move for a judgment of dismissal and the court is of the opinion that the evidence is insufficient to sustain the grounds for termination alleged in the petition, it shall enter an order denying the termination and proceed with dispositional alternatives as provided by law.

(i) Final Judgment.

(1) Terminating Parental Rights. If the court finds after all of the evidence has been presented that the elements and one of the grounds for termination of parental rights have been established by clear and convincing evidence, the court shall enter a final judgment terminating parental rights and proceed with dispositional alternatives as provided by law. The order must contain the findings of fact and conclusions of law on which the decision was based. The court shall include the dates of the adjudicatory hearing in the order. The parties may stipulate, or the court may order, that parents or relatives of the parent whose rights are terminated be allowed to maintain some contact with the child. If the court orders continued contact, the nature and frequency of this contact must be stated in a written order. The visitation order may be reviewed on motion of any party, including a prospective adoptive parent, and must be reviewed by the court at the time the child is placed for adoption.

(2) Denying Termination of Parental Rights. If the court finds after all of the evidence has been presented that the grounds for termination of parental rights have not been established by clear and convincing evidence, but that the grounds for dependency have been established by a preponderance of the evidence, the court shall adjudicate or readjudicate the child dependent and proceed with dispositional alternatives as provided by law.

(3) Dismissing Petition. If the court finds after all of the evidence has been presented that the allegations in the petition do not

establish grounds for dependency or termination of parental rights, it shall enter an order dismissing the petition.

FORM 8.983. ADJUDICATION ORDER AND JUDGMENT OF INVOLUNTARY TERMINATION OF PARENTAL RIGHTS

ORDER OF ADJUDICATION AND
JUDGMENT OF INVOLUNTARY
TERMINATION OF PARENTAL RIGHTS

THIS CAUSE came before this court on .....(all dates of the adjudicatory hearing)..... for an adjudicatory hearing on the Petition for Termination of Parental Rights filed by .....(name)..... Present before the court were:

.....(Name)..... , Petitioner
.....(Name)..... , Attorney for the petitioner
.....(Name)..... , Attorney for the department
.....(Name)..... , Department caseworker
.....(Name)..... , Child
.....(Name)..... , Attorney for Child
.....(Name)..... , Mother
.....(Name)..... , Attorney for mother
.....(Name)..... , Father of .....(child).....
.....(Name)..... , Attorney for father
.....(Name)..... , Guardian ad litem
.....(Name)..... , Attorney for guardian ad litem
.....(Name)..... , Legal custodian
.....(Name)..... , Attorney for legal custodian
.....(Name)..... , Other .....

The court has carefully considered and weighed the testimony of all witnesses. The court has received and reviewed all exhibits.

COMMENT: Add the following only if necessary.

The petitioner has sought termination of the parental rights of .....(parent(s)) who is/are subject of petition).....

The court finds that the parent(s), ...(name(s))....., has/have .....(list grounds proved)....., under chapter 39, Florida Statutes. The grounds were proved by clear and convincing evidence. Further, the court finds that termination of parental rights of the parent(s), ...name(s)....., is clearly in the manifest best interests of the child(ren). The findings of fact and conclusions of law supporting this decision are as follows:

1. At all stages of these proceedings the parent(s) was/were advised of his/her/their right to legal counsel, or was/were in fact represented by counsel.

2. On or about .....(date(s))....., the following occurred: .....(acts which were basis for dependency or TPR, if filed directly).....

3. The mother has .....(grounds for TPR)..... the minor child(ren) within the meaning and intent of section 39.806, Florida Statutes, in that: .....(findings that form the statutory basis for grounds).....

4. The father has .....(grounds for TPR)..... the minor child(ren) within the meaning and intent of section 39.806, Florida Statutes, in that: .....(findings that form the statutory basis for grounds).....

5. The minor child(ren) to whom ..…(parent's(s') name(s))….. parental rights are being terminated are at substantial risk of significant harm. Termination of parental rights is the least restrictive means to protect the child(ren) from harm.

6. Under the provisions of sections 39.810(1)–(11), Florida Statutes, it is in the manifest best interests of the child(ren) for parental rights of .....(name(s)).... to be terminated for the reasons below. The court has considered all relevant factors and finds as follows:

(a) Regarding any suitable permanent custody arrangement with a relative of the child, the court finds .....

(b) Regarding the ability and disposition of the parent or parents to provide the child with food, clothing, medical care, or other remedial care recognized and permitted under state law instead of medical care, and other material needs of the child, the court finds .....

(c) Regarding the capacity of the parent or parents to care for the child to the extent that the child's safety, well-being, and physical, mental, and emotional health will not be endangered upon the child's return home, the court finds .....

(d) Regarding the present mental and physical health needs of the child and such future needs of the child to the extent that such future needs can be ascertained based on the present condition of the child, the court finds .....

(e) Regarding the love, affection, and other emotional ties existing between the child and the child's parent or parents, siblings, and other relatives, and the degree of harm to the child that would arise from the termination of parental rights and duties, the court finds .....

(f) Regarding the likelihood of an older child remaining in long-term foster care upon termination of parental rights, due to emotional or behavioral problems or any special needs of the child, the court finds .....

(g) Regarding the child's ability to form a significant relationship with a parental substitute and the likelihood that the child will enter into a more stable and permanent family relationship as a result of permanent termination of parental rights and duties, the court finds .....

(h) Regarding the length of time that the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity, the court finds .....

(i) Regarding the depth of the relationship existing between the child and present custodian, the court finds .....

(j) Regarding the reasonable preferences and wishes of the child, if the court deems the child to be of sufficient intelligence, understanding, and experience to express a preference, the court finds .....

(k) Regarding the recommendations for the child provided by the child's guardian ad litem or the legal representative, the court finds .....

(*l*) Regarding other relevant factors including ....., the court finds .....

COMMENT: Add items 7, 8, and 9 as applicable.

7. Under section 39.811(6)(…..), Florida Statutes, the court terminates the parental rights of only .....(parent whose rights are being terminated)..... as to the minor child(ren), ...(child(ren)'s name(s))..... Specifically, the court finds that ……(specific findings of fact under section 39.811(6), Florida Statutes).....

8. Under sections 39.509(5) and 39.811(7)(a), Florida Statutes, the court finds that continued grandparental visitation is not in the best interests of the child(ren) or that such visitation would interfere with the permanency goals for the child(ren) for the following reasons .....

9. Under section 39.811(7)(b), Florida Statutes, the court finds that although parental rights are being terminated, the best interests of .....(names of child(ren) to which this provision applies)..... support continued communication or contact by .....(names of parents, siblings, or relatives of the parent whose rights are terminated and to which this provision applies)..... except as provided above. The nature and frequency of the communication or contact shall be as follows ..... It may be reviewed on motion of any party or an identified prospective adoptive parent.

THEREFORE, after weighing the credibility of the witnesses, weighing all statutory factors, and based on the findings of fact and conclusions of law above, the court hereby ORDERS AND ADJUDGES THAT:

1. The petition filed by .....(name)..... is granted as to the parent(s), ...(name(s)).....

2. The parental rights of the father, ...(name)....., and of the mother, ...(name)....., to the child, ...(name)....., are hereby terminated under section 39.806(.....), Florida Statutes.

COMMENT: Repeat the above for each child and parent, as necessary.

3. Under sections 39.811(2) and (5), Florida Statutes, the child(ren), ...(name(s))....., are placed in the custody of .....(agency)..... for the purpose of subsequent adoption.

4. The 30-day permanency plan required by section 39.811(8), Florida Statutes, shall be filed and heard at .....(time)..... on .....(date)..... in .....(location).....

DONE AND ORDERED on .....(date)....., in .....(city and county)....., Florida.

_____
Circuit Judge

NOTICE

Under section 39.815, Florida Statutes, any child, any parent, guardian ad litem, or legal custodian of any child, any other party to the proceeding who is affected by an order of the court, or the department may appeal to the appropriate District Court of Appeal within the time and in the manner prescribed by the Florida Rules of Appellate Procedure, which is 30 days from the date this order is rendered (filed).

Copies to: _____

FORM 8.984. JUDGMENT OF VOLUNTARY TERMINATION OF PARENTAL RIGHTS

ADJUDICATORY ORDER AND FINAL JUDGMENT OF TERMINATION OF PARENTAL RIGHTS AND GUARDIANSHIP

THIS CAUSE came before this court on .....(all dates of the adjudicatory hearing)..... for an adjudicatory hearing on the petition for termination of parental rights filed by .....(name)..... Present before the court were: ~~.....~~

..... (Name) ..... , Petitioner
..... (Name) ..... , Attorney for the petitioner
..... (Name) ..... , Attorney for the department
..... (Name) ..... , Department/agency caseworker
..... (Name) ..... , Child
..... (Name) ..... , Attorney/Attorney ad litem for Child
..... (Name) ..... , Mother
..... (Name) ..... , Attorney for mother
..... (Name) ..... , Father of ..... (child) .....
..... (Name) ..... , Attorney for father
..... (Name) ..... , Guardian ad litem
..... (Name) ..... , Attorney for guardian ad litem
..... (Name) ..... , Legal custodian
..... (Name) ..... , Attorney for legal custodian
..... (Name) ..... , Other .....

~~The mother, ...(name)....., and the father(s), ...(name(s))....., executed voluntary surrenders of their parental rights for the minor child(ren), ...(name(s))....., which are accepted by the court without objection.~~

___ The mother, ...(name)....., executed a voluntary surrender of her parental rights for the minor child(ren), ...(name(s))....., which is accepted by the court without objection.

COMMENT: Repeat the following as necessary.

___ The father, ...(name)....., executed a voluntary surrender of his parental rights for the minor child(ren), ...(name(s))....., which is accepted by the court without objection.

The court has carefully considered the testimony of witnesses, reviewed the exhibits, reviewed the file, heard argument of counsel, and considered recommendations and arguments of all parties. The court finds by clear and convincing evidence that the parents, ...(names)....., have surrendered their parental rights to the minor child(ren) under section 39.806(1)(a), Florida Statutes, and that termination of parental rights is in the manifest best interest of the child(ren). The specific facts and findings supporting this decision are as follows:

1. That the mother, ...(name)....., ... was ..... was not personally served with the summons and the petition.

COMMENT: Service is not required if surrender was signed before filing of petition.

2. That the father, ...(name)....., ... was ..... was not personally served with the summons and the petition.

COMMENT: Service is not required if surrender was signed before filing of petition.

3. That the parents were advised of their right to counsel in all prior dependency court proceedings which they attended. The mother has been represented by legal counsel, ...(name)....., starting on or about .....(date)..... The father has been represented by legal counsel, ...(name)....., starting on or about .....(date).....

4. The mother, ...(name)....., freely, knowingly, voluntarily, and ..... with ..... without advice of legal counsel executed an affidavit and acknowledgment of surrender, consent, and waiver of notice on .....(date)....., for termination of her parental rights to the minor child(ren), under section 39.806(1)(a), Florida Statutes.

5. The father, ...(name)....., freely, knowingly, voluntarily, and ..... with ..... without advice of legal counsel executed an affidavit and acknowledgment of surrender, consent, and waiver of notice on .....(date)....., for termination of ~~her~~his parental rights to the minor child(ren), under section 39.806(1)(a), Florida Statutes.

6. That at all times relevant to this action the interests of this/these child(ren) has/have been represented by a guardian ad litem. The guardian ad litem, ...(name)....., ... agrees ..... does not agree that it is in the best interest of the child(ren) for parental rights to be terminated in this cause.

COMMENT: Guardian ad litem not required in voluntary surrender.

7. Under the provisions of sections 39.810(1)–(11), Florida Statutes, it is in the manifest best interest of the child(ren) for parental rights to be terminated for the following reasons: ~~.....(findings as to each statutory factor) .....~~

(a) Regarding any suitable permanency custody arrangement with a relative of the child, the court finds .....

(b) Regarding the ability and disposition of the parent or parents to provide the child with food, clothing, medical care or other remedial care recognized and permitted under state law instead of medical care, and other materials needs of the child, the court finds .....

(c) Regarding the capacity of the parent or parents to care for the child to the

extent that the child's safety, well-being, and physical, mental, and emotional health will not be endangered upon the child's return home, the court finds .....

(d) Regarding the present mental and physical health needs of the child and such future needs of the child to the extent that such future needs can be ascertained based on the present condition of the child, the court finds .....

(e) Regarding the love, affection, and other emotional ties existing between the child and the child's parent or parents, siblings, and other relatives, and the degree of harm to the child that would arise from the termination of parental rights and duties, the court finds .....

(f) Regarding the likelihood of an older child remaining in long-term foster care upon termination of parental rights, due to emotional or behavioral problems or any special needs of the child, the court finds .....

(g) Regarding the child's ability to form a significant relationship with a parental substitute and the likelihood that the child will enter into a more stable and permanent family relationship as a result of permanent termination of parental rights and duties, the court finds .....

(h) Regarding the length of time that the child has lived in a stable, satisfactory environment and the desireability of maintaining continuity, the court finds .....

(i) Regarding the depth of the relationship existing between the child and present custodian, the court finds .....

(j) Regarding the reasonable preferences and wishes of the child, if the court deems the child to be of sufficient intelligence, understanding, and experience to express a preference, the court finds .....

(k) Regarding the recommendations for the child provided by the child's guardian ad litem or the legal representative, the court finds .....

(*l*) Regarding other relevant factors including ..... , the court finds .....

THEREFORE, it is ORDERED AND ADJUDGED that:

1. The petition for termination of parental rights is GRANTED.

2. ~~The parental rights of the parents, ...(name(s)) ....., to the child, ...(name) ....., are terminated.~~The parental rights of the father, ...(name)....., and of the mother, ...(name)....., to the child, ...(name)....., are hereby terminated under section 39.806(.....), Florida Statutes.

COMMENT: Repeat the above for each child and parent on petition.

3. The child(ren), ...(name(s)) ....., is/are hereby placed in the permanent care and custody of .....(agency name) ..... for subsequent adoption.

4. A hearing for the department to provide a plan for permanency for the child(ren) shall be held on .....(date)....., within 30 days of rendering of order, at .....(time).....

DONE AND ORDERED on .....(date) ....., in ..... County, Florida.

_____
Circuit Judge

Copies furnished to: .....

NOTICE

Under section 39.815, Florida Statutes, any child, any parent, guardian ad litem, or legal custodian of any child, any other party to the proceeding who is affected by an order of the court, or the department may appeal to the appropriate District Court of Appeal within the time and in the manner prescribed by the Florida Rules of Appellate Procedure, which is 30 days from the date this order is rendered (filed).

RULE 9.130. PROCEEDINGS TO REVIEW NON-FINAL ORDERS AND SPECIFIED FINAL ORDERS

(a) Applicability.

(1) This rule applies to appeals to the district courts of appeal of the non-final orders authorized herein and to appeals to the circuit court of non-final orders when provided by general law. Review of other non-final orders in such courts and non-final administrative action shall be by the method prescribed by rule 9.100.

(2) Appeals of non-final orders in criminal cases shall be as prescribed by rule 9.140. Appeals of non-final orders in dependency and termination of parental rights cases shall be limited to those non-final orders prescribed in rule 9.146 and those non-final orders specifically enumerated in this rule.

(3) Appeals to the district courts of appeal of non-final orders are limited to those that

(A) concern venue;

(B) grant, continue, modify, deny, or dissolve injunctions, or refuse to modify or dissolve injunctions;

(C) determine

(i) the jurisdiction of the person;

(ii) the right to immediate possession of property;

(iii) the right to immediate monetary relief or child custody in family law matters;

(iv) the entitlement of a party to arbitration;

(v) that, as a matter of law, a party is not entitled to workers' compensation immunity;

(vi) that a class should be certified;

(vii) that, as a matter of law, a party is not entitled to absolute or qualified immunity in a civil rights claim arising under federal law; or

(viii) that a governmental entity has taken action that has inordinately burdened real property within the meaning of section 70.001(6)(a), Florida Statutes.

(D) grant or deny the appointment of a receiver, and terminate or refuse to terminate a receivership.

(4) Non-final orders entered after final order on motions that suspend rendition are not reviewable; provided that orders granting motions for new trial in jury and non-jury cases are reviewable by the method prescribed in rule 9.110. Other non-final orders entered after final order on authorized motions are reviewable by the method prescribed by this rule.

(5) Orders entered on motions filed under Florida Rule of Civil Procedure 1.540, Small Claims Rule 7.190, Rule of Juvenile Procedure 8.270, and Florida Family Law Rule of Procedure 12.540 are reviewable by the method prescribed by this rule.

(6) Orders that deny motions to certify a class may be reviewed by the method prescribed by this rule.

(b) Commencement. The jurisdiction to seek review of orders described in subdivisions (a)(3)–(a)(6) shall be invoked by filing 2 copies of a notice, accompanied by the filing fees prescribed by law, with the clerk of the lower tribunal within 30 days of rendition of the order to be reviewed.

(c) Notice. The notice, designated as a notice of appeal of non-final order, shall be substantially in the form prescribed by rule 9.900(c). Except in criminal cases, a conformed copy of the order or orders designated in the notice of appeal shall be attached to the notice.

(d) Record. A record shall not be transmitted to the court unless ordered.

(e) Briefs. Appellant's initial brief, accompanied by an appendix as prescribed by rule 9.220, shall be served within 15 days of filing the notice. Additional briefs shall be served as prescribed by rule 9.210.

(f) Stay of Proceedings. In the absence of a stay, during the pendency of a review of a non-final order, the lower tribunal may proceed with all matters, including trial or final hearing; provided that the lower tribunal may not render a final order disposing of the cause pending such review.

(g) Review on Full Appeal. This rule shall not preclude initial review of a non-final order on appeal from the final order in the cause.

(h) Scope of Review. Multiple non-final orders that are listed in rule 9.130(a)(3) may be reviewed by a single notice if the notice is timely filed as to each such order.

Committee Notes

1977 Amendment. This rule replaces former rule 4.2 and substantially alters current practice. This rule applies to review of all non-final orders, except those entered in criminal cases, and those specifically governed by rules 9.100 and 9.110.

The advisory committee was aware that the common law writ of certiorari is available at any time and did not intend to abolish that writ. However, because that writ provides a remedy only if the petitioner meets the heavy burden of showing that a clear departure from the essential requirements of law has resulted in otherwise irreparable harm, it is extremely rare that erroneous interlocutory rulings can be corrected by resort to common law certiorari. It is anticipated that because the most urgent interlocutory orders are appealable under this rule, there will be very few cases in which common law certiorari will provide relief. See *Taylor v. Board of Pub. Instruction*, 131 So.2d 504 (Fla. 1st DCA 1961).

Subdivision (a)(3) designates certain instances in which interlocutory appeals may be prosecuted under the procedures set forth in this rule. Under these rules there are no mandatory interlocutory appeals. This rule eliminates interlocutory appeals as a matter of right from all orders "formerly

cognizable in equity," and provides for review of certain interlocutory orders based on the necessity or desirability of expeditious review. Allowable interlocutory appeals from orders in actions formerly cognizable as civil actions are specified, and are essentially the same as under former rule 4.2. Item (A) permits review of orders concerning venue. Item (C)(i) has been limited to jurisdiction over the person because the writ of prohibition provides an adequate remedy in cases involving jurisdiction of the subject matter. Because the purpose of these items is to eliminate useless labor, the advisory committee is of the view that stays of proceedings in lower tribunals should be liberally granted if the interlocutory appeal involves venue or jurisdiction over the person. Because this rule only applies to civil cases, item (C)(ii) does not include within its ambit rulings on motions to suppress seized evidence in criminal cases. Item (C)(ii) is intended to apply whether the property involved is real or personal. It applies to such cases as condemnation suits in which a condemnor is permitted to take possession and title to real property in advance of final judgment. See ch. 74, Fla. Stat. (1975). Item (C)(iii) is intended to apply to such matters as temporary child custody or support, alimony, suit money, and attorneys' fees. Item (C)(iv) allows appeals from interlocutory orders that determine liability in favor of a claimant.

Subdivision (a)(4) grants a right of review if the lower tribunal grants a motion for new trial whether in a jury or non-jury case. The procedures set forth in rule 9.110, and not those set forth in this rule, apply in such cases. This rule has been phrased so that the granting of rehearing in a non-jury case under Florida Rule of Civil Procedure 1.530 may not be the subject of an interlocutory appeal unless the trial judge orders the taking of evidence. Other non-final orders that postpone rendition are not reviewable in an independent proceeding. Other non-final orders entered by a lower tribunal after final order are reviewable and are to be governed by this rule. Such orders include, for example, an order granting a motion to vacate default.

Subdivision (a)(5) grants a right of review of orders on motions seeking relief from a previous court order on the grounds of mistake, fraud, satisfaction of judgment, or other grounds listed in Florida Rule of Civil Procedure 1.540.

Subdivision (a)(6) provides that interlocutory review is to be in the court that would have jurisdiction to review the final order in the cause as of the time of the interlocutory appeal.

Subdivisions (b) and (c) state the manner for commencing an interlocutory appeal governed by this rule. Two copies of the notice must be filed with the clerk of the lower tribunal within 30 days of rendition of the order. Under rule 9.040(g) the notice and fee must be transmitted immediately to the court by the clerk of the lower tribunal.

Subdivision (d) provides for transmittal of the record only on order of the court. Transmittal should be in accordance with instructions contained in the order.

Subdivision (e) replaces former rule 4.2(e) and governs the service of briefs on interlocutory appeals. The time to serve the appellant's brief has been reduced to 15 days so as to minimize interruption of lower tribunal proceedings. The brief must be accompanied by an appendix containing a conformed copy of the order to be reviewed and should also contain all relevant portions of the record.

Subdivision (f) makes clear that unless a stay is granted under rule 9.310, the lower tribunal is only divested of jurisdiction to enter a final order disposing of the case. This follows the historical rule that trial courts are divested of jurisdiction only to the extent that their actions are under review by an appellate court. Thus, the lower tribunal has jurisdiction to proceed with matters not before the court. This rule is intended to resolve the confusion spawned by *De la Portilla v. De la Portilla,* 304 So.2d 116 (Fla. 1974), and its progeny.

Subdivision (g) was embodied in former rule 4.2(a) and is intended to make clear that the failure to take an interlocutory appeal does not constitute a waiver of any sort on appeal of a final judgment, although an improper ruling might not then constitute prejudicial error warranting reversal.

1992 Amendment. Subdivisions (a)(3)(C)(vii) and (a)(6) were added to permit appeals from non-final orders that either granted or denied a party's request that a class be certified. The committee was of the opinion that orders determining the nature of an action and the extent of the parties before the court were analogous to other orders reviewable under rule 9.130. Therefore, these 2 subdivisions were added to the other limited enumeration of orders appealable by the procedures established in this rule.

Subdivision (a)(3)(D) was added by the committee in response to the decision in *Twin Jay Chambers Partnership v. Suarez*, 556 So.2d 781 (Fla. 2d DCA 1990). It was the opinion of the committee that orders that deny the appointment of receivers or terminate or refuse to terminate receiverships are of the same quality as those that grant the appointment of a receiver. Rather than base the appealability of such orders on subdivision (a)(3)(C)(ii), the committee felt it preferable to specifically identify those orders with respect to a receivership that were non-final orders subject to appeal by this rule.

Subdivision (c) was amended to require the attachment of a conformed copy of the order or orders designated in the notice of appeal consistent with the amendment to rule 9.110(d).

1996 Amendment. The amendment to subdivision (a)(3)(C)(vi) moves the phrase "as a matter of law" from the end of the subdivision to its beginning. This is to resolve the confusion evidenced in *Breakers Palm Beach v. Gloger*, 646 So.2d 237 (Fla. 4th DCA 1994), *City of Lake Mary v. Franklin*, 668 So.2d 712 (Fla. 5th DCA 1996), and their progeny by clarifying that this subdivision was not intended to grant a right of nonfinal review if the lower tribunal denies a motion for summary judgment based on the existence of a material fact dispute.

Subdivision (a)(3)(C)(viii) was added in response to the supreme court's request in *Tucker v. Resha*, 648 So.2d 1187 (Fla. 1994). The court directed the committee to propose a new rule regarding procedures for appeal of orders denying immunity in federal civil rights cases consistent with federal procedure. Compare *Johnson v. Jones*, 115 S.Ct. 2151, 132 L.Ed.2d 238 (1995), with *Mitchell v. Forsyth*, 472 U.S. 511, 105 S.Ct. 2806, 86 L.Ed.2d 411 (1985). The Florida Supreme Court held that such orders are "subject to interlocutory review to the extent that the order turns on an issue of law."

2000 Amendment. The title to this rule was amended to reflect that some of the review proceedings specified in this rule may involve review of final orders.

Subdivision (a)(1) was amended to reflect that the appellate jurisdiction of circuit courts is prescribed by general law and not by this rule, as clarified in *Blore v. Fierro*, 636 So.2d 1329 (Fla. 1994).

Subdivision (a)(3)(C)(iv) allowing review of orders determining "the issue of liability in favor of a party seeking affirmative relief" was deleted so that such orders are not appealable until the conclusion of the case.

Subdivision (a)(7) was deleted because it is superseded by proposed rule 9.040(b)(2), which determines the appropriate court to review non-final orders after a change of venue.

RULE 9.146. APPEAL PROCEEDINGS IN JUVENILE DEPENDENCY AND TERMINATION OF PARENTAL RIGHTS CASES AND CASES INVOLVING FAMILIES AND CHILDREN IN NEED OF SERVICES

(a) Applicability. Appeals proceedings in juvenile dependency and termination of parental rights cases and cases involving families and children in need of services shall be as in civil cases except ~~as modified by~~to the extent those rules are modified by this rule.

(b) Who May Appeal. Any child, any parent, guardian ad litem, or ~~legal custodian of any child,~~ any other party to the proceeding affected by an order of the lower tribunal, or the appropriate state agency as provided by law may appeal to the appropriate court within the time and in the manner prescribed by these rules.

(c) Appealable Orders.

(1) Final Orders. For purposes of this rule, final orders include those that

(a) adjudicate a child dependent;

(b) dismiss a dependency petition;

(c) permanently place a child and are intended to continue until the child reaches the age of majority;

(d) adjudicate termination of parental rights;

(e) dismiss a petition for termination of parental rights;

(f) adjudicate a child or family in need of services; and

(g) dismiss a petition for adjudication of a child or family in need of services.

(2) Non-Final Orders. Appeals of non-final orders in dependency and termination of parental rights cases are limited to those that

(a) are rendered at the conclusion of a shelter hearing;

(b) require or approve a change of placement into, out of, or within foster care;

(c) deny motions to amend the child's case plan;

(d) commit the child to a residential treatment facility;

(e) authorize or approve the administration of psychotropic medications to a child;

(f) deny independent living services;

(g) deny appointment of an attorney ad litem;

(h) deny a child access to records pertaining to the child's case, property, or public benefits, and

(i) pertain to a child who will turn 18 within 24 months of rendition of the non-final order.

The procedure for review of the specifically enumerated non-final orders is in accordance with rule 9.130(b)–(h). Review of non-final orders not specifically enumerated in this rule shall be by an original proceeding filed in compliance with rule 9.100.

(~~c~~d) Stay of Proceedings.

(1) **Application**. Except as provided by general law and in subdivision (~~c~~d)(2) of this rule, a party seeking to stay a final or non-final order pending review shall file a motion in the lower tribunal, which shall have continuing jurisdiction, in its discretion, to grant, modify, or deny such relief, after considering the welfare and best interest of the child. Review of orders entered by lower tribunals under this rule shall be by the court on motion.

(2) **Termination of Parental Rights.** The taking of an appeal shall not operate as a stay in any case unless pursuant to an order of the ~~court~~lower tribunal, except that a termination of parental rights order ~~with placement of~~that places the child with a licensed child-placing agency or the Department of Children and Family Services for subsequent adoption shall be suspended while the appeal is pending ~~,but~~. The child shall continue in custody under the order until the appeal is decided.

(~~d~~e) Retention of Jurisdiction. Transmittal of the record to the appellate court does not remove the jurisdiction of the lower tribunal to conduct judicial reviews or other proceedings related to the health and welfare of the child pending appeal.

(e~~f~~) References to Child or Parents. When the parent or child is a party to the appeal, the appeal shall be docketed and any papers filed in the court shall be titled with the initials, but not the name, of the child or parent and the court case number. All references to the child or parent in briefs, other papers, and the decision of the court shall be by initials.

(~~f~~g) Confidentiality. All papers shall remain sealed in the office of the clerk of the court when not in use by the court, and shall not be open to inspection except by the parties and their counsel, or as otherwise ordered.

(h) Special Procedures and Time Limitations Applicable to Appeals of Final Orders in Dependency or Termination of Parental Rights Proceedings.

(1) Applicability. This subdivision applies only to appeals of final orders to the district courts of appeal.

(2) The Record.

(A) Contents. The record shall be prepared in accordance with rule 9.200, except as modified by this subdivision.

(B) Transcripts of Proceedings. The appellant shall file a designation to the court reporter, including the name(s) of the individual court reporter(s), if applicable, with the notice of appeal. The designation shall be served on the court reporter on the date of filing and shall state that appeal is from a final order of termination of parental rights

or of dependency, and that the court reporter shall provide the transcript(s) designated within 20 days of the date of service. Within 20 days of the date of service of the designation, the court reporter shall transcribe and file with the clerk of the lower tribunal the original transcripts and sufficient copies for the Department of Children and Family Services, the guardian ad litem, and all indigent parties. If extraordinary reasons prevent the reporter from preparing the transcript(s) within the 20 days, the reporter shall request an extension of time, shall state the number of additional days requested, and shall state the extraordinary reasons that would justify the extension.

(C) Directions to the Clerk, Duties of the Clerk, Preparation and Transmittal of the Record. The appellant shall file directions to the clerk with the notice of appeal. The clerk shall transmit the record to the court within 5 days of the date the court reporter files the transcript(s) or, if a designation to the court reporter has not been filed, within 5 days of the filing of the notice of appeal. When the record is transmitted to the court, the clerk shall simultaneously serve copies of the record to the Department of Children and Family Services, the guardian ad litem, the indigent parties or counsel appointed to represent indigent parties, and shall simultaneously serve copies of the index to all non-indigent parties, and, upon their request, copies of the record or portions thereof at the cost prescribed by law.

(3) Briefs.

(A) In General. Briefs shall be prepared and filed in accordance with rule 9.210(a)–(e), (g), and (h).

(B) Times for Service. The initial brief shall be served within 20 days of service of the record on appeal or the index to the record on appeal. The answer brief shall be served within 20 days of service of the initial brief. The reply brief, if any, shall be served within 10 days of the service of the answer brief.

(4) Motions.

(A) Motions for Appointment of Appellate Counsel; Authorization of Payment of Transcription Costs. A motion for the appointment of appellate counsel, when authorized by general law, and a motion for authorization of payment of transcription costs, when

appropriate, shall be filed with the notice of appeal. The motion and a copy of the notice of appeal shall be served on the presiding judge in the lower tribunal. The presiding judge shall promptly enter an order on the motion.

(B) Motions to Withdraw as Counsel. If appellate counsel seeks leave to withdraw from representation of an indigent parent, the motion to withdraw shall be served on the parent and shall contain a certification that, after a conscientious review of the record, the attorney has determined in good faith that there are no meritorious grounds on which to base an appeal. The parent shall be permitted to file a brief pro se, or through subsequently retained counsel, within 20 days of the issuance of an order granting the motion to withdraw.

(C) Motions for Extensions of Time. An extension of time will be granted only for extraordinary circumstances in which the extension is necessary to preserve the constitutional rights of a party, or in which substantial evidence exists to demonstrate that without the extension the child's best interests will be harmed. The extension will be limited to the number of days necessary to preserve the rights of the party or the best interests of the child. The motion shall state that the appeal is from a final order of termination of parental rights or of dependency, and shall set out the extraordinary circumstances that necessitate an extension, the amount of time requested, and the effect an extension will have on the progress of the case.

(5) Oral Argument. A request for oral argument shall be in a separate document served by a party not later than the time when the first brief of that party is due.

(6) Rehearing; Rehearing En Banc; Clarification; Certification. Motions for rehearing, rehearing en banc, clarification, and certification shall be in accordance with rules 9.330 and 9.331, except that no response to these motions is permitted unless ordered by the court.

(7) The Mandate. The clerk shall issue such mandate or process as may be directed by the court as soon as practicable.

(gi) Expedited Review. The court shall give priority to appeals under this rule.

Committee Notes

1996 Adoption. The reference in subdivision (a) to cases involving families and children in need of services encompasses only those cases in which an order has been entered adjudicating a child or family in need of services under chapter 39, Florida Statutes.

Subdivision (c) requires the parties to use initials in all references to the child and parents in all briefs and other papers filed in the court in furtherance of the appeal. It does not require the deletion of the names of the child and parents from pleadings and other papers transmitted to the court from the lower tribunal.

2006 Amendment. The title to subdivision (b) was changed from "Appeals Permitted" to clarify that this rule addresses who may take an appeal in matters covered by this rule. The amendment is intended to approve the holding in *D.K.B. v. Department of Children & Families*, 890 So. 2d 1288 (Fla. 2d DCA 2005), that non-final orders in these matters may be appealed only if listed in rule 9.130.

2008 Amendment. The rule was substantially amended following the release of the Study of Delay in Dependency/Parental Termination Appeals Supplemental Report and Recommendations (June 2007) by the Commission on District Court of Appeal Performance and Accountability. The amendments are generally intended to facilitate expedited filing and resolution of appellate cases arising from dependency and termination of parental rights proceedings in the lower tribunal. Subdivision (h)(4)(A) authorizes motions requesting appointment of appellate counsel only when a substantive provision of general law provides for appointment of appellate counsel. Section 27.5304(6), Florida Statutes (2007), limits appointment of appellate counsel for indigent parents to appeals from final orders adjudicating or denying dependency or termination of parental rights. In all other instances, section 27.5304(6), Florida Statutes, requires appointed trial counsel to prosecute or defend appellate cases arising from a dependency or parental termination proceeding in the lower tribunal.

RULE 9.340. MANDATE

(a) Issuance of Mandate. Unless otherwise ordered by the court or provided by these rules, the clerk shall issue such mandate or process as may be directed by the court after expiration of 15 days from the date of an order or decision. A copy thereof, or notice of its issuance, shall be served on all parties.

(b) Extension of Time for Issuance of Mandate. Unless otherwise provided by these rules, ~~I~~if a timely motion for rehearing, clarification, or certification has been filed, the time for issuance of the mandate or other process shall be extended until 15 days after rendition of the order denying the motion, or, if granted, until 15 days after the cause has been fully determined.

(c) Entry of Money Judgment. If a judgment of reversal is entered that requires the entry of a money judgment on a verdict, the mandate shall be deemed to require such money judgment to be entered as of the date of the verdict.

Committee Notes

1977 Amendment. This rule replaces former rule 3.15. The power of the court to expedite as well as delay issuance of the mandate, with or without motion, has been made express. That part of former rule 3.15(a) regarding money judgments has been eliminated as unnecessary. It is not intended to change the substantive law there stated. The 15-day delay in issuance of mandate is necessary to allow a stay to remain in effect for purposes of rule 9.310(e). This automatic delay is inapplicable to bond validation proceedings, which are governed by rule 9.330(c).

1984 Amendment. Subdivision (c) was added. It is a repromulgation of former rule 3.15(a), which was deleted in 1977 as being unnecessary. Experience proved it to be necessary.

RULE 9.430. PROCEEDINGS BY INDIGENTS.

(a) Motion and Affidavit. A party who has the right to seek review by appeal without payment of costs shall, unless the court directs otherwise, file a motion in the lower tribunal, with an affidavit showing the party's inability either to pay fees and costs or to give security therefor. For review by original proceedings under rule 9.100, unless the court directs otherwise, the party shall file the motion and affidavit with the court. If the motion is granted, the party may proceed without further application to the court and without either the prepayment of fees or costs in the lower tribunal or court or the giving of security therefor. Reasons for denying the motion shall be stated in writing. Review of decisions by the lower tribunal shall be by motion filed in the court.

(b) Incarcerated Parties.

(1) Presumptions. In the absence of evidence to the contrary, an appellate court may, in its discretion, presume that

(A) assertions in an affidavit filed by an incarcerated party under this rule are true, and

(B) in cases involving criminal or collateral criminal proceedings, an incarcerated party who has been declared indigent for purposes of proceedings in the lower tribunal remains indigent.

(2) Non-Criminal Proceedings. Except in cases involving criminal or collateral proceedings, a motion and affidavit under this rule by a person who has been convicted of a crime and is incarcerated for that crime or who is being held in custody pending extradition or sentencing shall contain substantially the same information as required by rule 9.900(i). The determination of whether the case involves an appeal from an original criminal or collateral proceeding depends on the substance of the issues raised and not on the form or title of the petition or complaint. In these non-criminal cases, the court may require the party to make a partial prepayment of court costs or fees and to make continued partial payments until the full amount is paid.

(c) Parties in Juvenile Dependency and Termination of Parental Rights Cases; Presumption. In cases involving dependency or

termination of parental rights, an appellate court may, in its discretion, presume that any party who has been declared indigent for purposes of proceedings by the lower tribunal remains indigent, in the absence of evidence to the contrary.

Committee Notes

1977 Adoption. This rule governs the manner in which an indigent may proceed with an appeal without payment of fees or costs and without bond. Adverse rulings by the lower tribunal must state in writing the reasons for denial. Provision is made for review by motion. Such motion may be made without the filing of fees as long as a notice has been filed, the filing of fees not being jurisdictional. This rule is not intended to expand the rights of indigents to proceed with an appeal without payment of fees or costs. The existence of such rights is a matter governed by substantive law.

APPENDIX E

Proposed rule	Reasons for change
RULE 2.250. TIME STANDARDS FOR TRIAL AND APPELLATE COURTS AND REPORTING REQUIREMENTS	
(a) [No change]	
(1) [No change]	
(2) Supreme Court and District Courts of Appeal Time Standards: Rendering a decision — within 180 days of either oral argument or the submission of the case to the court panel for a decision without oral argument, except in juvenile dependency or termination of parental rights cases, in which a decision should be rendered within 60 days of either oral argument or submission of the case to the court panel for a decision without oral argument.	Amended in conformance with the District Court of Appeal Performance and Accountability (DCAP&A) Commission's recommendation and to expedite resolution of dependency and termination of parental rights appeals
(3) [No change]	
(4) [No change]	
(b) [No change]	

Proposed rule	Reasons for change
RULE 2.535. COURT REPORTING	
(a) [No change]	
(b) [No change]	
(c) [No change]	
(d) [No change]	
(e) [No change]	
(f) [No change]	
(g) [No change]	
(h) [No change]	
(i) Juvenile Dependency and Termination of Parental Rights Cases. Transcription of hearings for appeals of orders in juvenile dependency and termination of parental rights cases should, to the extent reasonably possible, be given priority consistent with rule 2.215(g).	Amended in response to the DCAP&A Report Recommendation 9, but with addition of statement that transcription of dependency and termination of parental rights cases should be given priority "to the extent reasonably possible" and consistent with *Rule* 2.215(g).

Proposed rule	Reasons for change
RULE 8.276. APPEAL PROCEDURES	
Florida Rule of Appellate Procedure 9.146 generally governs appeals in juvenile dependency and termination of parental rights cases.	Creates rule conforming to Recommendation 1 of the DCAP&A Report: "[a]ppellate rules should be cross-referenced in the juvenile rules so that attorneys are aware of the requirements in filing appeals."

Proposed rule	Reasons for change
RULE 8.330. ADJUDICATORY HEARINGS	
(a) [No change]	
(b) [No change]	
(c) [No change]	
(d) [No change]	
(e) Motion for Judgment of Dismissal. In all proceedings, if at the close of the evidence for the petitioner the court is of the opinion that the evidence is insufficient to warrant a finding of dependency, it may, and on the motion of any party shall, enter an order dismissing the petition for insufficiency of the evidence or find that the allegations in the petition against a party have not been sustained. If the court finds that the allegations in the petition against a party have not been sustained but does not dismiss the petition, the parties, including all parents, shall continue to receive pleadings, notices, and documents and to have the right to be heard.	Amended to permit a finding that the allegations of the petition against one party have not been sustained. Also requires that the party continue to receive pleadings, notices, and documents.
(f) Dismissal. If the court shall find that the allegations in the petition have not been sustained, it shall enter an order dismissing the case for insufficiency of the evidence or find that the allegations in the petition against a party have not been sustained. If the court finds that the allegations in the petition against a party have not been sustained but does not dismiss the petition, the parties, including all parents, shall	Amended to permit dismissal of the allegations against one party on a finding that there is an insufficiency of the evidence or that the allegations have not been sustained.

continue to receive pleadings, notices, and documents and to have the right to be heard.

~~**(g) Findings and Orders.** In all cases in which dependency is established:~~

~~(1) The court shall enter a written order stating the legal basis for a finding of dependency, specifying the facts upon which the finding of dependency is based, and stating whether the court made the finding by a preponderance of the evidence or by clear and convincing evidence.~~

~~(2) The court shall advise the parents that if the parents fail to substantially comply with the case plan, their parental rights may be terminated.~~

~~(3) If the child is in out-of-home placement, the court shall inquire of the parents whether the parents have relatives who might be considered as placement for the child. The parents shall provide to the court and all parties identification and location information for the relatives.~~

Deleted because contents have been transferred to new *Rule* 8.332.

Committee Notes

[No change]

Proposed rule	Reasons for change
RULE 8.332 ORDER FINDING DEPENDENCY	
(a) Finding of Dependency. In all cases in which dependency is established, the court shall enter a written order stating the legal basis for a finding of dependency, specifying the facts upon which the finding of dependency is based, and stating whether the court made the finding by a preponderance of the evidence or by clear and convincing evidence. The court shall include the dates of the adjudicatory hearing, if any, in the order.	Creates a new rule governing orders finding dependency. Transfers provisions of *Fla .R. Juv. P.* 8.330(g) and creates a new subdivision (c) governing withholds of adjudication. The last sentence of subdivision (a) incorporates Recommendation 2 of the DCAP&A report, that "[t]he adjudication of dependency or final judgment of termination of parental rights should set forth all of the specific days the hearing occurred."
(b) Adjudication of Dependency. If the court finds that the child named in the petition is dependent, the court shall enter an order adjudicating the child dependent if the child is placed or will continue to be placed in an out-of-home placement. The court may enter an order adjudicating the child dependent if the child remains or is returned to the home. The court shall conduct a disposition hearing.	
(c) Withhold of Adjudication of Dependency.	
(1) If the court finds that the child named in the petition is dependent, but finds that no action other than supervision in the child's home is required, it may enter an order briefly stating the facts on which its finding is based, but withholding an order of adjudication and placing the child in the child's home under the supervision of the department. The department shall file a case plan and the court shall review the case plan pursuant to these rules.	

(2) If the court later finds that the parents of the child have not complied with the conditions of supervision imposed, including the case plan, the court may, after a hearing to establish the noncompliance, but without further evidence of the state of dependency, enter an order of adjudication and shall thereafter have full authority under this chapter to provide for the child as adjudicated. If the child is to remain in an out-of-home placement by order of the court, the court must adjudicate the child dependent. If the court adjudicates the child dependent, the court shall then conduct a disposition hearing.

Proposed rule	Reasons for change
RULE 8.525. ADJUDICATORY HEARINGS	
(a) [No change]	
(b) [No change]	
(c) [No change]	
(d) [No change]	
(e) [No change]	
(f) [No change]	
(g) [No change]	
(h) [No change]	
(i) Final Judgment.	
(1) Terminating Parental Rights. If the court finds after all of the evidence has been presented that the elements and one of the grounds for termination of parental rights have been established by clear and convincing evidence, the court shall enter a final judgment terminating parental rights and proceed with dispositional alternatives as provided by law. The order must contain the findings of fact and conclusions of law on which the decision was based. <u>The court shall include the dates of the adjudicatory hearing in the order.</u> The parties	A sentence has been added to provide that the court should include the dates of the adjudicatory hearing in an order terminating parental rights. This conforms to DCAP&A Report Recommendation 2: "The adjudication or final judgment of termination of parental rights should set forth all of the specific days that the hearing occurred."

may stipulate, or the court may order, that parents or relatives of the parent whose rights are terminated be allowed to maintain some contact with the child. If the court orders continued contact, the nature and frequency of this contact must be stated in a written order. The visitation order may be reviewed on motion of any party, including a prospective adoptive parent, and must be reviewed by the court at the time the child is placed for adoption.

(2) [No change]

(3) [No change]

Proposed rule	Reasons for change
RULE 9.130 PROCEEDINGS TO REVIEW NON-FINAL ORDERS AND SPECIFIED FINAL ORDERS	
(a) Applicability.	
(1) [No change]	
(2) Appeals of non-final orders in criminal cases shall be as prescribed by rule 9.140. Appeals of non-final orders in dependency and termination of parental rights cases shall be limited to those non-final orders prescribed in rule 9.146 and those non-final orders specifically enumerated in this rule.	Amended to conform to proposed amendments to rule 9.146.
(3) [No change]	
(4) [No change]	
(5) [No change]	
(6) [No change]	
(b) [No change]	
(c) [No change]	
(d) [No change]	

(e) [No change]

(f) [No change]

(g) [No change]

(h) [No change]

Committee notes

[No change]

Proposed rule	Reasons for change
RULE 9.146. APPEAL PROCEEDINGS IN JUVENILE DEPENDENCY AND TERMINATION OF PARENTAL RIGHTS CASES AND CASES INVOLVING FAMILIES AND CHILDREN IN NEED OF SERVICES	
(a) Applicability. Appeals proceedings in juvenile dependency and termination of parental rights cases and cases involving families and children in need of services shall be as in civil cases except ~~as modified by~~to the extent those rules are modified by this rule.	Minor changes in wording.
(b) Who May Appeal. Any child, any parent, guardian ad litem, or ~~legal custodian of any child,~~ any other party to the proceeding affected by an order of the lower tribunal, or the appropriate state agency as provided by law may appeal to the appropriate court within the time and in the manner prescribed by these rules.	Amended to conform to definition of "party" in section 39.01(50), Florida Statutes
(c) Appealable Orders.	
(1) Final Orders. For purposes of this rule, final orders include those that	Amended to provide list of appealable orders to promote consistency between the district courts of appeal.
(a) adjudicate a child dependent;	
(b) dismiss a dependency petition;	

(c) permanently place a child and are intended to continue until the child reaches the age of majority;

(d) adjudicate termination of parental rights;

(e) dismiss a petition for termination of parental rights;

(f) adjudicate a child or family in need of services; and

(g) dismiss a petition for adjudication of a child or family in need of services.

(2) Non-Final Orders. Appeals of non-final orders in dependency and termination of parental rights cases are limited to those that

(a) are rendered at the conclusion of a shelter hearing;

(b) require or approve a change of placement into, out of, or within foster care;

(c) deny motions to amend the child's case plan;

(d) commit the child to a residential treatment facility;

(e) authorize or approve the administration of psychotropic medications to a child;

(f) deny independent living services;

(g) deny appointment of an attorney ad litem;

(h) deny a child access to records pertaining to the child's case, property, or public benefits, and

(i) pertain to a child who will turn 18 within 24 months of rendition of the non-final order.

The procedure for review of the specifically enumerated non-final orders is in accordance with rule 9.130(b)–(h). Review of non-final orders not specifically enumerated in this rule shall be by an original proceeding filed in compliance with rule 9.100.

(~~c~~d) Stay of Proceedings.

(1) **Application**. Except as provided by general law and in subdivision (~~c~~d)(2) of this rule, a party seeking to stay a final or non-final order pending review shall file a motion in the lower tribunal, which shall have continuing jurisdiction, in its discretion, to grant, modify, or deny such relief, after considering the welfare and best interest of the child. Review of orders entered by lower tribunals under this rule shall be by the court on motion.

Amended to conform to the general stay rule, *Fla. R. App. P.* 9.310. Cross-reference corrected.

(2) **Termination of Parental Rights.** The taking of an appeal shall not operate as a stay in any case unless pursuant to an order of the ~~court~~lower tribunal, except that a termination of parental rights order ~~with placement of~~that places the child with a licensed child-placing agency or the Department of Children and Family Services for subsequent adoption shall be suspended while the appeal is pending~~, but~~. The child shall continue in custody under the order until the appeal is decided.

Reworded to make rule clearer.

(~~d~~e) [No change in text]

(e~~f~~) [No change in text]

(~~f~~g) [No change in text]

(h) Special Procedures and Time Limitations Applicable to Appeals of Final Orders in Dependency or Termination of Parental Rights Proceedings.

(1) Applicability. This subdivision applies only to appeals of final orders to the district courts of appeal.

Clarifies that this subdivision applies only to appeals filed in the district courts of appeal.

(2) The Record.

(A) Contents. The record shall be prepared in accordance with rule 9.200, except as modified by this subdivision.

Provides that the record shall be prepared in conformity with *Fla. R. App. P.* 9.200.

(B) Transcripts of Proceedings. The appellant shall file a designation to the court reporter, including the name(s) of the individual court reporter(s), if applicable,

Amendment conforms to DCAP&A Recommendations 7–10, intended to expedite dependency and termination of parental rights appeals. Adds a requirement that the designation state

with the notice of appeal. The designation shall be served on the court reporter on the date of filing and shall state that appeal is from a final order of termination of parental rights or of dependency, and that the court reporter shall provide the transcript(s) designated within 20 days of the date of service. Within 20 days of the date of service of the designation, the court reporter shall transcribe and file with the clerk of the lower tribunal the original transcripts and sufficient copies for the Department of Children and Family Services, the guardian ad litem, and all indigent parties. If extraordinary reasons prevent the reporter from preparing the transcript(s) within the 20 days, the reporter shall request an extension of time, shall state the number of additional days requested, and shall state the extraordinary reasons that would justify the extension.

that it is from a dependency or termination of parental rights order. Also adds a procedure for the court reporter to move for an extension of time in "extraordinary circumstances." Adds provision that transcript be provided to the guardian ad litem and for the guardian ad litem to be served with the complete record on appeal.

(C) Directions to the Clerk, Duties of the Clerk, Preparation and Transmittal of the Record. The appellant shall file directions to the clerk with the notice of appeal. The clerk shall transmit the record to the court within 5 days of the date the court reporter files the transcript(s) or, if a designation to the court reporter has not been filed, within 5 days of the filing of the notice of appeal. When the record is transmitted to the court, the clerk shall simultaneously serve copies of the record to the Department of Children and Family Services, the guardian ad litem, the indigent parties or counsel appointed to represent indigent parties, and shall simultaneously serve copies of the index to all non-indigent parties, and, upon their request, copies of the record or portions thereof at the cost prescribed by law.

Conforms to DCAP&A recommendations except conforms language to *Rule* 9.200; adds provision regarding transmission of the record if transcripts are not designated; and includes guardian ad litem in list of those to receive the record.

(3) Briefs.

(A) In General. Briefs shall be prepared and filed in accordance with rule 9.210(a)–(e), (g), and (h).

DCAP&A Recommendation 11 recommended shortened time limits for filing briefs. This provision was included but the Committee also added provisions of *Rule* 9.210 regarding briefs and conformed the language in the rule to other rules.

(B) Times for Service. The initial brief shall be served within 20 days of service of the record on appeal or the index to the record on appeal. The answer brief shall be served within 20 days of service of the initial brief. The reply brief, if any, shall be served within 10 days of the service of the answer brief.

Incorporates DCAP&A Recommendation 11, but conforms language to other appellate rules.

(4) Motions.

(A) Motions for Appointment of Appellate Counsel; Authorization of Payment of Transcription Costs. A motion for the appointment of appellate counsel, when authorized by general law, and a motion for authorization of payment of transcription costs, when appropriate, shall be filed with the notice of appeal. The motion and a copy of the notice of appeal shall be served on the presiding judge in the lower tribunal. The presiding judge shall promptly enter an order on the motion.

Incorporates DCAP&A Recommendation 6 but includes it in this rule rather than as a separate rule.

(B) Motions to Withdraw as Counsel. If appellate counsel seeks leave to withdraw from representation of an indigent parent, the motion to withdraw shall be served on the parent and shall contain a certification that, after a conscientious review of the record, the attorney has determined in good faith that there are no meritorious grounds on which to base an appeal. The parent shall be permitted to

Incorporates DCAP&A Recommendation 18.

file a brief pro se, or through subsequently retained counsel, within 20 days of the issuance of an order granting the motion to withdraw.

(C) Motions for Extensions of Time. An extension of time will be granted only for extraordinary circumstances in which the extension is necessary to preserve the constitutional rights of a party, or in which substantial evidence exists to demonstrate that without the extension the child's best interests will be harmed. The extension will be limited to the number of days necessary to preserve the rights of the party or the best interests of the child. The motion shall state that the appeal is from a final order of termination of parental rights or of dependency, and shall set out the extraordinary circumstances that necessitate an extension, the amount of time requested, and the effect an extension will have on the progress of the case.

Incorporates provisions of DCAP&A proposed *Rule* 9.146 but combines two proposed subdivisions into one. Deleted requirement that motion must be "in writing" as superfluous. Removed reference to *Fla. R. Jud. Admin.* 2.545(e). Removed sentence stating that total time allowed for continuances could not exceed 60 days in any 12-month period because court can restrict extensions of time.

(5) Oral Argument. A request for oral argument shall be in a separate document served by a party not later than the time when the first brief of that party is due.

Incorporates language recommended by DCAP&A Report.

(6) Rehearing; Rehearing En Banc; Clarification; Certification. Motions for rehearing, rehearing en banc, clarification, and certification shall be in accordance with rules 9.330 and 9.331, except that no response to these motions is permitted unless ordered by the court.

Incorporates provisions recommended by DCAP&A Report. Added motions seeking rehearing en banc and clarification to those governed by subdivision. Includes cross-reference to relevant appellate rule.

(7) The Mandate. The clerk shall issue such andate or process as may be directed by the court as soon as practicable.

Incorporates provisions recommended by DCAP&A Report with minor revisions.

(gi) [No change in text]

Committee Notes

1996 Adoption. [No change in text]

2006 Amendment. [No change in text]

2008 Amendment. The rule was substantially amended following the release of the Study of Delay in Dependency/Parental Termination Appeals Supplemental Report & Recommendations (June 2007) by the Commission on District Court of Appeal Performance and Accountability. The amendments are generally intended to facilitate expedited filing and resolution of appellate cases arising from dependency and termination of parental rights proceedings in the lower tribunal. Subdivision (h)(4)(A) authorizes motions requesting appointment of appellate counsel only when a substantive provision of general law provides for appointment of appellate counsel. Section 27.5304(6), Florida Statutes (2007), limits appointment of appellate counsel for indigent parents to appeals from final orders adjudicating or denying dependency or termination of parental rights. In all other instances, section 27.5304(6), Florida Statutes, requires appointed trial counsel to prosecute or defend appellate cases arising from a dependency or parental termination proceeding in the lower tribunal.

Proposed rule

RULE 9.340. MANDATE

(a) [No change]

(b) Extension of Time for Issuance of Mandate. Unless otherwise provided by these rules, i~~I~~f a timely motion for rehearing, clarification, or certification has been filed, the time for issuance of the mandate or other process shall be extended until 15 days after rendition of the order denying the motion, or, if granted, until 15 days after the cause has been fully determined.

(c) [No change]

Committee Notes

[No change]

Reasons for change

Amended in conformance with DCA&P Report recommendations.

Proposed rule

RULE 9.430. PROCEEDINGS BY INDIGENTS.

(a) [No change]

(b) [No change]

(c) Parties in Juvenile Dependency and Termination of Parental Rights Cases; Presumption. In cases involving dependency or termination of parental rights, an appellate court may, in its discretion, presume that any party who has been declared indigent for purposes of proceedings by the lower tribunal remains indigent, in the absence of evidence to the contrary.

Committee Notes

[No change]

Reasons for change

Amended in conformance with Recommendation 3 of the DCAP&A Report.

APPENDIX F

REPORT CONCERNING FAMILY LAW PRACTICE SUBCOMMITTEE'S PROPOSED REVISIONS TO RULES 9.146 AND 9.430.

To: Members of the ACRC.

From: Fran Toomey

The Family Law Practice Subcommittee is proposing extensive revisions to rule 9.146, Appeal Proceedings in Juvenile Dependency and Termination of Parental Rights Cases and Cases Involving Families and Children in Need of Services, and an amendment to rule 9.430. At the behest of Denise Powers, chair of the subcommittee, I have prepared this report to describe the genesis of the subcommittee's proposals, to explain why the full committee must vote on the proposals before the June 20, 2008 meeting, and to give a brief overview of the subcommittee's deliberations on the various amendments.

In July 2006, the Commission on District Court of Appeal Performance and Accountability (the "Commission") submitted a report to the Florida Supreme Court concerning delay in appeals of juvenile dependency and termination of parental rights cases. The court asked the Commission to study the issues and propose time lines and rule changes to help expedite those appeals. Over the next year, the Commission conducted five district-wide workshops and one statewide workshop. Steve Brannock and I attended the statewide workshop as representatives of the ACRC. ACRC and Family Law Practice Subcommittee member Tom Young attended as a representative of the Statewide Guardian ad Litem program (Mr. Young had attended the district-wide workshops as well). Also in attendance at the workshops were district and circuit court judges, Tom Hall, the chair of the Juvenile Rules Committee, DCF lawyers, lawyers who represent children and parents, other representatives of the Statewide Guardian ad Litem program, district court clerks, representatives of court reporting agencies, representatives of the Office of State Court Administration, and the general counsel of the Justice Administration Commission. Judge Martha Warner of the Fourth DCA chaired the Commission.

The participants in the final statewide workshop studied and discussed proposals presented in the district-wide workshops and came to a consensus about changes needed to expedite appeals in these juvenile cases. The result of this year-long process is set out in the Commission's Study of Delay in Dependency/Parental Termination Appeals, Supplemental Report & Recommendations, June 2007. (**Exhibit "A", pp. 17-31 of this report)**. The Commission's suggested changes to the appellate rules appear in the "Recommendations" subsection beginning on page 4 of the Study.

On October 9, 2007, Chief Justice Lewis wrote to Steve Brannock, Robert Mason, Chair of the Juvenile Rules Committee, and Judge Robert Benton, Chair of the Rules of Judicial Administration Committee, requesting that their respective committees examine a "rough draft" of rules designed to implement the Commission's recommendations to streamline appeals in juvenile dependency and termination of parental rights proceedings.

(**Exhibit "B", pp. 32-39 of this report**). The RJAC and JRC have proposed several amendments to their respective rules. Each of the three rules committees will be examining the rules proposed by the other two committees at their June 2008 meetings. The ACRC will be expected to comment on the RJAC's and JRC's proposed revisions and those committees will comment on the ACRC's. In order to accomplish this reciprocal review, we must finalize our proposed revisions to the appellate rules before the mid-year meetings. This deadline requires that the ACRC members approve, disapprove, or modify the Family Law Practice Subcommittee's proposed rules by e-mail vote.

Justice Lewis's letter suggested major changes to rule 9.146. Additionally, the letter recommended an amendment to rule 9.430, concerning proceedings by indigents. The Family Law Practice Subcommittee's proposed amendment to that rule was presented to the full committee at the January 18, 2008 meeting. After discussion, the amendment was referred back to the subcommittee for further thought. The referral also proposed a change to the mandate rule, 9.340(b). The full committee adopted that proposed change at the January 2008 meeting.

While the Family Law Practice Subcommittee was reviewing the Supreme Court's proposals, it received another referral concerning rule 9.146 from Jay Thomas, a staff attorney at the Second District Court of Appeal. Mr. Thomas observed that rule 9.146(b), "Who May Appeal" was at odds with amendments to chapter 39. The referral and a brief memorandum Mr. Thomas prepared in support of his suggested change to the existing rule are attached. (**Exhibit "C", pp. 40-43 of this report**). Tom Young, appellate counsel for the Statewide Guardian-ad-Litem program, ACRC member and member of the Family Law Practice Subcommittee, also proposed a revision to rule 9.146. He suggested that the rule be amended to specify the final and nonfinal orders in juvenile cases that could be appealed. Mr. Young's memorandum in support of his proposal is attached. (**Exhibit "D", pp. 44-47 of this report**).

The subcommittee reviewed all these proposals over the course of three extensive telephone conferences. See Minutes of the Family Law Practice Subcommittee dated March 5, 2008; March 19, 2008; March 26, 2008. The subcommittee agreed with one of the Commission's guiding principles: that the majority of appellate rules addressing dependency and termination of parental rights should be in the same place--rule 9.146--in order to give lawyers who handle these appeals an easy point of reference. But the subcommittee members also thought that the revisions to rule 9.146 should therefore be fairly detailed and should contain some references to the general appellate rules when necessary. Many of the subcommittee's proposed revisions to rule 9.146 contain language taken from existing appellate rules.

The Supreme Court's suggestions for revisions to rule 9.146(h) did not follow the general structure of the existing appellate rules. For example, in the general civil appellate rules, the rule concerning the record (9.200) is followed by the rule discussing briefs (9.210), which is then followed by the rule addressing motions (9.300). The

subcommittee members rearranged the Supreme Court's proposals to more closely mirror the organization of the existing appellate rules.

For ease of comparison between the suggested amendments in Justice Lewis's letter and the subcommittee's final proposed amendments to rule 9.146, the following chart sets out the Family Law Subcommittee's proposed amendments in order (**Exhibit "F", pp.54-60 of this report**) and the Supreme Court's proposed amendments by subject and rule number (**Exhibit "B"**). Where applicable, the chart also references the Commission's recommendations by number. The subcommittee is presenting additional amendments not addressed in the Supreme Court's proposals; this chart shows only the revisions that correspond with the Supreme Court's suggestions. A document showing the Supreme Court's proposals interspersed with all the subcommittee's recommended revisions is attached as **Exhibit "G", pp. 61-70 of this report.**

Family Law Subcommittee Proposal	**Supreme Court Proposal**	**Commission's Recommendation**
9.146(h)(1)	Title and applicability--9.146(h)	
9.146(h)(2)(A)	Record--9.146(h)(3)	
9.146(h)(2)(B), (C)	Directions to Clerk and Reporter--9.146(h)(2)	Recommendation number 7.
9.146(h)(2)(B)	Record--Transcripts--9.146(h)(3)(A)	Recommendation number 8
9.146(h)(2)(B) & (C)	Record--Service--9.146(h)(3)(B)	Recommendation number 10
9.146(h)(3)(A) & (B)	Briefs--9.146(h)(4)	Recommendation number 11
9.146(h)(4)(A)	Motion for appointment of appellate counsel--9.146(h)(1)	Recommendation number 6
9.146(h)(4)(B)	Withdrawal of Counsel--9.146(h)(5)	Recommendation number 18

9.146(h)(4)(C)	Extensions of Time-- 9.146(h)(6)(A) & B	Recommendation number 12
9.146(h)(5)	Oral Arguments 9.146(h)(7)	Recommendation number 13
9.146(h)(6)	Response to Motions for Rehearing 9.146(h)(8)	Recommendation number 16
9.146(h)(7)	Mandate---9.146(h)(9)	Recommendation number 17

Following is a brief recitation of the subcommittee's deliberations about the proposals. The amendments are discussed in the order the subsections appear in rule 9.146. The subcommittee did not debate the proposed revisions in this order, so I have indicated the date of the teleconference in which each subsection was addressed.

Rule 9.146(a). (minutes of March 5, 2008 teleconference) Although the Commission had not proposed any revisions to rule 9.146(a), the subcommittee was considering a wholesale revision of the rule so it examined this subsection as well. The subcommittee recommends minor changes to the wording--the substance of the rule has not changed.

Rule 9.146(b)--Who May Appeal. (minutes of March 5, 2008 teleconference) As set forth in the referral (**Exhibit "C"**), Attorney Jay Thomas proposed that the term "legal custodian of the child" be deleted from rule 9.146(b). As he explained in his memorandum, after the rule was promulgated, the statute defining parties in juvenile proceedings, section 39.01(50), was amended and a legal custodian was deleted from the definition. The rule has never been amended to reflect the change in the statute. After discussing Mr. Thomas's memorandum and reviewing the statutory changes, the subcommittee unanimously agreed that the term "legal custodian of the child" should be removed from the subsection.

Rule 9.146(c)--Appealable orders. (minutes of March 26, 2008 teleconference) The subcommittee reviewed Tom Young's proposal that rule 9.146 list the orders appealable as final orders and the orders appealable as nonfinal orders. The Commission had considered this topic (see page 12 -15 of the Supplement Report, **Exhibit "A"**), and although it did not favor enumerating the appealable orders, it noted that this issue was more properly debated in the Appellate Court Rules and Juvenile Rules Committees. Mr. Young prepared a memorandum advocating his position and discussing the inconsistencies in the district courts over whether review of nonfinal orders was by appeal or by a petition for writ of certiorari. (See memo attached as **Exhibit "D"**).

The subcommittee members discussed Mr. Young's suggestion at length. Those in favor of enumerating the appealable orders believed it would promote consistency in the districts. But some members believed lists of orders were not appropriate in the rules and thought that the inconsistencies in the districts would eventually be remedied through the court system. The final vote was five members in favor of enumeration, one opposed. Porsche Shantz, the dissenting subcommittee member, has provided the committee with a memorandum detailing her reasons for opposing the proposal. (**Exhibit "E", pp. 48-53 of this report.)**

The adoption of the proposed rule 9.146(c) obviated the need for the Supreme Court's suggested addition to the presently existing rule 9.146(b), which would add the language "appeals from non-final orders are limited to those set forth in rule 9.130(a)."

Rule 9.146(d)--Stay of proceedings. (minutes of March 26, 2008 teleconference) The subcommittee considered whether rule 9.146(d)(2) (stays in TPR appeals--presently numbered 9.146(c)(2)) should be moved to the new subsection (h). After discussion, the members decided to leave the provision in its current placement. But the members noted several problems with the existing rule. First, subsection (1) did not mirror the general stay rule, 9.310. The subcommittee voted to add a sentence to that subsection stating that a stay entered in the lower court was reviewable by motion in the appellate court. Second, the members though the language of subsection (2) was not clear, so the subcommittee approved a slight change in wording.

Rule 9.146(h)(1)--Applicability (minutes of March 5, 2008 teleconference). Proposed subsection (h) specifically addresses new procedures applicable in appeals of final order in dependency and tpr cases. Subcommittee member Porsche Shantz noted that the Supreme Court's suggested rule 9.146(h) did not address jurisdictional briefs filed in that court. The subcommittee members discussed this point and added subsection (1) to proposed rule 9.146(h), which states that the procedures set forth in subsection (h) apply only to appeals filed in the district courts.

Rule 9.146(h)(2)--The Record. (minutes of March 5, 2008 teleconference). Unlike the Supreme Court's proposed rules, the general civil appellate rules include designations to the reporter and directions to the clerk under the rubric of "The Record." Fla. R. App. 9.200. The subcommittee decided to use rule 9.200 as a template for proposed rule 9.146(h)(2). First the subcommittee adopted subsection (A), which states that, unless modified by the section 9.146(h)(2), the record shall be prepared in accordance with rule 9.200.

Proposed rule 9.146(h)(2)(B) addresses the directions to the court reporter and the preparation of transcripts. The Commission and Supreme Court believe that the preparation of transcripts in juvenile dependency and tpr appeals must be expedited to move these appeals more swiftly through the district courts. The subcommittee members agreed. Several members related that they had experienced difficulty in obtaining transcripts in a timely manner. The Supreme Court's proposal suggested that the court reporter be required to prepare the transcripts within 20 days of the designation and that

the name(s) of the individual reporter(s) be included on the designation. The subcommittee members agreed, but also thought that the designation should state that the appeal is from a dependency or termination order. The members reasoned that this additional requirement would alert both the reporter and the circuit court clerk that the transcripts must be prepared in a limited time frame.

Subcommittee member Michael Korn noted that the Supreme Court's proposed rule did not contain a procedure for the court reporter to file a motion for an extension of time. The subcommittee members agreed with Mr. Korn that in some cases, a transcript could not be prepared within such a short time frame. The members added language that did not appear in the Supreme Court's proposal: the final sentence of proposed rule 9.146 (h)(2)(b) allows a reporter to seek an extension, but only in extraordinary circumstances that must be described in the motion.

Tom Young pointed out that the Supreme Court's proposal required the court reporter to file sufficient copies of the transcripts for the clerk to provide copies to DCF and to indigent parties. Mr. Young suggested that the Guardian-ad-Litem should also receive a copy of the transcript. The subcommittee members agreed with his suggestion and added the guardian to the list proposed in the Supreme Court's suggested revision.

Proposed rule 9.146(h)(2)(C) concerns directions to the clerk and preparation of the record. The Commission and the Supreme Court proposed that the circuit court clerk serve the record on the appellate court and other parties within five days of receipt of the transcript. Again, the subcommittee members agreed with the proposed time requirement. But the members also thought that the language in the rule should comport with the language in rule 9.200. Thus, in the subcommittee's proposed rule, the clerk "transmits" the record to the appellate court and "serves" the record on the parties. The subcommittee also added the proviso that if transcripts are not designated, the record must be transmitted and served within five days from the filing of the notice of appeal. The subcommittee also included the guardian in the list of entities to be served with the complete record on appeal, not merely the index.

Rule 9.146(h)(3)--Briefs. (minutes of the March 5, 2008 teleconference). The subcommittee again turned to the general civil rules for guidance in crafting the briefs rule, and used rule 9.210 as a template. The Commission and the Supreme Court had merely proposed shortened time limits for filing briefs. The subcommittee members thought it was important to incorporate all the brief rules, such as page limitations, fonts, et cetera, into rule 9.146. Thus the members added rule 9.146(h)(3)(a), which states that all briefs must be prepared in accordance with particular subdivisions of rule 9.210. The subcommittee members were aware that incorporation of another rule can present problems when the incorporated rule is amended. But because of the overriding policy that rule 9.146 would provide all needed information to lawyers in these juvenile appeals, they believed it was important to reference rule 9.210.

Concerning the timing of the briefs, the subcommittee members agreed with the Supreme Court's proposal. The members again conformed the Supreme Court's language

to that of the present rules. Thus, the proposed rule states that briefs will be "served" not "filed" as in the Supreme Court's draft.

Rule 9.146(h)(4)--Motions. (minutes of the March 19, 2008 teleconference). The subcommittee first discussed the Supreme Court's proposal regarding motions for payment of appellate counsel and payment of transcription costs. While the Supreme Court suggested a stand-alone rule on this topic, the subcommittee members believed that it should be included in a subsection addressing motions. After making minor revisions to the Supreme Court's proposed language, the subcommittee approved the proposed rule as 9.146(h)(4)(A). The committee note explains the subcommittee's decision to insert the words "when authorized by general law" into the Supreme Court's proposal.

The subcommittee then discussed motions to withdraw as appellate counsel, proposed rule 9.146(h)(4)(B). This rule contemplates counsel's withdrawal when he or she finds no meritorious issues that would support reversal. It is similar in theory to the procedures for withdrawal of counsel in criminal appeals pursuant to Anders v. California, 386 U.S. 738 (1967). The subcommittee's rule adopts the Supreme Court's proposal with only minor changes in wording.

The members then discussed motions for extensions of time (proposed rule 9.146(h)(4)(C)). The Supreme Court's proposal contained two subsections, (A) and (B), but the subcommittee believed they should be combined in one provision. Additionally, subsection (A) stated that motions must be "in writing." The members thought this language was superfluous because all motions filed in appellate courts must be in writing. The Supreme Court's suggested subsection (A) also referenced a specific Rule of Judicial Administration, 2.545(3). The subcommittee members believed that the appellate rules should not refer to other court rules, and thus decided to delete this reference from the proposed rule.

Many members were concerned with the last sentence in the Supreme Court's proposed subsection (B): "The total time allowed for continuances or extensions of time may not exceed 60 days within any 12-month period for proceedings under this rule." Members pointed out that this language could include requests for extensions by court reporters, and that such extensions could exhaust the 60 day period, thus depriving the parties of the ability to request extensions when needed. Others opined that the courts themselves could restrict extensions of time and that a more flexible approach was preferable. Two subcommittee members voted to include a 60 day limitation, three voted against such inclusion. Thus, the subcommittee's proposal does not contain the time limitation.

The rest of the Supreme Court's proposal was included in the rule proposed by the subcommittee, including the statement that extensions will be granted only in extraordinary circumstances where the extension is necessary to preserve constitutional rights or where the child's rights will be harmed.

Rule 9.146(h)(5)--Oral Argument (minutes of the March 19, 2008 teleconference). The Supreme Court proposed that requests for oral argument be filed with a party's first brief. The subcommittee members unanimously agreed. The proposed rule makes only minor language changes to the Supreme Court's suggested rule.

Rule 9.146(h)(6)--Rehearing. (minutes of the March 26, 2008 teleconference). The Supreme Court's draft proposal would not permit a response to a motion for rehearing unless requested by the court. This was a controversial topic: a number of the members argued that a response should always be allowed, while another group posited that, under the Supreme Court's proposal, frivolous rehearing motions could be quickly denied without the delay attendant in waiting for a response. These members believed that a court would ask for a response if it were even considering granting rehearing. Eventually, the latter position prevailed.

Many members thought that the rule should apply not only to motions for rehearing but also to motions seeking rehearing en banc and clarification. The subcommittee membership agreed this would be appropriate. Thus the proposed rule 9.146(h)(6) includes all the described motions and references the general civil rules addressing these motions. The proposed rule also includes the prohibition on responses, unless requested by the court.

Rule 9.146(h)(7)--the Mandate. (minutes of the March 19, 2008, teleconference. The subcommittee members unanimously agreed with the Supreme Court's proposal concerning issuance of the mandate. The subcommittee's proposed rule makes only minor language changes to the court's proposal.

Rule 9.430--addressing proceedings involving indigent parties. The subcommittee discussed the full committee's concerns with its original proposed rule revision, presented for a vote at the January 18, 2008, meeting. The subcommittee members believed the Supreme Court had proposed the rule revision to short-cut the delay sometimes experienced in the appointment of appellate counsel to represent indigent parents or other parties (see also Commission's recommendation number 3). The members discussed conforming the juvenile rule to the present criminal rule, 9.140(d), which requires that trial counsel perform certain tasks before withdrawing from representation of an indigent party. In fact, the Juvenile Rules Committee is promulgating a rule containing similar requirements. David Silverstein of Juvenile Rules joined the teleconference to ask for input on that committee's proposed rule. Because the appellate rule should mirror the juvenile rule, the members agreed to table the discussion until the juvenile rule is adopted. Then an appellate rule could be drafted.

After discussion of language, the subcommittee members approved the proposed rule, which follows the language used in rule 9.430(a).

EXHIBIT "A"

Commission on District Court of Appeal
Performance and Accountability

*Study of Delay in Dependency and Termination of Parental Rights Appeals***ountability**

Study of Delay in Dependency/Parental Termination Appeals

Supplemental Report & Recommendations

June 2007

Commission on District Court of Appeal
Performance and Accountability

In June, 2006, the Commission on District Court of Appeal Performance and Accountability submitted a report to the Florida Supreme Court on Delay In Child Dependency/Termination of Parental Rights Appeals. The Court accepted the report and subsequently requested that the Commission further study the issue and propose timelines along with any rules changes necessary to expedite these appeals. Since that time the Commission has gathered and analyzed additional information, and conducted five district-wide workshops and one statewide workshop. The purpose of these workshops was to collect the views of participants in the development of a timeline and proposed rules that would reduce delay yet constitute realistic time parameters for attorneys, court reporters, and the courts. Based on the analyses conducted by the Commission and the input of workshop participants, this report is submitted in compliance with the Court's direction

In its first report the Commission examined the problem of appellate delay, reviewed how national organizations and other states have addressed the issue, and collected information on the steps that the district courts have taken to address it. The Commission recommended that specific expedited rules be adopted to achieve the goal of reducing time on appeal. The creation of specific rules would "reinforce the importance the courts attach to resolving these issues expeditiously for the children's sake." In addition to rules, the Commission's report noted that such cases required active case management and monitoring on appeal with reporting mechanisms to assure that time parameters are being met.

Executive Summary

In this report the Commission proposes specific policies and rules changes intended to expedite dependency and termination of parental rights cases. These changes would result in a timeline for the appellate process of 195 days, measured from rendition of the final judgment to rendition of the opinion on appeal.

The Commission found that improvements in two areas in particular would be essential to the success of such a timeline: reduction in the time expended in obtaining an order of appointment of appellate counsel, and reduction in the time expended in securing the transcript of proceedings.

To insure that the transcript is received in a timely fashion, court reporters or transcriptionists must be made aware that these cases are to be given priority over other cases. Such directives must be made in the rules and enforced by the judges.

Reduction in the time currently allowed for preparation of a brief is not recommended for reasons explained within this report.

The Commission also seeks to reinforce recent efforts by all of the appellate courts to adopt practices to advance child cases on their calendars and to expedite the publication of decisions by recommending new reporting requirements for the courts.

Finally, with respect to non-final appeals, the Commission recommends that only those non-final orders which could be appealed under Rule of Appellate Procedure 9.130 should be permitted as appealable orders. All other orders should be reviewed by petition for certiorari, which is a more expeditious form of review.

Updated Information on Delay in the District Courts

The Commission reviewed time on appeal statistics of dependency and termination appeals during fiscal year 2005-06. Appendix A. During that time, the district courts commenced various case management measures to reduce time on appeal for these cases, although many of those steps were not in place during the entire year. As illustrated in the accompanying tables, the median time on appeal for termination of parental rights cases was generally down slightly in all courts, except in the third district where it was up significantly. However, at the 90th percentile, both the second and third districts showed a substantial decrease in time on appeal, indicating that those courts had been successful in their efforts to clear out their older cases. Similarly, with respect to dependency appeals, all courts except the fourth district experienced a decline on time on appeal, and at the 90th percentile, all courts showed a decrease in time on appeal.

Statewide, 69% of the termination of parental rights cases filed were not disposed of within 180 days; the median time to disposition for those cases was 264 days. For dependency cases, 58% of cases filed were not disposed of within 180 days; the median time for those cases was 267 days on appeal.

In addition, when the overall time on appeal is broken down into segments representing the time prior to perfection, from perfection to conference or oral argument, and from conference or oral argument to disposition, it is clear that those activities that must occur prior to perfection continue to account for the greatest percentage of time on appeal. This data is presented in Appendix B.

District Wide Workshops

The Commission recognized that issues with respect to the appeals process would differ from circuit to circuit and thus district to district. To explore these local variations the Commission a scheduled workshop in each of the five districts to bring together representatives of all of the stakeholders in the process. Each workshop was attended by 35-40 people. Attendees included: 1) district court of appeals judges; 2) district court of appeal clerks; 3) trial court judges; 4) trial court case managers; 5)trial court deputy clerks; 6) circuit court reporter managers; 7) Department of Children and Families attorneys; 8) parents' attorneys; 9) guardian ad litem program attorneys; and 10) the Statewide Guardian ad Litem appellate attorneys.

At each workshop the participants outlined the causes of delay in their jurisdiction and made suggestions as to how delay might be reduced. The consolidated notes from each session are included at Appendix C. While there is some local variation, discussions at the district workshops indicate general agreement as to the causes of delay. To a large degree, causes of delay identified in the Commission's 2006 report were confirmed by the individual district workshops. In addition, participants in all districts described interaction with the Justice Administrative Commission, which must approve payment of attorney's fees and court reporter costs, as problematic. In particular participants describe the process of obtaining the necessary documentation as time consuming and a contributor to delay in the appeals process.

Statewide Workshop

On May 11, 2007, the Commission hosted a statewide workshop to develop recommendations for rules to expedite the dependency/termination appeals. Each of the districts sent representatives from among attendees to district workshops. In addition, representatives of the Juvenile Court Rules Committee and the Appellate Court Rules Committees attended. The general counsel of the Justice Administrative Commission was also present. The list of participants is attached in Appendix D.

Participants in the statewide workshop discussed each stage of the appellate process. Based upon the previous district discussions, participants were able to reach a considerable degree of consensus on recommendations for rules revisions to expedite appeals. Non-final appeals and writs were also discussed, albeit briefly. Non-final appeals and writs are addressed after the recommendations.

The Commission reviewed the recommendations developed at the statewide workshop and made modifications to them in some respects. A draft of the report and recommendations was furnished to the statewide workshop participants for their review.

Rule or Administrative Order

The Commission suggests that the recommendations in this report be submitted to the respective court rules committees for inclusion in the rules of appellate procedure, juvenile procedure, and judicial administration, where appropriate. However, understanding that the rule-making process may take substantial time to complete, the Commission also recommends that the chief justice modify the current rules by administrative order to incorporate these proposals. This measure would also permit the recommendations to be tested prior to their final incorporation into a rule. Through an administrative order, each district court should be directed to notify the chief judges and family court judges in their districts of the administrative order and the changes that it will bring about in the method and manner of appeals of dependency and termination orders.

Recommendations

The proposed time for processing an appeal under these recommendations would be 195 days from the rendition of the final judgment to the publication of the opinion. Time consumed in filing a motion for rehearing would increase the time on appeal. The Commission recommends that a performance goal be set that 90% of cases filed be handled within these time parameters.

1. Appellate rules should be cross-referenced in the juvenile rules so that trial attorneys are aware of the requirements in filing appeals.

Trial attorneys in dependency and parental termination cases typically refer to the Rules of Juvenile Procedure and may not review the Rules of Appellate Procedure when filing appeals. Often they simply file the prescribed notice, which can be found in any form book. If the Court chooses to impose additional requirements for filing notices of appeal, they would be more effective if they appear or are referenced in the Rules of Juvenile Procedure and coordinated with the Rules of Appellate Procedure.

2. The adjudication of dependency or final judgment of termination of parental rights should set forth all of the specific days that the hearing occurred.

Delay in obtaining the transcript is a problem in all districts. It often begins with difficulty for court reporters in determining the actual days on which the hearing took place. The present forms in the Juvenile Court Rules of Procedure provide for the inclusion of the date of the adjudicatory hearings. Either the form or the rule should provide that the trial court specify *all* dates on which the hearing occurred. The present form for final judgment in the Juvenile Court Rules, Rules of Procedure has a space for this information. However, explicit direction should be given to include this information in any adjudication of dependency or final judgment terminating parental rights.

3. Appellate Rule of Procedure 9.430(a) should be amended to provide that a parent's indigent status shall be presumed to continue for purposes of appeal unless revoked by the trial court.

A determination of indigence is made by the trial court at the beginning of a proceeding when counsel is appointed for the parents. It is a rare case the Justice Administrative where the indigence of the parent, once determined, does not continue for purpose of appeal. However, obtaining the necessary documentation and processing it though the Justice Administration Commission in order to continue the representation consumes time and causes delay. The general counsel of the Justice Administrative Commission agreed at the workshop that a court rule providing a continuing presumption of indigence for appeal was a workable solution and would be honored by the Justice Administrative Commission. This would be an effective measure in expediting appeals.

4. No change should be made to the thirty-day time period for filing a notice of appeal.

Although the American Bar Association and National Conference of Juvenile and Family Court Judges recommended timelines, and several

states have reduced the time for filing an appeal to ten or twenty days from the final judgment, the consensus of the workshop was to maintain the period for filing a notice of appeal at thirty days. Participants expressed a general concern that by shortening the period of time parents have to evaluate their options with their attorneys, more appeals may be filed as a precautionary measure. Lawyers representing parents also often have a difficult time communicating with their clients, who are frequently unavailable even by telephone. Attorneys also felt that having different time periods for different types of cases would ultimately lead to confusion. In addition, unlike other rules, the time for filing of an appeal is not suspended by the filing of a motion for rehearing.

While the various groups agreed not to recommend shortening the time for filing a notice of appeal, representatives who do not represent parents took the position that an inability to locate or communicate with the parent is not a sound reason for extending time periods, as the parents have responsibility to keep in touch with their attorneys.

5. Further study should be given to a general requirement which recognizes that a lawyer has authority to file an appeal on behalf of a client.

Some states require a parent to sign the notice of appeal in order to assure that cases are not delayed due to unauthorized appeals.

Attorneys at the workshop who represent parents strenuously objected to such a requirement in Florida, arguing that parents are often unavailable because they are incarcerated, out of the country, or without transportation to the attorney's offices. Requiring their signatures on the notice of appeal would be impractical and needlessly deny them effective access to the courts. Alternatively, they suggest that attorneys could certify that the client has authorized the appeal, and this would prevent the lawyer from filing the notice when client could not be reached at all

.

The Rules of Professional Conduct provide that "(a) lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation." Rule 4-1.2(a). Not only in dependency and termination cases but in other of cases, lawyers may feel compelled to file a notice of appeal even if he or she has not received specific

authorization from the client, simply because failure to do so would waive the client's right to appeal. A general provision of the appellate rules stating that the rules assume that a lawyer has authority to file an appeal and that a lawyer must notify the court when he or she does not have specific authority may be something that the Appellate Rules Committee could study. Although no consensus was reached at the workshop on this issue, the Commission believes that assuring that appeals in this area are not pursued simply out of a sense of professional responsibility has merit and will reduce the number of appeals and thus the delay.

6. A motion for appointment of appellate counsel and authorization of payment of transcription costs, when appropriate, should be filed with the notice of appeal. The trial judge should be served with a copy of the notice of appeal and the motion for appointment of appellate counsel, and shall promptly enter an order appointing counsel.

The trial judge is not always aware that an appeal has been filed. In order to expedite appeals, it is necessary that trial judges enter orders for the appointment of counsel and authorizing the transcription of proceedings for purposes of payment. The judge may also need to assist in expediting transcript production. Therefore, it is appropriate to make the judge aware of an appeal at the earliest possible opportunity. The Commission also recommends that each circuit chief judge develop a circuit plan to insure that orders appointing counsel are entered on an expedited basis.

7. The directions to the clerk and the designations to the court reporter shall be filed at the same time the notice of appeal is filed and the designations shall be served on the court reporter.

There is no reason to delay the commencement of the preparation of the transcript by five or ten days after the filing of the notice of appeal. Some workshop participants suggested that the circuit clerk prepare the designations to the reporter, as the clerk would also have the date or dates of the final hearing. However, the Commission does not recommend requiring the clerk to prepare the designations because of the ongoing concerns about the division of responsibilities between clerks and judicial staff since passage of Revision 7.

Because the Commission is also recommending reducing the time for filing transcripts, consideration should be given for requiring that designations be e-mailed to the court reporter as well transmitted by mail.

There was some discussion of a special rule that would require the clerk to prepare a more limited record than currently required under Rule of Appellate Procedure 9.200(a)(1). The Commission endorses this proposal, as frequently the records include voluminous and duplicative documents that are unnecessary to the appeal. The best group to determine what documents should be included may be a joint committee from both the Rules of Juvenile Procedure and the Rules of Appellate Procedure.

8. The designation to the reporter must include the name of the individual court reporter, if applicable and provide 20 days for transcription.

The participants at the statewide workshop agreed that these appeals should be given the utmost priority in transcription. The court reporter managers at the workshop did not object to a shortened timeline for producing a transcript so long as rules or orders were put in place to require priority. Too often transcripts are delayed because the reporter has a substantial backlog of work and no orders of priority. Trial judges may require overnight production of transcript, and court reporters feel they cannot refuse such demands without some written policies on which they can rely.

9. The Rules of Judicial Administration should include a provision requiring that transcription of hearings for appeal of dependency and parental termination orders, and any other similar proceedings needing the transcription of hearings, shall be given priority over the transcription of all other proceedings both in the trial and appellate court.

Without a rule providing that transcripts in child case appeals are a priority, transcription of the proceedings will constitute a major source of delay. The Commission further suggests that the rule enabling the chief judge of a circuit to enforce this provision when necessary,

including the availability of sanctions. A rule requiring these proceedings to be given priority provides the court reporters with the ability to prioritize these transcripts in the face of demands for other transcripts or court appearances. By placing the priority in the rule, it shows the importance the Supreme Court places on expediting these appeals.

10. The clerk of the circuit court shall complete and file the record on appeal within five days after receiving the transcript on appeal, and shall serve copies of the record on the parties as is done in criminal cases.

Because the clerk should have been working on preparing the record during the twenty days allowed for preparation of the transcript, the clerk representatives in attendance at the workshop believed that a rule requiring that the record be finalizing within five days of receiving the transcript would be reasonable. As to service, the participants noted that the clerks in each county vary in how they treat the production of the record in dependency and termination cases. In some counties these cases are treated as civil cases, and only the index is sent to the parties. They must view the court filings at the courthouse. Other counties treat these like criminal cases, where the clerk sends the entire record to the state and non-indigent parties. See Rule of Appellate Procedure 9.140(f)(4). The Commission recommends that the rule require service of the record as in the criminal rules.

11. The initial brief shall be filed within 20 days of the service of the record on appeal; the answer brief shall be filed within 20 days of service of the initial brief; and the reply brief, if any, shall be filed within 10 days of service of the answer brief.

All of the lawyers, particularly those who represent parents, requested that the time for filing the briefs not be reduced, except for the filing of the reply brief. Allowing the appellant, usually the parent, 20 days to file the initial brief is consistent with the ABA proposed timeline, although the ABA proposal allows only 15 days for the filing of the appellee's brief. Note that the recommendation requires filing and not serving the brief within the time period, thus reducing the time for mailing. Further, because of the reduction of time for filing by mail,

the Commission recommends that briefs shall be served electronically on opposing parties. Attendees at the conference were concerned that decreasing the time for briefs could have a negative impact on the number of attorneys who will do this work, and could negatively impact the quality of the briefs themselves.

12. The appellate rules should provide that motions for extension of time should be granted only for good cause shown and only for the amount of time necessary.

The workshop participants debated what a proposed rule should state with respect to motions for extension of time. While they agreed that such motions should not be routinely made, they could not agree on what a rule should say about extensions of time. Section 39.0136, Florida Statute, enacted in 2006, provides legislative direction regarding time periods and continuances in dependency and termination proceedings. It provides:

> (1) The Legislature finds that time is of the essence for establishing permanency for a child in the dependency system. Time limitations are a right of the child which may not be waived, extended, or continued at the request of any party except as provided in this section
>
> (3) Notwithstanding subsection (2), in order to expedite permanency for a child, the total time allowed for continuances or extensions of time may not exceed 60 days within any 12-month period for proceedings conducted under this chapter. A continuance or extension of time may be granted only for extraordinary circumstances in which it is necessary to preserve the constitutional rights of a party or if substantial evidence exists to demonstrate that without granting a continuance or extension of time the child's best interests will be harmed…
>
> (4) Notwithstanding subsection (2), a continuance or an extension of time is limited to the number of days absolutely necessary to complete a necessary task in order to preserve the rights of a party or the best interests of a child.

These specific legislative directions should be adhered to in drafting a rule regarding extensions on appeal. The Commission recommends that a rule on extensions restate subsections 3 and 4 of the statute.

13. The rules should provide that any request for oral argument must be made in the first brief filed by the party.

Making the request for oral argument in the first brief permits the appellate court to schedule oral argument in an expeditious manner.

14. The appellate court shall expedite the disposition of cases by advancing them on their calendars and giving priority to rendering opinions.

All of the district courts have adopted practices which have expedited the scheduling of dependency and parental termination cases on their calendars. All courts should adopt written procedures to assure that cases are set on an oral argument or conference calendar to be hearing within 30 days of the filing of the answer brief. These cases should also be given priority in opinion writing by every judge, and the decision in the case should be published (or served on the parties) within 60 days of conference or oral argument.

15. Rule of Judicial Administration 2.080(f)(2) should be amended to require that decisions be rendered in dependency and termination cases within 60 days of either oral argument or the submission of the case to the court panel without oral argument. This will require reporting of cases over that time limit under Rule 2.808(g).

Providing a limited time standard for preparation of a decision provides a policy statement that the expedition of these cases is important to the judiciary of the state. Reporting of cases decided over that time period also provides accountability for such cases. The preparation of such a list also assists both the chief judges and chief justice in monitoring older cases.

16. The parties shall be permitted 15 days to file a motion for rehearing, and no response shall be required unless ordered by the court.

Participants at the workshop felt that few motions for rehearing are filed in these cases, and the lawyers objected to reducing the time. By eliminating the response except upon order of the court, a motion may be disposed of at the earliest possible time.

17. The additional 15 days for issuance of the mandate after denial of rehearing as provided in Rule 9.340(b) should be eliminated for dependency/termination appeals.

Once the motion for rehearing is decided, the mandate can issue and the child can be adopted. Neither the Commission nor the members of the workshop found any reasons to delay return of jurisdiction to the trial court at the earliest possible date.

18. Where counsel files a no-merit brief, all appellate courts should follow the process set forth in *N.S.H. v. Florida Dept of Children and Family Services,* 843 So. 2d 898 (Fla. 2003), permitting a parent 20 days in which to file his or her own brief.

The supreme court has already adopted the procedure for handling a no merit appeal in dependency/termination cases. The Commission recommends that in all courts the time for which a parent is required to file his or her own brief be limited to 20 days. In most cases no brief is filed, and the case can be dismissed for failure to prosecute.

Non-final Appeals and Petitions for Writ of Certiorari

The Supreme Court requested that the Commission study how other types of orders in dependency and termination cases come to the appellate courts. In Appendix E the number and type of orders are listed, as well as types of appeal filed, and how the courts the filings. Many orders, other than final orders, were appealed as final or non-final orders and converted to petitions for writ of certiorari.

An examination of these filings indicates that except in the second district, there are few non-final appeals or certiorari petitions filed. It is also

apparent that, to date, the courts have been fairly inconsistent in how various appeals are to be handled. Some courts have handled similar proceedings in several different ways. When filed as non-final appeals, not all of the courts accord them the expedited procedures that they deserve, leading to substantial delay in a pending proceeding.

Representatives of the Statewide Guardian ad Litem Program raised the processing of appeals from non-final orders as a significant issue to be addressed. Chief Appellate Counsel Thomas Young prepared a detailed memorandum of law addressing the inconsistent methods by which orders are appealed. This memorandum is attached as Appendix F. We thank Mr. Young for his work. He concludes by recommending that the rules be amended to designate the various types of orders which may be appealed by non-final appeal. Any other order should be reviewed by petition for certiorari. He lists nine orders which may be appealed as non-final, appealable orders.

Rule 9.146(b) provides that "any parent ... affected by an order of the lower tribunal ... may appeal to the appropriate court within the time and in the manner prescribed by these rules." The Second District has held that this rule "provides no exception or expansion to the appeals permitted under rule 9.130." *In re R.B.*, 890 So. 2d 1288 (Fla. 2d DCA 2005). The Commission considers this to be the proper understanding of the rule. However, in order to assure that practitioners are not misled, the rule should be amended to state that only non-final orders listed in Rule 9.130 are authorized appeals.

Rule 9.130 provides for the appeal of specific non-final orders, very few of which are the type which would emanate from a dependency or termination case. Even Rule 9.130(a)(3)(C)(ii), permitting appeals from orders determining the right to immediate monetary relief or child custody in family law matters, does not apply to dependency/termination cases, because family law is governed by a separate subset of rules and statutes from dependency and termination cases.

The Commission disfavors an expansion of Rule 9.130 to provide a list of specific orders to be appealed. Generally, the list of non-final orders which may be appealed tends to get longer with time, thus increasing the possibility of delay on appeal as more orders can result in appeals.

If the primary goal is to avoid delay, then review of all non-final proceedings by petition for writ of certiorari, other than those specifically set forth in Rule 9.130, will be more expeditious than any appeal. However, review by certiorari presently carries with it a different standard of review. We believe that this debate as to what types of orders should be appealed by way of non-final appeal, or whether to handle review of non-final orders by way of petition for certiorari, are issues more properly debated in the Juvenile Court Rules and Appellate Court Rules Committees, as those bodies have more experience with the nature of the orders. However, it is the Commission's position that the types of non-final orders which may be appealed should be very limited.

"EXHIBIT B"

Supreme Court of Florida

500 South Duval Street
Tallahassee, Florida 32399-1925

R. FRED LEWIS
CHIEF JUSTICE
CHARLES T. WELLS
HARRY LEE ANSTEAD
BARBARA J.PARIENTE
PEGGY A. QUINCE
RAOUL G. CANTERO, III
KENNETH B. BELL
JUSTICES

THOMAS D. HALL
CLERK OF COURT

EDWARD DECOSTE
MARSHAL

October 9, 2007

Mr. Steven L. Brannock
Chair, Appellate Court Rules Committee
P.O. Box 1288
Tampa, Florida 33601-1288

Mr. Robert W. Mason
Chair, Juvenile Court Rules Committee
Public Defender's Office
25 N. Market Street, Ste. 200
Jacksonville, Florida 32202-2802

The Honorable Robert T. Benton II
Chair, Rules of Judicial Administration Committee
First District Court of Appeal
301 S. Martin Luther King, Jr. Blvd.
Tallahassee, Florida 32399-6601

Re: Implementation of Commission on District Court of Appeal Performance and Accountability Recommendations

Dear Judge Benton, Mr. Brannock, and Mr. Mason:

I am writing to you as Chairs of the Appellate Court Rules Committee, the Juvenile Court Rules Committee, and the Rules of Judicial Administration Committee to ask your committees to consider the enclosed rough draft of rule amendments intended to implement the recent recommendations of the

Commission on District Court of Appeal Performance and Accountability. The report, which also is enclosed,
contains a number of recommendations the Commission believes will help to avoid delay in juvenile dependency and termination of parental rights appeals. The Court would like your committees to analyze the enclosed materials and provide the Court with any proposed amendments to the rules or forms deemed necessary to implement the Commission's recommendations. Your committees should work together to the extent necessary to address this important matter. Your comprehensive report and proposed amendments should be filed with the Clerk's Office no later than May 1, 2008, with copies to your liaison justices and the director of central staff.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,

R. Fred Lewis

RFL/dm/mb
Enclosures

cc: The Honorable Charles T. Wells, Liaison to Appellate Court Rules Com.
The Honorable Peggy A. Quince, Liaison to the Juvenile Court Rules Com.
The Honorable Kenneth B. Bell, Liaison to Rules of Jud. Admin. Com.
Mr. Thomas D. Hall, Clerk of Court
Mr. Craig Shaw, Bar Staff Liaison to Rules of Jud. Admin. Com.
Ms. Ellen Sloyer, Bar Staff Liaison to Juvenile Court Rules Com.
Ms. Joanna Mauer, Bar Staff Liaison to Appellate Court Rules Com.
Ms. Deborah J. Meyer, Director of Central Staff

DRAFT AMENDMENTS TO IMPLEMENT COMMISSION ON DISTRICT COURT OF APPEAL PERFORMANCE & ACCOUNTABILITYRECOMMENDATIONS

Rule 2.250. Time Standards for Trial and Appellate Courts and Reporting Requirements

(a) Time Standards. The following time standards are hereby established as a presumptively reasonable time period for the completion of cases in the trial and appellate courts of this state. It is recognized that there are cases that, because of their complexity, present problems that cause reasonable delays. However, most cases should be completed within the following time periods

(1) [No Change

(2) Supreme Court and District Courts of Appeal Time Standards: Rendering a decision within 180 days of either oral argument or the submission of the case to the court panel for a decision without oral argument, except in juvenile dependency or termination of parental rights cases, in which a decision should be rendered within 60 days of either oral argument or submission of the case to the court panel for a decision without oral argument.

(3)-(4) [No Change]

(b) [No Change

Rule 2.535. **Court Reporting**

(a)-(h) [No Change]

(i) Juvenile Dependency and Termination of Parental Rights Cases. Transcription of hearings for appeals of orders in juvenile dependency and termination of parental rights cases should be given priority over the transcription of all other proceedings.

Rule 8.276. Appeal Procedures. Florida Rule of Appellate Procedure 9.146 generally governs appeals in juvenile dependency and termination of parental rights cases.

Rule 8.330. Adjudicatory Hearings
(a)-(f) [No Change]

(g) Findings and Orders. In all cases in which dependency is established:

(1) The court shall enter a written order specifying all dates on which the adjudicatory hearing occurred, stating the legal basis for a finding of dependency, specifying the facts upon which the finding of dependency is based, and stating whether the court made the finding by a preponderance of the evidence or by clear and convincing evidence.

(2)-(3) [No Change]

Committee Notes [No change]

Rule 8.525. Adjudicatory Hearings

(a)-(h) [No Change]

(i) Final Judgment.

(1) Terminating Parental Rights. If the court finds after all of the evidence has been presented that the elements and one of the grounds for termination of parental rights have been established by clear and convincing evidence, the court shall enter a final judgment terminating parental rights and proceed with dispositional alternatives as provided by law. The order must specify all dates on which the adjudicatory hearing occurred and contain the findings of fact and conclusions of law on which the decision was based. The parties may stipulate, or the court may order, that parents or relatives of the parent whose rights are terminated be allowed to maintain some contact with the child. If the court orders continued contact, the nature and frequency of this contact must be stated in a written order. The visitation order may be reviewed on motion of any

party, including a prospective adoptive parent, and must be reviewed by the court at the time the child is placed for adoption.

(2)-(3) [No Change]

Rule 9.146. Appeal Proceedings in Juvenile Dependency and Termination of Parental Rights Cases and Cases Involving Families and Children in Need of Services

(a) [No Change]

(b) Who May Appeal. Any child, any parent, guardian ad litem, or legal custodian of any child, any other party to the proceeding affected by an order of the lower tribunal, or the appropriate state agency as provided by law may appeal to the appropriate court within the time and in the manner prescribed by these rules. Appeals from non-final orders are limited to those set forth in rule 9.130(a).

(c) -(g) [No Change]

(h) Juvenile Dependency and Termination of Parental Rights Cases. The following procedures apply only in juvenile dependency and termination of parental rights appeals.

(1) Motion for Appointment of Appellate Counsel; Authorization of Payment of Transcription Costs. A motion for appointment of appellate counsel and authorization of payment of transcription costs, when appropriate, shall be filed with the notice of appeal. The motion shall be served on the trial judge with a copy of the notice of appeal. The trial judge shall promptly enter an order on the motion.

(2) Directions to Clerk; Designation to Reporter. The directions to the clerk and the designation to the court reporter, including the name(s) of the individual court reporter(s), if applicable, shall be filed with the notice of appeal. The designation shall be served on the court reporter and shall provide 20 days for transcription.

(3) Record. The clerk of the lower tribunal shall prepare and serve the record prescribed by rule 9.200 within 5 days of receiving the transcript.

(A) Transcripts. Within 20 days of service of the designation, the court reporter shall transcribe and file with the clerk of the lower tribunal the original transcripts for the court and sufficient copies for the Department of Children and Family Services and all indigent parties.

(B) Service of Copies. The clerk of the lower tribunal shall serve copies of the record to the court, the Department of Children and Family Services, and indigent parties or counsel appointed to represent indigent parties. The clerk of the lower tribunal shall simultaneously serve copies of the index to all non-indigent parties and, upon their request, copies of the record or portions thereof at the cost prescribed by law.

(4) Briefs. The initial brief shall be filed within 20 days of service of the record on appeal. The answer brief shall be Filed within 20 days of service of the initial brief. The reply brief, if any, shall be filed within 10 days of service of the answer brief.

(5) Withdrawal of Counsel. Where appellate counsel seeks leave to withdraw from representation of an indigent parent, the motion to withdraw shall be served on the client and contain a certification that after a conscientious review of the record, the attorney has determined in good faith that there are no meritorious grounds on which to base an appeal. The parent shall be permitted to file a brief pro se, or through subsequently retained counsel within 20 days of issuance of the order granting the motion to withdraw.

(6) Extensions of Time.

(A) Motions. A motion for continuance or extension of time must be in writing and must clearly identify the priority status of the case and explain what effect the motion will have on the progress of the case, as required by Florida Rule of Judicial Administration 2.545(e).

(B) Disposition. A continuance or extension of time may be granted only for extraordinary circumstances in which it is necessary to preserve the constitutional rights of a party or if substantial evidence exists to demonstrate that without granting a continuance or extension of time the

child's best interests will be harmed. A continuance or extension of time must be limited to the number of days absolutely necessary in order to preserve the rights of a party or the best interests of the child. The total time allowed for continuances or extensions of time may not exceed 60 days within any 12-month period for proceedings under this rule.

(7) Oral Argument. Any request for oral argument must be served with the first brief filed by the party.

(8) Response to Motion for Rehearing. No response to a motion for rehearing shall be allowed unless ordered by the court.

(9) Mandate. Mandate shall be issued as soon as is practicable after an order or decision is rendered.

Committee Notes

1996 Adoption. [No change]

2006 Amendment. The title to subdivision (b) was changed from "Appeals Permitted" to clarify that this rule addresses who may take an appeal in matters covered by this rule. The amendment is intended to approve the holding in *D.K.B v. Department of Children & Families*, 890 So. 2d 1288 (Fla. 2d DCA 2005), that non-final orders in these matters may be appealed only if listed in rule 9.130.

Court Commentary

2007. Under new subdivision (h)(3)(a), the court reporter must transcribe and file the transcript within 20 days of service of the designation. Because of this limited time for production of the transcripts, parties are encouraged to also serve the designation electronically on the court reporter.

New subdivision (h)(4) requires that initial briefs be filed within 20 days of service of the record, answer briefs be filed within 20 days of service of the initial brief, and the reply brief be filed within 10 days of service of the answer brief. Because the briefs must be filed with the court within

the applicable period after service, parties also should serve briefs electronically on opposing parties.
New subdivision (h)(5) addresses withdrawal of counsel for an indigent parent. *See N.S.H. v. Fla. Dep't of Children and Family Serv's*, 843 So. 2d 898 (Fla. 2003).

Rule 9.340. Mandate

(a) [No Change]

(b) Extension of Time for Issuance of Mandate. Unless otherwise provided by these rules, if a timely motion for rehearing, clarification, or certification has been filed, the time for issuance of the mandate or other process shall be extended until 15 days after rendition of the order denying the motion, or, if granted, until 15 days after the cause has been fully determined.

(c) [No Change]

Committee Notes [No change]

Rule 9.430. Proceedings by Indigents

(a)-(b) [No Change]

(c) Indigent Parents in Juvenile Dependency and Termination of Parental Rights Cases. A parent who has been declared indigent for purposes of juvenile dependency or termination of parental rights proceedings in the trial court shall be presumed indigent for purposes of appeal, unless the parent's indigent status is revoked by the trial court.

Committee Notes [No change]

EXHIBIT "C"--REFERRAL AND MEMORANDUM FROM ATTORNEY JAY THOMAS

Referral

Reply Reply to all Forward | | Close | Help

From: steve.brannock@hklaw.com [steve.brannock@hklaw.com] Sent: Wed 2/6/2008 5:35 PM

To: dvpowers@bellsouth.net

Cc: jmauer@flabar.org; Fran Toomey

Subject: RE: referral

Attachments:

View As Web Page

Denise, another referral for your subcommittee. It appears related to the work you are already doing on the recommendations on the DCAPAC. Let Joanna know when you'd like to schedule a subcommittee meeting and she'll clear the time for you.

Hope all is going well.

Steve

From: Fran Toomey [mailto:toomeyf@flcourts.org]
Sent: Wednesday, February 06, 2008 5:32 PM
To: Brannock, Steven L (TPA - X36611)
Cc: jmauer@flabar.org
Subject: referral

Steve. I am passing on a referral I received from Jay Thomas, an attorney at the Second District Court of Appeal. He suggests that language of rule 9.146(b) be revised to conform with changes in various statutes:

"The wording of rule 9.146(b) provides that a "legal custodian", among others, may appeal in a dependency or TPR case. However, the statutes allowing for legal guardians to appeal, § 39.413(1) (1997) (dependency) and § 39.473(1) (TPR), have been replaced by statutes that allow a "party" to appeal, § 39.510(1) (1999 and later) (dependency) and § 39.815(1) (TPR). The definition of "party" does not include legal guardian, § 39.01(52) (1999); that status is now a "participant", § 39.01(51). In short, it appears rule 9.146(b) needs to be updated to reflect this change."

I have not had the opportunity to research this point or to determine whether his suggestion is well taken, but on its face, it makes sense. The Family Law Rules Subcommittee is presently in the process of proposing amendments and additions to rule 9.146 in accordance with the recommendations of the DCA Performance and Accountability Com. I know we have a very short time limit to complete those revisions and thought it would be appropriate to consider this referral at the same time. Fran.

MEMORANDUM

Those who may appeal an order of dependency are "any party to the proceeding who is affected by an order of the court" and DCF. § 39.510(1). The definition of party, however, does not include "legal custodian":

> "Party" means the parent or parents of the child, the petitioner, the department, the guardian ad litem or the representative of the guardian ad litem program when the program has been appointed, and the child.

§ 39.01(50). Rather, a legal custodian is included under the rubric of "participant," which is a status separate from (and not a subcategory of) "party." See § 39.01(49) (defining "participant"). "Participants" are not included in the list of entities that may appeal a dependency action. § 39.510(1).

Rule 9.146 includes the following provision:

> (b) Who May Appeal. Any child, any parent, guardian ad litem, or legal custodian of any child, any other party to the proceeding affected by an order of the lower tribunal, or the appropriate state agency as provided by law may appeal to the appropriate court within the time and in the manner prescribed by these rules.

Rule 9.146(b) (emphasis added). (Juvenile rule 8.610, which defines "party" to include the "the custodian," applies only to "Proceedings for

Families and Children in Need of Service," not dependencies or terminations)

On its face, rule 9.146(b) contradicts section 39.510(1), which does not list "legal custodians" as an entity that may appeal and provides for appeals only by "any party." Furthermore, the phrase "any other party" in the rule implies that a legal custodian is a party, but this contradicts the definition of "party" in section 39.01(50), which does not include legal custodians.

What appears to have happened is that the rule, promulgated in 1996, see Amendments to the Florida Rules of Appellate Procedure, 685 So. 2d 773 (Fla. 1996), reflects the statutes in effect at that time but has not been updated to be consistent with statutory amendments. The statute in effect at the time read: "Any child, any parent, guardian ad litem, or legal custodian of any child, any other party to the proceeding who is affected by an order of the court, or the department may appeal to the appropriate district court of appeal ...." § 39.413, Fla. Stat. (1995). This provision was amended and renumbered as section 39.510 and then further amended to delete "legal custodian." See ch. 98-403, § 72, Laws of Fla. (renumbering section 39.413 as section 39.510; effective October 1, 1998); ch. 99-193, § 34, Laws of Fla. (amending section 39.510 from "Any child, parent, guardian ad litem, caregiver, or legal custodian of any child, any other party to the proceeding who is affected by an order of the court . . . may

appeal . . " to "Any party to the proceeding who is affected by an order of the court . . may appeal"; effective July 1, 1999); see also id. at § 4 (deleting "legal custodian" from the definition of "party" and adding "the legal custodian of the child" to the definition of "participant" in section 39.01).

Because "[a] statute conferring a right to appeal upon a litigant relates to a substantive, rather than a procedural right," State v. Kelley, 588 So. 2d 595, 597 (Fla. 1st DCA 1991) (citations omitted), it would seem that the statute supersedes the rule.

EXHIBIT "D"--MEMORANDUM FROM TOM YOUNG.

Review of Non-final Dependency and Parental Termination Orders

According to the final report of the Commission on District Court of Appeal Performance and Accountability ("Commission"):

> [T]he courts have been fairly inconsistent in how various appeals are to be handled. Some courts have handled similar proceedings in several different ways. When filed as non-final appeals, not all of the courts accord them the expedited procedures that they deserve, leading to substantial delay in a pending proceeding.

Commission on District Court of Appeal Performance and Accountability, *Study of Delay in Dependency/Parental Termination Appeals Supplemental Report and Recommendations* 13 (June 2007) ("Study").

The first, fourth, and fifth districts have permitted direct appeal of nonfinal dependency orders pursuant to rule 9.130(a)(4). See, e.g., Guardian ad Litem Program v. Dep't of Children & Fams., 936 So. 2d 1183 (Fla. 5th DCA 2006) (converting certiorari petition to a direct appeal in a case involving denial of a motion to change placement);[1] Dep't of Children & Fams. v. T.L., 854 So. 2d 819 (Fla. 4th DCA 2003) (placement without home study);[2] Ayo v. Dep't of Children & Fam. Servs., 788 So. 2d 397 (Fla. 1st DCA 2001) (order on "periodic review of an adjudication of dependency and disposition").

The second district created inter-district conflict on the question of whether non-final dependency and parental termination orders are directly appealable by expressly rejecting appellate jurisdiction under rule 9.130(a)(4).

> The only potential appellate jurisdiction for this order derives from rule 9.130(a)(4), which states, "Other non-final orders entered after final order on authorized motions are reviewable by the method prescribed by this

[1] Intra-district conflict appears to exist in the fifth district, where recent case law suggests that non-final dependency orders should be reviewed through certiorari. D.W.G. v. Dep't Of Children & Fams., 961 So. 2d 1022 (Fla. 5th DCA 2007); S.H. v. Dep't of Children & Fams., 950 So. 2d 1267 (Fla. 5th DCA 2007).

[2] The fourth district has also denied motions to dismiss "appeals" of shelter orders, which have commonly been understood to be unappealable non-final orders. See In re Amendments to The Florida Rules of Appellate Procedure (Out of Cycle), 941 So. 2d 352, 353 (Fla. 2006) (declining to adopt proposed rule that would have authorized direct appeals of "nonfinal orders determining the right to child custody in juvenile dependency and termination of parental rights cases.")

> rule." ... [A] crucial issue in this context is whether the order was entered "on authorized motion," which we construe as a term of art, much as it is used in the rendition rule, Fla. R. App. P. 9.020(h)(1), which lists specific motions that will suspend rendition until the court files a written order disposing of the motion as to any party against whom relief is sought. All of the authorized motions enumerated in the rendition rule are directed to some aspect of true finality in the original order or judgment; such motions seek rehearing, new trial, alteration or amendment of the judgment, arrest of judgment, correction of a sentence, and the like. ... We have searched the juvenile, civil, and family law rules of procedure but have discovered nothing suggesting that this motion would be considered "authorized" for purposes of rule 9.130(a)(4).

In re J.T. (Dep't of Children & Fam. Servs. v. Heart of Adoptions, Inc.), 947 So. 2d 1212, 1217 (Fla. 2d DCA 2007); see also In re R.B. (D.K.B. v. Dep't of Children & Fam. Servs.), 890 So. 2d 1288 (Fla. 2d DCA 2005).[3] The third district does not appear to have addressed the question in a formal opinion, but its practice is generally to require all non-final orders to be reviewed as original proceedings, which aligns the third district with the second district.

A rule clarifying the basis for jurisdiction and procedures followed in review of non-final dependency and parental termination orders is desirable for several reasons, including the following:

1. A rule specifically listing the orders that may be the subject of a nonfinal appeal will resolve the inter-district conflict and provide uniform procedures for reviewing non-final orders in dependency and parental termination cases;
2. A rule listing appealable nonfinal orders in rule 9.146 (and cross-reference in and to rule 9.130) will provide express guidance to parents' attorneys, many of whom have little or no appellate experience and are not familiar with the intricacies of the Florida Rules of Appellate Procedure; and
3. A rule listing specific appealable non final order will improve the courts' ability to expedite review of non-final orders by eliminating confusion among counsel and circuit clerk's offices about what constitutes a final order and when a record is required to be prepared and transmitted.

The Commission did not attempt to resolve what the rule should provide. It expressed preference for review by certiorari but acknowledged that the standard of review for certiorari may pose problems. Study at 15. The Commission ultimately chose to leave determination of "what types of orders should be appealed by way of non-final appeal" to the Appellate Court Rules Committee and the Juvenile Court Rules Committee. Id. To date, the Juvenile Court Rules Committee has not addressed the issue.

[3] R.B. (D.K.B.) provided the basis for the 2006 amendment of rule 9.146(b).

Permitting direct appeal of a limited number of specified non-final orders is reasonable and laudable, provided the list of appealable orders is limited to orders that have the most significant impact on the family unit and the ability of children and youth to achieve stability. In my experience, the orders listed in the proposed rule fall into that category.

EXHIBIT "E" MINORITY REPORT REGARDING RULE 9.146(C)

M E M O R A N D U M

To: Appellate Court Rules Committee
From: Porsche Shantz
Date: April 7, 2008
Re: Minority Position on Enumerating Appealable Non-Final Orders in Proposed Rule 9.146(c)

This memorandum attempts to set forth my reasons for voting against the proposal to set forth in rule 9.146 a list of appealable non-final orders in dependency and termination of parental rights cases. The Family Law Practice Subcommittee voted on March 26, 2008, in favor of such a list. I was the only member of the subcommittee to vote against enumeration.

As explained to the subcommittee by Thomas W. Young, who provided input on this issue to the Study of Delay in Dependency and Termination of Parental Rights Appeals conducted by the Commission on District Court of Appeal Performance and Accountability (hereinafter "Commission"), the Commission's Supplemental Report and Recommendations, issued in June 2007, indicated that the Commission generally disfavored expansion of the list of appealable non-final orders already set forth in rule 9.130 of the Rules of Appellate Procedure. In its report, the Commission specifically commented:

> The Commission disfavors an expansion of Rule 9.130 to provide a list of specific orders to be appealed. Generally, the list of non-final orders which may be appealed tends to get longer with time, thus increasing the possibility of delay on appeal as more orders can result in appeal. Chapter 2007-62 may also impact the number of non-final appeals or petitions for certiorari which are filed, as the law requires trial counsel to file any non-final appeals in dependency and termination proceedings and does not allow additional compensation for such appeals. No separate appointment of appellate counsel for such appeals is permitted.
>
> If the primary goal is to avoid delay, then review of all non-final proceedings by petition for writ of certiorari, other than those specifically set forth in Rule 9.130, will be more expeditious than any appeal. However, review by certiorari presently carries with it a different standard of review. We believe that this debate as to what types of orders should be appealed by way of non-final appeal, or whether to handle review of non-final orders by way of petition for certiorari, are issues more properly debated in the Juvenile Court Rules and Appellate Court Rules Committees, as those bodies have more experience with the nature of the orders. However, it is the Commission's position that the types of non-final orders which may be appealed should be very limited.

Commission Report, at 15.[4]

In reaching this conclusion, the Commission considered a memorandum prepared by Mr. Young, which was dated May 7, 2007, discussing the need for specific enumeration of appealable non-final orders in dependency and termination of parental rights cases. In that memorandum, the four reasons advanced for enumeration of appealable non-final orders in this context were: (1) the 2006 deferral of a proposed amendment to rule 9.130 pending the outcome of the Commission's study; (2) conflict among the district courts of appeal on the issue of review of non-final orders in this context; (3) general non-compliance among practitioners with the current rules; and (4) the unique and "life-altering" character of certain non-final orders in dependency and termination of parental rights cases.[5]

It is my belief that the third and fourth reasons advanced in Mr. Young's memorandum can be made in support of any argument for an expansion of non-final appellate jurisdiction. From my experience as a central staff attorney with the appellate courts in Florida, it is the rare appellate practitioner who possesses an in-depth understanding of what constitutes an appealable final order, let alone an appealable non-final order, in any area of practice, not just dependency and termination of parental rights. In addition, even accepting that certain non-final orders in dependency and termination of parental rights cases can be "life-altering" for both child and parent, there are many other areas of the law where nothing but extraordinary writ jurisdiction exists over non-final orders that also could be described as "life-altering." See, e.g., State v. Matute-Chirinos, 713 So. 2d 1006 (Fla. 1998) (discussing extraordinary writ review of non-final order concerning an individual's eligibility for a sentence of death). Thus, to me, the third and fourth reasons advanced by Mr. Young in his memorandum were unpersuasive.

I was also unpersuaded by the first and second reasons advanced by Mr. Young in his memorandum. In the same opinion in which the supreme court declined to amend rule 9.130 pending the outcome of the Commission's study, see In re Amendments to the Florida Rules of Appellate Procedure (Out of Cycle) [hereinafter "Amendments"], 941 So. 2d 352, 353 (Fla. 2006), the supreme court amended the title to rule 9.146(b), from "Appeals Permitted" to "Who May Appeal," and adopted a committee note which stated that the amendment was "intended to approve the holding in D.K.B. v. Department of Children & Families, 890 So. 2d 1288 (Fla. 2d DCA 2005), that non-final orders in these matters may be appealed only if listed in rule 9.130." Amendments, 941 So. 2d at 357. The decision in D.K.B. was among those cases cited by Mr. Young in his memorandum as evidencing the conflict among the district courts of appeal on the issue of review of non-final orders in this context.

In his memorandum, Mr. Young stated that the first, fourth, and fifth districts had

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[4]This memorandum assumes that all members of the Appellate Court Rules Committee have been provided, or will be provided, with a copy of the Commission's report.

[5]A copy of Mr. Young's memorandum was attached to the Commission's Report as Appendix F.

taken the position that non-final orders entered after an adjudication of dependency were appealable non-final orders under rule 9.130(a)(4), which permits appellate review of "[o]ther non-final orders entered after final order on authorized motions." Mr. Young also stated in his memorandum that the second district has expressly rejected such a construction of rule 9.130(a)(4) in the case of In re J.T., 947 So. 2d 1212 (Fla. 2d DCA 2007). He also stated that the third district had not yet issued a formal opinion on the question, but generally required all non-final orders to be reviewed by extraordinary writ petition, thereby aligning itself with the second district.

My own independent research has revealed that the alignment of the district courts on this issue of apparent conflict has changed since Mr. Young wrote his memorandum to the Commission in May 2007. On July 25, 2007, the fourth district issued an opinion in Guardian Ad Litem Program v. Dep't of Children & Families, 972 So. 2d 871 (Fla. 4th DCA 2007), in which that court expressly aligned itself with the second district's interpretation of rule 9.130(a)(4) as set forth in J.T. This opinion undercuts the precedential authority of the two prior opinions out of the fourth district, cited by Mr. Young in his memorandum, which had simply stated, without analysis, that the non-final orders at issue in those cases were appealable under rule 9.130(a)(4). See Dep't of Children & Families v. T.L., 854 So. 2d 819, 820 (Fla. 4th DCA 2003); A.B. v. Dep't of Children & Families, 834 So. 2d 350, 351 (Fla. 4th DCA 2003). Similarly, on March 5, 2008, the fifth district issued an opinion in C.B. v. Dep't of Children & Families, 33 Fla. L. Weekly D697 (Fla. 5th DCA Mar. 5, 2008), in which that court expressly aligned itself with the second district's interpretation of rule 9.130(a) as set forth in D.K.B. This opinion similarly undercuts the precedential authority of the two prior opinions out of the fifth district, cited by Mr. Young in his memorandum, which had simply stated, without analysis, that the non-final orders at issue in those cases were appealable under rule 9.130(a)(4). See Guardian Ad Litem Program v. Dep't of Children & Families, 936 So. 2d 1183, 1183 n.1 (Fla. 5th DCA 2006); Coy v. Dep't of Health & Rehabilitative Services, 623 So. 2d 792, 793 (Fla. 5th DCA 1993).

The opinions from the fourth and fifth districts, issued since Mr. Young drafted his memorandum to the Commission, appear to indicate that the district courts are now overwhelmingly in favor of less expansive non-final appellate jurisdiction in dependency and termination of parental rights cases. At present, only the first district appears to have any viable case law indicating that non-final orders entered after an adjudication of dependency are appealable non-final orders under rule 9.130(a)(4). See Ayo v. Dep't of Children & Family Services, 788 So. 2d 397 (Fla. 1st DCA 2001). However, because the fifth district has now apparently changed its position on the issue, and because the first district's decision in Ayo relied on the fifth district's opinion in Coy in reaching its result, the first district's position on the issue now seems suspect.

In short, it is my belief at this point that an enumeration of appealable non-final orders in rule 9.146 would expand appellate jurisdiction beyond what is currently permitted by the majority of the district courts of appeal. Based primarily on that reason, as well as those set forth elsewhere in this memorandum, I voted against enumeration.

EXHIBIT "F" -- FAMILY LAW SUBCOMMITTEE'S PROPOSED REVISIONS

ACRC FAMILY LAW PRACTICE SUBCOMMITTEE

Proposed Rule Changes:

Rule 9.146. APPEAL PROCEEDINGS IN JUVENILE DEPENDENCY AND TERMINATION OF PARENTAL RIGHTS CASES AND CASES INVOLVING FAMILIES AND CHILDREN IN NEED OF SERVICES

(a) Applicability. Appeals proceedings in juvenile dependency and termination of parental rights cases and cases involving families and children in need of services shall be as in civil cases except ~~as modified by~~ to the extent those rules are modified by this rule.

(b) Who May Appeal. Any child, any parent, guardian ad litem, or ~~legal custodian of any child,~~ any other party to the proceeding affected by an order of the lower tribunal, or the appropriate state agency as provided by law may appeal to the appropriate court within the time and in the manner prescribed by these rules.

(c) Appealable Orders.

(1) Final Orders. For purposes of this rule, final orders include those that:

(a) adjudicate a child dependent;

(b) dismiss a dependency petition;

(c) permanently place a child and are intended to continue until the child reaches the age of majority;

(d) adjudicate termination of parental rights;

(e) dismiss a petition for termination of parental rights;

(f) adjudicate a child or family in need of services, and

(g) dismiss a petition for adjudication of a child or family in need of services.

(2) Non-Final Orders. Appeals of non-final orders in dependency and termination of parental rights cases are limited to those that

(a) are rendered at the conclusion of a shelter hearing;

(b) require or approve a change of placement into, out of, or within foster care;

(c) deny motions to amend the child's case plan;

(d) commit the child to a residential treatment facility;

(e) authorize or approve the administration of psychotropic medications to a child;

(f) deny independent living services;

(g) deny appointment of an attorney ad litem;

(h) deny a child access to records pertaining to the child's case, property, or public benefits, and

(i) pertain to a child who will turn 18 within 24 months of rendition of the non-final order.

The procedure for review of the specifically enumerated non-final orders is in accordance with rule 9.130(b) - (h). Review of non-final orders not specifically enumerated in this rule must be by an original proceeding filed in strict compliance with rule 9.100.

(~~c~~ d) Stay of Proceedings.

(1) **Application**. Except as provided by general law and in subdivision (~~c~~ d)(2) of this rule, a party seeking to stay a final or non-final order pending review shall file a motion in the lower tribunal, which shall have continuing jurisdiction, in its discretion, to grant, modify, or deny such relief, after considering the welfare and best interest of the child. Review of orders entered by lower tribunals under this rule shall be by the court on motion.

(2) **Termination of Parental Rights.** The taking of an appeal shall not operate as a stay unless pursuant to an order of the ~~court~~ lower tribunal, except that a termination of parental rights order ~~with placement of~~ that places the child with a licensed child-placing agency or the Department of Children and Family Services for subsequent adoption shall be suspended while the appeal is pending ~~,but~~. The child shall continue in custody under the order until the appeal is decided.

(~~d~~ e) Retention of Jurisdiction. Transmittal of the record to the appellate court does not remove the jurisdiction of the lower tribunal to conduct judicial reviews or other

proceedings related to the health and welfare of the child pending appeal.

(e f) References to Child or Parents. When the parent or child is a party to the appeal, the appeal shall be docketed and any papers filed in the court shall be titled with the initials, but not the name, of the child or parent and the court case number. All references to the child or parent in briefs, other papers, and the decision of the court shall be by initials.

(f g) Confidentiality. All papers shall remain sealed in the office of the clerk of the court when not in use by the court, and shall not be open to inspection except by the parties and their counsel, or as otherwise ordered.

(h) Special Procedures and Time Limitations Applicable to Appeals of Final Orders in Dependency or Termination of Parental Rights Proceedings.

(1) Applicability. This subsection applies only to appeals of final orders to the district courts of appeal.

(2) The record.

(A) Contents. The record shall be prepared in accordance with rule 9.200, except as modified by this subsection.

(B) Transcripts of proceedings. The appellant shall file a designation to the court reporter, including the name(s) of the individual court reporter(s), if applicable, with the notice of appeal. The designation shall be served on the court reporter on the date of filing and shall state that appeal is from a final order of termination of parental rights or of dependency, and that the court reporter shall provide the transcript(s) designated within 20 days of the date of service. Within 20 days of the date of service of the designation, the court reporter shall transcribe and file with the clerk of the lower tribunal the original transcripts and sufficient copies for the Department of Children and Family Services, the guardian ad litem, and all indigent parties. If extraordinary reasons prevent the reporter from preparing the transcript(s) within the 20 days, the reporter shall request an extension of time, shall state the number of additional days requested, and shall state the extraordinary reasons that would justify the extension.

(C) Directions to the Clerk, Duties of the Clerk, Preparation and Transmittal of the Record. The appellant shall file directions to the clerk with the notice of appeal. The clerk shall transmit the record to the court within 5 days of the date the court reporter files the transcript(s) or, if a designation to the court report has not been filed, within 5 days of the filing of the notice of appeal. When the record is transmitted to the court, the clerk shall simultaneously serve copies of the record to the Department

of Children and Family Services, the guardian ad litem, the indigent parties or counsel appointed to represent indigent parties, and shall simultaneously serve copies of the index to all non-indigent parties, and, upon their request, copies of the record or portions thereof at the cost prescribed by law.

(3) Briefs.

(A) In general. Briefs shall be prepared and filed n accordance with rule 9.210(a)-(e) and (g) and (h).

(B) Times for service. The initial brief shall be served within 20 days of service of the record on appeal or the index to the record on appeal. The answer brief shall be served within 20 days of service of the initial brief. The reply brief, if any, shall be served within 10 days of the service of the answer brief.

(4) Motions.

(A) Motions for Appointment of Appellate Counsel; Authorization of Payment of Transcription Costs. A motion for the appointment of appellate counsel, when authorized by general law, and a motion for authorization of payment of transcription costs, where appropriate, shall be filed with the notice of appeal. The motion and a copy of the notice of appeal shall be served on the presiding judge in the lower tribunal. The presiding judge shall promptly enter an order on the motion.

(B) Motions to Withdraw as Counsel. If appellate counsel seeks leave to withdraw from representation of an indigent parent, the motion to withdraw shall be served on the parent and shall contain a certification that, after a conscientious review of the record, the attorney has determined in good faith that there are no meritorious grounds on which to base an appeal. The parent shall be permitted to file a brief pro se, or through subsequently retained counsel, within 20 days of the issuance of an order granting the motion to withdraw.

(C) Motions for Extensions of Time. An extension of time will be granted only for extraordinary circumstances in which the extension is necessary to preserve the constitutional rights of a party, or in which substantial evidence exists to demonstrate that without the extension the child's best interests will be harmed. The extension will be limited to the number of days necessary to preserve the rights of the party or the best interests of the child. The motion shall state that the appeal is from a final order of termination of parental rights or of dependency, and shall set out the extraordinary circumstances that necessitate an extension, the amount of time requested, and the effect an extension will have on the progress of the case.

(5) Oral Argument. A request for oral argument shall be in a separate document served by a party not later than the time when the first brief of that party is due.

(6) Rehearing; Rehearing En Banc; Clarification; Certification. Motions for rehearing, rehearing en banc, clarification, and certification shall be in accordance with rules 9.330 and 9.331, except that no response to these motions is permitted unless ordered by the court.

(7) The Mandate. The clerk shall issue such mandate or process as may be directed by the court as soon as practicable.

(g) Expedited Review. The court shall give priority to appeals under this rule.

Committee Notes

1996 Adoption. [No change.]

2006 Amendment. [No change.]

2008 Amendment. The rule was substantially amended following the release of the Study of Delay in Dependency/Parental Termination Appeals Supplemental Report & Recommendations (June 2007) by the Commission on District Court of Appeal Performance & Accountability. The amendments are generally intended to facilitate expedited filing and resolution of appellate cases arising from dependency and termination of parental rights proceedings in the lower tribunal.

Subdivision (h)(4)(A) authorizes motions requesting appointment of appellate counsel only when a substantive provision of general law provides for appointment of appellate counsel. Section 27.5304(6), Florida Statutes (2007), limits appointment of appellate counsel for indigent parents to appeals from final orders adjudicating or denying dependency or termination of parental rights. In all other instances, section 27.5304(6) requires appointed trial counsel to prosecute or defend appellate cases arising from a dependency or parental termination proceeding in the lower tribunal.

Rule 9.430. PROCEEDINGS BY INDIGENTS.

(a)-(b) [No change]

(c) Parties in Juvenile Dependency and Termination of Parental Rights Cases.
Presumption. In cases involving dependency or termination of parental rights, an appellate court may, in its discretion, presume that any party who has been declared indigent for purposes of proceedings by the lower tribunal remains

indigent, in the absence of evidence to the contrary.

EXHIBIT "G"
SUPREME COURT'S PROPOSALS (IN TIMES NEW ROMAN AND RED)
FOLLOWED BY FAMILY LAW SUBCOMMITTEE'S SUGGESTED REVISIONS
(IN COURIER NEW AND BLACK)

Rule 9.146. Appeal Proceedings in Juvenile Dependency and Termination of Parental Rights Cases and Cases Involving Families and Children in Need of Services

(a) [No Change]

(a) Applicability. Appeals proceedings in juvenile dependency and termination of parental rights cases and cases involving families and children in need of services shall be as in civil cases except ~~as modified by~~ to the extent those rules are modified by this rule.

(b) Who May Appeal. Any child, any parent, guardian ad litem, or legal custodian of any child, any other party to the proceeding affected by an order of the lower tribunal, or the appropriate state agency as provided by law may appeal to the appropriate court within the time and in the manner prescribed by these rules. Appeals from non-final orders are limited to those set forth in rule 9.130(a).

(b) Who May Appeal. Any child, any parent, guardian ad litem, or ~~legal custodian of any child,~~ any other party to the proceeding affected by an order of the lower tribunal, or the appropriate state agency as provided by law may appeal to the appropriate court within the time and in the manner prescribed by these rules.

(c) -(g) [No Change]

(c) Appealable Orders.

(1) Final Orders. For purposes of this rule, final orders include those that:

(a) adjudicate a child dependent;

(b) dismiss a dependency petition;

(c) permanently place a child and are intended to continue until the child reaches the age of majority;

(d) adjudicate termination of parental rights;

(e) dismiss a petition for termination of parental rights;

(f) adjudicate a child or family in need of services, and

(g) dismiss a petition for adjudication of a child or family in need of services.

(2) Non-Final Orders. Appeals of non-final orders in dependency and termination of parental rights cases are limited to those that

(a) are rendered at the conclusion of a shelter hearing;

(b) require or approve a change of placement into, out of, or within foster care;

(c) deny motions to amend the child's case plan;

(d) commit the child to a residential treatment facility;

(e) authorize or approve the administration of psychotropic medications to a child;

(f) deny independent living services;

(g) deny appointment of an attorney ad litem;

(h) deny a child access to records pertaining to the child's case, property, or public benefits, and

(i) pertain to a child who will turn 18 within 24 months of rendition of the non-final order.

The procedure for review of the specifically enumerated non-final orders is in accordance with rule 9.130(b) - (h). Review of non-final orders not specifically enumerated in this rule must be by an original proceeding filed in strict compliance with rule 9.100.

(~~c~~ d) Stay of Proceedings.

(1) **Application**. Except as provided by general law and in subdivision (~~c~~ d)(2) of this rule, a party seeking to stay a final or non-final order pending review shall file a motion in the lower tribunal, which shall have continuing jurisdiction, in its discretion, to grant, modify, or deny such relief, after considering the welfare and

best interest of the child. Review of orders entered by lower tribunals under this rule shall be by the court on motion.

(2) **Termination of Parental Rights.** The taking of an appeal shall not operate as a stay unless pursuant to an order of the ~~court~~ lower tribunal, except that a termination of parental rights order ~~with placement of~~ that places the child with a licensed child-placing agency or the Department of Children and Family Services for subsequent adoption shall be suspended while the appeal is pending ~~,but~~. The child shall continue in custody under the order until the appeal is decided.

(~~d~~ e) Retention of Jurisdiction. Transmittal of the record to the appellate court does not remove the jurisdiction of the lower tribunal to conduct judicial reviews or other proceedings related to the health and welfare of the child pending appeal.

(e f) References to Child or Parents. When the parent or child is a party to the appeal, the appeal shall be docketed and any papers filed in the court shall be titled with the initials, but not the name, of the child or parent
and the court case number. All references to the child or parent in briefs, other papers, and the decision of the court shall be by initials.

(~~f~~ g) Confidentiality. All papers shall remain sealed in the office of the clerk of the court when not in use by the court, and shall not be open to inspection except by the parties and their counsel, or as otherwise ordered.

(h) Juvenile Dependency and Termination of Parental Rights Cases. The following procedures apply only in juvenile dependency and termination of parental rights appeals.

(h) Special Procedures and Time Limitations Applicable to Appeals of Final Orders in Dependency or Termination of Parental Rights Proceedings.

(1) Applicability. This subsection applies only to appeals of final orders to the district courts of appeal.

(1) Motion for Appointment of Appellate Counsel; Authorization of Payment of Transcription Costs. A motion for appointment of appellate counsel and authorization of payment of transcription costs, when appropriate, shall be filed with the notice of appeal. The motion shall be served on the trial judge with a copy of the notice of appeal. The trial judge shall promptly enter an order on the motion.

(4) Motions.

(A) Motions for Appointment of Appellate Counsel; Authorization of Payment of Transcription Costs. A motion for the appointment of appellate counsel, when authorized by general law, and a motion for authorization of payment of transcription costs, where appropriate, shall be filed with the notice of appeal. The motion and a copy of the notice of appeal shall be served on the presiding judge in the lower tribunal. The presiding judge shall promptly enter an order on the motion.

(2) Directions to Clerk; Designation to Reporter. The directions to the clerk and the designation to the court reporter, including the name(s) of the individual court reporter(s), if applicable, shall be filed with the notice of appeal. The designation shall be served on the court reporter and shall provide 20 days for transcription.

(3) Record. The clerk of the lower tribunal shall prepare and serve the record prescribed by rule 9.200 within 5 days of receiving the transcript.

(A) Transcripts. Within 20 days of service of the designation, the court reporter shall transcribe and file with the clerk of the lower tribunal the original transcripts for the court and sufficient copies for the Department of Children and Family Services and all indigent parties.

(B) Service of Copies. The clerk of the lower tribunal shall serve copies of the record to the court, the Department of Children and Family Services, and indigent parties or counsel appointed to represent indigent parties. The clerk of the lower tribunal shall simultaneously serve copies of the index to all non-indigent parties and, upon their request, copies of the record or portions thereof at the cost prescribed by law.

(2) The record.

(A) Contents. The record shall be prepared in accordance with rule 9.200, except as modified by this subsection.

(B) Transcripts of proceedings. The appellant shall file a designation to the court reporter, including the name(s) of the individual court reporter(s), if applicable, with the notice of appeal. The designation shall be served on the court reporter on the date of filing and shall state that appeal is from a final order of termination of parental rights or of dependency, and that the court reporter shall provide the transcript(s)

designated within 20 days of the date of service. Within 20 days of the date of service of the designation, the court reporter shall transcribe and file with the clerk of the lower tribunal the original transcripts and sufficient copies for the Department of Children and Family Services, the guardian ad litem, and all indigent parties. If extraordinary reasons prevent the reporter from preparing the transcript(s) within the 20 days, the reporter shall request an extension of time, shall state the number of additional days requested, and shall state the extraordinary reasons that would justify the extension.

(C) Directions to the Clerk, Duties of the Clerk, Preparation and Transmittal of the Record. The appellant shall file directions to the clerk with the notice of appeal. The clerk shall transmit the record to the court within 5 days of the date the court reporter files the transcript(s) or, if a designation to the court report has not been filed, within 5 days of the filing of the notice of appeal. When the record is transmitted to the court, the clerk shall simultaneously serve copies of the record to the Department of Children and Family Services, the guardian ad litem, the indigent parties or counsel appointed to represent indigent parties, and shall simultaneously serve copies of the index to all non-indigent parties, and, upon their request, copies of the record or portions thereof at the cost prescribed by law.

(4) Briefs. The initial brief shall be filed within 20 days of service of the record on appeal. The answer brief shall be Filed within 20 days of service of the initial brief. The reply brief, if any, shall be filed within 10 days of service of the answer brief.

(3) Briefs.

(A) In general. Briefs shall be prepared and filed in accordance with rule 9.210(a)-(e) and (g) and (h).

(B) Times for service. The initial brief shall be served within 20 days of service of the record on appeal or the index to the record on appeal. The answer brief shall be served within 20 days of service of the initial brief. The reply brief, if any, shall be served within 10 days of the service of the answer brief.

(5) Withdrawal of Counsel. Where appellate counsel seeks leave to withdraw from representation of an indigent parent, the motion to withdraw shall be served on the client and contain a certification that after

a conscientious review of the record, the attorney has determined in good faith that there are no meritorious grounds on which to base an appeal. The parent shall be permitted to file a brief pro se, or through subsequently retained counsel within 20 days of issuance of the order granting the motion to withdraw.

(4) Motions.

(B) Motions to Withdraw as Counsel. If appellate counsel seeks leave to withdraw from representation of an indigent parent, the motion to withdraw shall be served on the parent and shall contain a certification that, after a conscientious review of the record, the attorney has determined in good faith that there are no meritorious grounds on which to base an appeal. The parent shall be permitted to file a brief pro se, or through subsequently retained counsel, within 20 days of the issuance of an order granting the motion to withdraw.

(6) Extensions of Time.

(A) Motions. A motion for continuance or extension of time must be in writing and must clearly identify the priority status of the case and explain what effect the motion will have on the progress of the case, as required by Florida Rule of Judicial Administration 2.545(e).

(B) Disposition. A continuance or extension of time may be granted only for extraordinary circumstances in which it is necessary to preserve the constitutional rights of a party or if substantial evidence exists to demonstrate that without granting a continuance or extension of time the child's best interests will be harmed. A continuance or extension of time must be limited to the number of days absolutely necessary in order to preserve the rights of a party or the best interests of the child. The total time allowed for continuances or extensions of time may not exceed 60 days within any 12-month period for proceedings under this rule.

(4) Motions.

(C) Motions for Extensions of Time. An extension of time will be granted only for extraordinary circumstances in which the extension is necessary to preserve the constitutional rights of a party, or in which substantial evidence exists to

demonstrate that without the extension the child's best interests will be harmed. The extension will be limited to the number of days necessary to preserve the rights of the party or the best interests of the child. The motion shall state that the appeal is from a final order of termination of parental rights or of dependency, and shall set out the extraordinary circumstances that necessitate an extension, the amount of time requested, and the effect an extension will have on the progress of the case.

(7) Oral Argument. Any request for oral argument must be served with the first brief filed by the party.

(5) Oral Argument. A request for oral argument shall be in a separate document served by a party not later than the time when the first brief of that party is due.

(8) Response to Motion for Rehearing. No response to a motion for rehearing shall be allowed unless ordered by the court.

(6) Rehearing; Rehearing En Banc; Clarification; Certification. Motions for rehearing, rehearing en banc, clarification, and certification shall be in accordance with rules 9.330 and 9.331, except that no response to these motions is permitted unless ordered by the court.

(9) Mandate. Mandate shall be issued as soon as is practicable after an order or decision is rendered.

(7) The Mandate. The clerk shall issue such mandate or process as may be directed by the court as soon as practicable.

(g) Expedited Review. The court shall give priority to appeals under this rule.

Committee Notes

1996 Adoption. [No change]

2006 Amendment. The title to subdivision (b) was changed from "Appeals Permitted" to clarify that this rule addresses who may take an appeal in matters covered by this rule. The amendment is intended to approve the holding in *D.K.B v. Department of Children & Families*, 890

So. 2d 1288 (Fla. 2d DCA 2005), that non-final orders in these matters may be appealed only if listed in rule 9.130.

2008 Amendment. The rule was substantially amended following the release of the Study of Delay in Dependency/Parental Termination Appeals Supplemental Report & Recommendations (June 2007) by the Commission on District Court of Appeal Performance & Accountability. The amendments are generally intended to facilitate expedited filing and resolution of appellate cases arising from dependency and termination of parental rights proceedings in the lower tribunal.

Subdivision (h)(4)(A) authorizes motions requesting appointment of appellate counsel only when a substantive provision of general law provides for appointment of appellate counsel. Section 27.5304(6), Florida Statutes (2007), limits appointment of appellate counsel for indigent parents to appeals from final orders adjudicating or denying dependency or termination of parental rights. In all other instances, section 27.5304(6) requires appointed trial counsel to prosecute or defend appellate cases arising from a dependency or parental termination proceeding in the lower tribunal.

Court Commentary

2007. Under new subdivision (h)(3)(a), the court reporter must transcribe and file the transcript within 20 days of service of the designation. Because of this limited time for production of the transcripts, parties are encouraged to also serve the designation electronically on the court reporter.

New subdivision (h)(4) requires that initial briefs be filed within 20 days of service of the record, answer briefs be filed within 20 days of service of the initial brief, and the reply brief be filed within 10 days of service of the answer brief. Because the briefs must be filed with the court within the applicable period after service, parties also should serve briefs electronically on opposing parties.
New subdivision (h)(5) addresses withdrawal of counsel for an indigent parent. *See N.S.H. v. Fla. Dep't of Children and Family Serv's*, 843 So. 2d 898 (Fla. 2003).

Rule 9.340. Mandate

(a) [No Change]

(b) Extension of Time for Issuance of Mandate. Unless otherwise provided by these rules, if a timely motion for rehearing, clarification, or certification has been filed, the time for issuance of the mandate or other process shall be extended until 15 days after rendition of the order denying the motion, or, if granted, until 15 days after the cause has been fully determined.

(c) [No Change]

Committee Notes [No change]

Rule 9.430. Proceedings by Indigents

(a)-(b) [No Change]

(c) Indigent Parents in Juvenile Dependency and Termination of Parental Rights Cases. A parent who has been declared indigent for purposes of juvenile dependency or termination of parental rights proceedings in the trial court shall be presumed indigent for purposes of appeal, unless the parent's indigent status is revoked by the trial court.

Committee Notes [No change]

(c) Parties in Juvenile Dependency and Termination of Parental Rights Cases.
Presumption. In cases involving dependency or termination of parental rights, an appellate court may, in its discretion, presume that any party who has been declared indigent for purposes of proceedings by the lower tribunal remains indigent, in the absence of evidence to the contrary.

Minutes of the ACRC Family Law Practice Subcommittee
March 5, 2008

Present: Mike Korn, Calianne Lantz, Fran Toomey, Porsche Shantz, Celene Humphries, Denise Powers, chair, Tom Young, vice chair

Absent: Susan Hugentugler

The meeting began at 2:05 p.m.

The subcommittee discussed the full ACRC's vote on the issue of ineffective assistance of counsel as referred to the committee in *E.T. v. State.* The full committee voted 32 to 17, not to take a substantive position. The committee also voted by the same numbers not to send any rules on the issue to the Florida Supreme Court.

The subcommittee turned to the referral from Jay Thomas (see attached memo). His issue is that "Those who may appeal an order of dependency are 'any party to the proceeding who is affected by an order of the court' and DCF." § 39.510(1). The definition of party, however, does not include "legal custodian."

The current Rule 9.146 states:

> (b) Who May Appeal. Any child, any parent, guardian ad litem, or legal custodian of any child, any other party to the proceeding affected by an order of the lower tribunal, or the appropriate state agency as provided by law may appeal to the appropriate court within the time and in the manner prescribed by these rules.

Fran's proposal is to change the rule:

> **(c) Who May Appeal.** Any child, any parent, or guardian ad litem~~, or legal custodian of any child, any other party to the proceeding~~ affected by an order of the lower tribunal, or the appropriate state agency as provided by law may appeal to the appropriate court within the time and in the manner prescribed by these rules.

Jay Thomas' memo states that the definition does not include "legal custodian."

We discussed the difference between a party and participant in the appeal process.

Fran Toomey suggested that we take out "legal custodian" based on definition of 39.510(50): "Party" means the parent or parents of the child, the petitioner, the department, the guardian ad litem or the representative of the guardian ad litem program when the program has been appointed, and the child.

A legal custodian can be a party. Tom Young indicated that it would be different for a

family member and that depending on circumstances the custodian could be party.
Mike Korn recalled that the standard we were using was to make the rule understandable to lay persons or a person doing a first appeal.

Calianne Lantz suggested that we could do a comment or committee note.

Mike Korn asked about people who don't have lawyers. Tome Young answered that in his experience most of the relatives are pro se.
Mike Korn questioned whether the change will make a difference.

Tom thought that it would be better to change the rule so that the different appellate courts would be uniform. The change in language would help in the lack of uniformity.

Denise Powers noted that the rule had been changed within the last 2 years. Fran Toomey stated that the prior rule change was a substantive change on issue of jurisdiction and came from the prior referral of Ryan Truckowski.

The issue at that time had been whether the rule provided a basis for jurisdiction. The prior rule change was for a different purpose. The prior subsection was "Appeals Permitted." As indicated in the 2006 Amendment Committee Note the purpose of the change in the title was to approve the holding in *D.K.B. v. Dept. of Children & Families*, 890 So. 2d 1288 (Fla. 2d DCA 2005).
See note prior title and case cited by 2d DCA DKB v. State 890 So.2d 1288 (Fla. 2d DCA 2005)

There has been a statutory change in 1999. The rule now is conformed to the 1996 version of Chapter 39, which has been rewritten. See Jay Thomas memo attached.

Tom Young has had a relative file an appeal in the 2d DCA and the court changed the appeal to certiorari. He has seen difference orders from different panels in same district.

Upon motion and second the subcommittee to change the subsection as follows:

> Who May Appeal. Any child, any parent, guardian ad litem, or ~~legal custodian of any child,~~ any other party to the proceeding affected by an order of the lower tribunal, or the appropriate state agency as provided by law may appeal to the appropriate court within the time and in the manner prescribed by these rules.

The vote was unanimous.

The subcommittee then discussed proposed changes to 9.146(g) as indicated in Fran Toomey's attached memo. Fran explained that she had made changes from the rough draft that Justice Lewis had done.

This is Fran's proposed change:

(g) Special Procedures and Time Limitations Applicable to Appeals of Final Orders in Dependency or Termination of Parental Rights Proceedings.

(1) Applicability. This subsection applies only to final orders.

(2) The record.

(A) Contents. The record shall be prepared in accordance with rule 9.200, except as modified by this subsection.

(B) Transcripts of proceedings. The appellant shall file a designation to the court reporter, including the name(s) of the individual court reporter(s), if applicable, with the notice of appeal. The designation shall be served on the court reporter on the date of filing and shall state that appeal is from a final order of termination of parental rights or of dependency, and that the court reporter shall provide the transcript(s) designated within 20 days of the date of service. Within 20 days of the date of service of the designation, the court reporter shall transcribe and file with the clerk of the lower tribunal the original transcripts and sufficient copies for the Department of Children and Family Services and all indigent parties.

(C) Directions to the Clerk, Duties of the Clerk, Preparation and Transmittal of the Record. The appellant shall file directions to the clerk with the notice of appeal. The clerk shall transmit **a copy of (get rule on copies)** the record to the court within 5 days of the date the court reporter files the transcript(s) or, if a designation to the court report has not been filed, within 5 days of the filing of the notice of appeal. When the record is transmitted to the court, the clerk shall simultaneously serve copies of the record to the Department of Children and Family Services, the indigent parties or counsel appointed to represent indigent parties, and shall simultaneously serve copies of the index to all non-indigent parties, and, upon their request, copies of the record or portions thereof at the cost prescribed by law.

(3) Briefs.

(A). In general. Briefs shall be prepared in accordance with rule 9.210(a) -(e). An original and three copies of the briefs shall be filed in the court concurrent with the service of the briefs.

(B) Times for service. The initial brief shall be served within 20 days of service of the record on appeal or the index to the record on appeal. The answer brief shall be served within 20 days of service of the initial brief. The reply brief, if any, shall be served within 10 days of the service of the answer brief.

(4) Motions.

(A) Motions for Appointment of Appellate Counsel; Authorization of Payment of Transcription Costs. A motion for the appointment of appellate counsel and a motion for authorization of payment of transcription costs, where appropriate, shall be filed with the notice of appeal. The motion shall be served on the trial judge with a copy of the notice of appeal. The trial judge shall promptly enter an order on the motion.

(B) Motions to Withdraw as Counsel. If appellate counsel seeks leave to withdraw from representation of an indigent parent, the motion to withdraw shall be served on the parent and shall contain a certification that, after a conscientious review of the record, the attorney has determined in good faith that there are no meritorious grounds on which to base an appeal. The parent shall be permitted to file a brief pro se, or though subsequently retained counsel, within 20 days of the issuance of an order granting the motion to withdraw.

(C) Motions for Extensions of Time. An extension of time will be granted only for extraordinary circumstances in which the extension is necessary to preserve the constitutional rights of a party, or in which substantial evidence exists to demonstrate that without the extension the child's best interests will be harmed. The extension will be limited to the number of days necessary to preserve the rights of the party or the best interests of the child. The motion shall state that the appeal is from a final order of termination of parental rights or of dependency, and shall set out the extraordinary circumstances that necessitate an extension, the amount of time requested, and the effect an extension will have on the progress of the case. The time granted for all extensions will not exceed 60 days within any twelve month period.

(5) Stay of Proceedings, exception. The taking of an appeal shall not operate as a stay unless pursuant to an order of the court, except that a termination of parental rights order **that** place**s a** child with a licensed child-placing agency or the Department of Children and Family Services for subsequent adoption shall be suspended while the appeal is pending, but the child shall continue in custody under the order until the appeal is decided.

6) Oral Argument. A request for oral argument shall be in a separate document served by a party not later than the time when the first brief of that party is due.

(7) Rehearing. Motions for rehearing shall be in accordance with rule 9.330. No response to a motion for rehearing is permitted, unless ordered by the court.

(8) The Mandate. The clerk shall issue such mandate or process as may be directed by the court as soon as practicable.

The DCAP&A Report wanted to put everything in rule 9.146 for inexperienced lawyers and pro se parties who could do one stop shopping.

Fran made changes for example in the record, designations, etc., to make the rule more like general appellate rules.

For the time changes that the DCAP&A committee recommended, we needed a rule for the contents of the record that would incorporate the time changes such as when the clerk and the transcriptionist had to do things. Fran also did it for the briefs and put in the necessary information.

Celene Humphries thought that Fran did an incredible job and everyone agreed.

Mile Korn questioned the cross reference with time for the court reporter. Tom Young was concerned about the issue of extensions of time that the reporters want.

The Rules of Judicial Administration Committee is dealing with the issue of court reporters prioritizing their time. That committee is making changes to rule 2.535(a new subsection "I") in order to give dependency and termination of parental rights cases priority over other proceedings.

Currently rule 9.200(a)(2) addresses the record in dependency and termination of parental rights cases. The concept would be the same.

The concern is if a court reporter granted an extension under rule 9.200(b)(3), the current extension rule and the impact on the briefing schedule.

Mike Korn wanted to use the standard of "extraordinary circumstances."

The last sentence ("<u>The time granted for all extensions will not exceed 60 days within any twelve month period.</u>") in subsection (g)(4) comes from §39.0136 (Time limitations; Continuances)-See attached statute.

Mike Korn thought that any order needs to have time frame for service of the briefs. Denise Powers noted that the time frame in (g)(3)(B) makes the time for brief based on record.

Fran Toomey saw a problem in certain circuits that is lost between the trial and appellate attorneys and that this delays the court's ability to resolve appeals quickly. Mike Korn questioned whether the DCAs have time frames to solve this problem. Tom Young answered No although the courts are trying by their review process, placement on calendars, internal mechanisms, and other procedures. Mike Korn questioned that he assumed that rule 9.200 would not apply and that no cross reference to that rule would be needed.

While subcommittee members worked on emailing suggested changes to 9.146(g)(2)(B), the subcommittee turned its discussion to subsection (a).

The subcommittee then discussed proposed subsection (a) to rule 9.146:

(a) Applicability. Appeals ~~proceedings~~ in juvenile dependency and termination of parental rights cases and cases involving families and children in need of services shall be as in civil cases ~~except as modified by~~ except to the extent those rules are modified by this rule.

Tom saw no problem. Denise liked the changes in Fran's proposal.

Upon motion and second the subcommittee unanimously voted for the change to rule 9.146(a).

Fran proposed this new language to 9.146(g)(2)(B) after the third sentence:

(B) Transcripts of proceedings. The appellant shall file a designation to the court reporter, including the name(s) of the individual court reporter(s), if applicable, with the notice of appeal. The designation shall be served on the court reporter on the date of filing and shall state that appeal is from a final order of termination of parental rights or of dependency, and that the court reporter shall provide the transcript(s) designated within 20 days of the date of service. Within 20 days of the date of service of the designation, the court reporter shall transcribe and file with the clerk of the lower tribunal the original transcripts and sufficient copies for the Department of Children and Family Services and all indigent parties.

If extraordinary reasons prevent the reporter from preparing the transcript(s) within the 20 days, the reporter shall request an extension of time and shall state the extraordinary reasons that would justify the extension.

Tom wants to add "shall state the number of additional days requested." Calianne Lantz saw a problem of transcribing audio versus a live court reporter. It is easier when there is a live court reporter versus an audio tape.

Fran suggested:

If extraordinary reasons prevent the reporter from preparing the transcript(s) within the 20 days, the reporter shall request an extension of time, shall state the number of additional days requested, and shall state the extraordinary reasons that would justify the extension.

Tom suggested:

(B) Transcripts of proceedings. The appellant shall file a designation to the court reporter, including the name(s) of the individual court reporter(s), if applicable, with the notice of appeal. The designation shall be served on the court reporter on the date of filing and shall state that appeal is from a final order of termination of parental rights or of dependency, and that the court reporter shall provide the transcript(s) designated within 20 days of the date of service. Within 20 days of the date of service of the designation, the court reporter shall transcribe

and file with the clerk of the lower tribunal the original transcripts and sufficient copies for the Department of Children and Family Services, *the guardian ad litem*, and all indigent parties. If extraordinary reasons prevent the reporter from preparing the transcript(s) within the 20 days, the reporter shall request an extension of time, shall state the number of additional days requested, and shall state the extraordinary reasons that would justify the extension.

Mike Korn asked what if the transcript is not done by a court reporter but is an audio tape. Calianne explained that the court reporter with the contract transcribes the audio tapes. Mike wanted to know if we need to specify the recording people or the court reporter. Tom did not think so because of the different procedures in different locals impossible to cover everything. In Tom's experience the delays are with the attorneys not with transcribing the recording.

Tom had a problem with (g)(2)(B) and (C) and wants to add "Guardian ad Litem":

(B) Transcripts of proceedings. The appellant shall file a designation to the court reporter, including the name(s) of the individual court reporter(s), if applicable, with the notice of appeal. The designation shall be served on the court reporter on the date of filing and shall state that appeal is from a final order of termination of parental rights or of dependency, and that the court reporter shall provide the transcript(s) designated within 20 days of the date of service. Within 20 days of the date of service of the designation, the court reporter shall transcribe and file with the clerk of the lower tribunal the original transcripts and sufficient copies for the Department of Children and Family Services, *the guardian ad litem*, and all indigent parties. If extraordinary reasons prevent the reporter from preparing the transcript(s) within the 20 days, the reporter shall request an extension of time, shall state the number of additional days requested, and shall state the extraordinary reasons that would justify the extension.

(C) Directions to the Clerk, Duties of the Clerk, Preparation and Transmittal of the Record. The appellant shall file directions to the clerk with the notice of appeal. The clerk shall transmit a copy of the record to the court within 5 days of the date the court reporter files the transcript(s) or, if a designation to the court report has not been filed, within 5 days of the filing of the notice of appeal. When the record is transmitted to the court, the clerk shall simultaneously serve copies of the record to the Department of Children and Family Services, *the guardian ad litem*, the indigent parties or counsel appointed to represent indigent parties, and shall simultaneously serve copies of the index to all non-indigent parties, and, upon their request, copies of the record or portions thereof at the cost prescribed by law.

All changes were circulated. Upon motion and second, the following was unanimously proposed:

(B) Transcripts of proceedings. The appellant shall file a designation to the court reporter, including the name(s) of the individual court reporter(s), if applicable, with the notice of appeal. The designation shall be served on the court reporter on the date of filing and shall state that appeal is from a final order of termination of parental rights or of dependency, and that the court reporter shall provide the transcript(s) designated within 20 days of the date of service. Within 20 days of the date of service of the designation, the court reporter shall transcribe and file with the clerk of the lower tribunal the original transcripts and sufficient copies for the Department of Children and Family Services, *the guardian ad litem*, and all indigent parties. If extraordinary reasons prevent the reporter from preparing the transcript(s) within the 20 days, the reporter shall request an extension of time, shall state the number of additional days requested, and shall state the extraordinary reasons that would justify the extension.

(C) Directions to the Clerk, Duties of the Clerk, Preparation and Transmittal of the Record. The appellant shall file directions to the clerk with the notice of appeal. The clerk shall transmit the record to the court within 5 days of the date the court reporter files the transcript(s) or, if a designation to the court report has not been filed, within 5 days of the filing of the notice of appeal. When the record is transmitted to the court, the clerk shall simultaneously serve copies of the record to the Department of Children and Family Services, the guardian ad litem, the indigent parties or counsel appointed to represent indigent parties, and shall simultaneously serve copies of the index to all non-indigent parties, and, upon their request, copies of the record or portions thereof at the cost prescribed by law.

Next the subcommittee turned to rule 9.146:

(g) Special Procedures and Time Limitations Applicable to Appeals of Final Orders in Dependency or Termination of Parental Rights Proceedings.

(1) Applicability. This subsection applies only to final orders.
The subcommittee unanimously voted this proposed change.

The subcommittee then discussed 9.146(g)(2):

(2) The record.

(A) Contents. The record shall be prepared in accordance with rule 9.200, except as modified by this subsection.

Fran explained the reason for including reference to rule 9.200 is one stop shopping.

The subcommittee unanimously voted this proposed change.

Discussion then turned to the subsection on the briefs in rule 9.146(g)(3).

Fran proposed:

(3) Briefs.

(A). In general. Briefs shall be prepared in accordance with rule 9.210(a) -(e). An original and three copies of the briefs shall be filed in the court concurrent with the service of the briefs.

Denise thought that filing should be "at the same time as" service of brief. Tom asked what if the brief goes to the Florida Supreme Court or it is a brief on jurisdiction. That would be governed by rule 9.210 (a)-(e) and (g) and (h).

The following is the revised change which the subcommittee unanimously voted to propose.

(3) Briefs.

(A). In general. Briefs shall be prepared and filed and accordance with rule 9.210(a) -(e) and (g) and (h).

Porsche Shantz then noted that this would not apply to jurisdiction briefs under rule 9.120 and that we should change our proposed suggestion to 9.146 (g)(1) as follows:

Applicability. This subsection applies only to appeals of final orders to the district courts of appeal.

The subcommittee unanimously voted to propose the change to rule 9.146(g)(1).

The next issue for discussion was the following:

(B) Times for service. The initial brief shall be served within 20 days of service of the record on appeal or the index to the record on appeal. The answer brief shall be served within 20 days of service of the initial brief. The reply brief, if any, shall be served within 10 days of the service of the answer brief.

Tom suggested that we leave the extension of time issue for the next meeting and the subcommittee agreed. We will also take up the "stay of proceeding" proposal.

The meeting concluded at 4:07 p.m.

M E M O R A N D U M

TO: **Denise Powers, Chair Family Law Rules Subcommittee**

FROM: **Fran Toomey**

RE: **Proposed revisions to rule 9.146**

DATE: **2/29/08**

In a letter to Steve Brannock, Chief Justice Lewis asked the ACRC to examine a "rough draft" of appellate rules designed to implement the DCA Performance & Accountability Commissions recommendations to streamline appeals is juvenile dependency and termination of parental rights proceedings. This referral was sent to our subcommittee to review and propose rules. The draft amendments are attached as Exhibit A. [actually you must click on the adobe acrobat document in the e-mail to get Exhibit A--my computer system has no way of converting an adobe document to word, or a word document to adobe].

In reviewing the Supreme Court's proposals, in particular the new subsection (h), I was concerned that the order of the proposal did not follow the general scheme of the appellate rules. For example, in the general rules, rules concerning the record (9.200) are followed by rules about briefs (9.210), then rules addressing motions (9.300). I have done a draft reorganization to conform the Supreme Court's proposals to the

scheme of the general appellate rules. My draft proposal is attached as exhibit B. Following is chart that shows the difference in placement between the Supreme Court's proposal and mine:

Supreme Court Proposal	My proposal
Title and applicability--9.146(h)	9.146(g)(1)
Motion for appointment of appellate counsel--9.146(h)(1)	9.146(g)(4)(A)
Directions to Clerk and Reporter--9.146(h)(2)	9.146(g)(2)(A)
Record--9.146(h)(3)	9.146(g)(2)(A)
Record--Transcripts--9.146(h)(3)(A)	9.146(g)(2)(B)
Record--Service--9.146(h)(3)(B)	9.146(g)(2)(B) & (C)
Briefs--9.146(h)(4)	9.146(g)(3)(A) & (B)
Withdrawal of Counsel--9.146(h)(5)	9.146(g)(4)(B)
Extensions of Time--9.146(h)(6)(A) & (B)	9.146(g)(4)(C)
Oral Arguments 9.146(h)(7)	9.146(g)(6)
Response to Motions for Rehearing 9.146(h)(8)	9.146(g)(7)
Mandate---9.146(h)(9)	9.146(g)(8)

As you will notice, I am proposing language different from the Supreme Court's in some of the subsections, as well as the structural revisions. As a general proposition, the DCA Performance and Accountability Commission believed that all the appellate rules addressing dependency and tpr should be in the same place--rule 9.146. Part of the reasoning behind this suggestion is that lawyers who handle these cases will have an easy point of reference for appeals. But if we presume those lawyers will rely solely on 9.146, I believe the rule needs more detail than the revision proposed by the Supreme Court, and some references to the general appellate rules when necessary. Thus, much of the additional language in my proposals comes from existing appellate rules. It is repetitive, but if we subscribe to the notion that the lawyers will only look to rule 9.146, I feel it is needed. I will address my suggested changes by referring to the lettering and numbering my proposal. I know I had some reason that I thought this subsection should appear as "g" rather than "h" but for the life of me, I can't remember it now.

9.146(g)(1). I have added additional language stating that these procedures are applicable to final orders only. The Supreme Court's proposals imply this--for example, a nonfinal appeal proceeds on an appendix, not a record.

9.146(g)(2). In the general appellate rules, the transcripts, directions to the clerks and service of the record and transcripts are addressed as

subsections of the record rule. I thought it made sense to do the same in this rule. I have used the general record rule (9.200) as a template for this subsection, and have added language from that rule to this subsection. The time frames are the same as in the Supreme Court's suggested revision.

9.146(g)(3). The supreme court rule just addresses time frames. I have referenced the general rule on briefs in order to ensure that someone reading 9.146 is directed to the correct format for a brief. I have added subsection (B) to explain the different service times (which correspond to the Supreme Court's proposal).

9.146(g)(4). The Supreme Court's proposal scatters subsections addressing various motions throughout the rule. I thought it would be helpful to have a "motions" section. Subsection (A) is identical to 9.146(h)(1). Subsection (B) somewhat revises the language from that contained in 9.146(h)(5); subsection (C) collapses 9.146(h)(6)(A) & (B). I have deleted the Supreme Court's reference to Fla. R. Jud. Admin. 2.545(e) because of the general theory that we do not cite rules in rules. I saw no reason to state the motion must be in writing--there are no oral motions in an appeal. The rest of the subsection is my restatement of the Court's proposal.

9.146(g)(5) The Supreme Court's proposal did not address a stay, but as I was reviewing the general rules I thought such a rule would be

helpful.

9.146(g)(6) I have slightly rewritten the Supreme Court's suggestion to conform with rule 9.320.

9.146(g)(7) I have revised 9.146(h)(8) to point the reader to the general rehearing rule, but the revision includes the Supreme Court's proposal that responses are not permitted except when the court orders.

9.146(g)(8) I have slightly revised 9.146(h)(9) to conform with the mandate rule, 9.340.

Additionally, my proposed revision contains other revisions not discussed by the Supreme Court. The first is a rule amendment proposed in the recent referral from Jay Thomas, the others have been proposed by subcommittee vice chair Tom Young.

Jay Thomas's referral. I have attached a memo (Exhibit C) in which Mr. Thomas discusses a conflict between rule 9.146(b) and the juvenile statutes. I have revised what is presently 9.146(c) to conform to his suggestion.

Tom Young's proposal. Tom suggests that we specifically define the orders reviewable, either as final or as nonfinal orders, in rule 9.146. His suggested additions are contained in 9.146(b). I have attached his memo explaining his reasons for recommending this revision as Exhibit D. His proposal obviates the need for the Supreme Court's suggested addition to the presently exiting rule 9.146(b), which would add the

language "appeals from non-final orders are limited to those set forth in rule 9.130(a)." I have included his proposals in my revision.

EXHIBIT "B"

Rule 9.146. Appeal Proceedings in Juvenile Dependency and Termination of Parental Rights Cases and Cases Involving Families and Children in Need of Services

(a) Applicability. Appeals ~~proceedings~~ in juvenile dependency and termination of parental rights cases and cases involving families and children in need of services shall be as in civil cases ~~except as modified by~~ except to the extent those rules are modified by this rule.

(b) Appealable Orders.

(A) Final Orders. For purposes of this rule, final orders include those that:

(I) adjudicate a child dependent;

(ii)) dismiss a dependency petition;

(iii) permanently place a child and are intended to continue until the child reaches the age of majority;

(iv) adjudicate termination of parental rights;

(v) dismiss a petition for termination of parental rights;

(vi) adjudicate a child or family in need of services; and

(vii) dismiss a petition for adjudication of a child or family in need of services.

(B) **Non-Final Orders.** Appeals of non-final orders in dependency and termination of parental rights cases are limited to those that

(I) are rendered at the conclusion of a shelter hearing;

(ii) require or approve a change of placement into, out of, or within foster care;

(iii) deny motions to amend the child's case plan;

(iv) commit the child to a residential treatment facility;

(v) authorize or approve the administration of psychotropic medications to a child;

(vi) deny independent living services;

(vii) deny appointment of an attorney ad litem;

(viii) deny a child access to records pertaining to the child's case, property, or public benefits; and

(ix) pertain to a child who will turn 18 within 24 months of rendition of the non-final order.

The procedure for review of the specifically enumerated non-final orders is in accordance with rule 9.130(b) - (h). Review of non-final orders not specifically enumerated in this rule must be by an original proceeding filed in strict compliance with rule 9.100.

(c) Who May Appeal. Any child, any parent, or guardian ad litem~~, or legal custodian of any child, any other party to the proceeding~~ affected by an order of the lower tribunal, or the appropriate state agency as provided by law may appeal to the appropriate court within the time and in the manner prescribed by these rules.

(d) Stay of Proceedings.

~~**(1) Application.**~~ Except as provided by general law and in subdivision ~~(c)(2)~~ (g)(5) of this rule, a party seeking to stay a final or non-final order pending review shall file a motion in the lower tribunal, which shall have continuing jurisdiction, in its discretion, to grant, modify, or deny such relief, after considering the welfare and best interest of the child.

~~**(2) Termination of Parental Rights.** The taking of an appeal shall not operate as a stay in any case unless pursuant to an order of the court, except that a termination of parental rights order with placement of the child with a licensed child-placing agency or the Department of Children and Family Services for subsequent adoption shall be suspended while the appeal is pending, but the child shall continue in custody under the order until the appeal is decided.~~

(e) Retention of Jurisdiction. Transmittal of the record to the appellate court

does not remove the jurisdiction of the lower tribunal to conduct judicial reviews or other proceedings related to the health and welfare of the child pending appeal.

(f) References to Child or Parents. When the parent or child is a party to the appeal, the appeal shall be docketed and any papers filed in the court shall be titled with the initials, but not the name, of the child or parent and the court case number. All references to the child or parent in briefs, other papers, and the decision of the court shall be by initials.

(g) Special Procedures and Time Limitations Applicable to Appeals of Final Orders in Dependency or Termination of Parental Rights Proceedings.

(1) Applicability. This subsection applies only to final orders.

(2) The record.

(A) Contents. The record shall be prepared in accordance with rule 9.200, except as modified by this subsection.

(B) Transcripts of proceedings. The appellant shall file a designation to the court reporter, including the name(s) of the individual court reporter(s), if applicable, with the notice of appeal. The designation shall be served on the court reporter on the date of filing and shall state that appeal is from a final order of termination of parental rights or of dependency, and that the court reporter shall provide the transcript(s) designated within 20 days of the date of service. Within 20 days of the date of service of the designation, the court reporter shall transcribe and file with the clerk of the lower tribunal the original transcripts and sufficient copies for the Department of Children and Family Services and all indigent parties.

(C) Directions to the Clerk, Duties of the Clerk, Preparation and Transmittal of the Record. The appellant shall file directions to the clerk with the notice of appeal. The clerk shall transmit **a copy of (get rule on copies)** the record to the court within 5 days of the date the court reporter files the transcript(s) or, if a designation to the court report has not been filed, within 5 days of the filing of the notice of appeal. When the record is transmitted to the court, the clerk shall simultaneously serve copies of the record to the Department of Children and Family Services, the indigent parties or counsel appointed to represent indigent parties, and shall simultaneously serve copies of the index to all non-indigent parties, and, upon their request, copies of the record or portions thereof at

the cost prescribed by law.

(3) Briefs.

(A). In general. Briefs shall be prepared in accordance with rule 9.210(a) -(e). An original and three copies of the briefs shall be filed in the court concurrent with the service of the briefs.

(B) Times for service. The initial brief shall be served within 20 days of service of the record on appeal or the index to the record on appeal. The answer brief shall be served within 20 days of service of the initial brief. The reply brief, if any, shall be served within 10 days of the service of the answer brief.

(4) Motions.

(A) Motions for Appointment of Appellate Counsel; Authorization of Payment of Transcription Costs. A motion for the appointment of appellate counsel and a motion for authorization of payment of transcription costs, where appropriate, shall be filed with the notice of appeal. The motion shall be served on the trial judge with a copy of the notice of appeal. The trial judge shall promptly enter an order on the motion.

(B) Motions to Withdraw as Counsel. If appellate counsel seeks leave to withdraw from representation of an indigent parent, the motion to withdraw shall be served on the parent and shall contain a certification that, after a conscientious review of the record, the attorney has determined in good faith that there are no meritorious grounds on which to base an appeal. The parent shall be permitted to file a brief pro se, or though subsequently retained counsel, within 20 days of the issuance of an order granting the motion to withdraw.

(C) Motions for Extensions of Time. An extension of time will be granted only for extraordinary circumstances in which the extension is necessary to preserve the constitutional rights of a party, or in which substantial evidence exists to demonstrate that without the extension the child's best interests will be harmed. The extension will be limited to the number of days necessary to preserve the rights of the party or the best interests of the child. The motion shall state that the appeal is from a final order of termination of parental rights or of dependency, and shall set out the extraordinary

circumstances that necessitate an extension, the amount of time requested, and the effect an extension will have on the progress of the case. The time granted for all extensions will not exceed 60 days within any twelve month period.

(5) Stay of Proceedings, exception. The taking of an appeal shall not operate as a stay unless pursuant to an order of the court, except that a termination of parental rights order **that** place**s a** child with a licensed child-placing agency or the Department of Children and Family Services for subsequent adoption shall be suspended while the appeal is pending, but the child shall continue in custody under the order until the appeal is decided.

6) Oral Argument. A request for oral argument shall be in a separate document served by a party not later than the time when the first brief of that party is due.

(7) Rehearing. Motions for rehearing shall be in accordance with rule 9.330. No response to a motion for rehearing is permitted, unless ordered by the court.

(8) The Mandate. The clerk shall issue such mandate or process as may be directed by the court as soon as practicable.

(h) Confidentiality. All papers shall remain sealed in the office of the clerk of the court when not in use by the court, and shall not be open to inspection except by the parties and their counsel, or as otherwise ordered.

(I) Expedited Review. The court shall give priority to appeals under this rule.

CREDIT(S)

Added Nov. 22, 1996, effective Jan. 1, 1997 (685 So.2d 773). Amended Oct. 12, 2000, effective Jan. 1, 2001 (780 So.2d 834); Oct. 26, 2006, effective Jan. 1, 2007 (941 So.2d 352).

COMMITTEE NOTES

2007 Main Volume

Court Commentary

2008.

Under new subdivision (g)(2)(B), the court reporter must transcribe and file the transcript within 20 days of the service of the designation. Because of this limited time for production of the transcripts, parties are encouraged to also serve

the designation electronically on the court reporter.

New subdivision (g)(3)(B) requires that initial briefs be served within 20 days of service of the record, answer briefs be served within 20 days of service of the initial brief, and the reply brief be served within 10 days of the service of the answer brief. Because the briefs must be filed with the court within the applicable period after service, parties also should serve briefs electronically on opposing parties.

New subdivision (g)(4)(B) addresses withdrawal of counsel for an indigent parent. See N.S.H. v. Fla. Dep't of Children and Family Serv's, 843 So. 2d 898 (Fla. 2003).

1996 Adoption. The reference in subdivision (a) to cases involving families and children in need of services encompasses only those cases in which an order has been entered adjudicating a child or family in need of services under chapter 39, Florida Statutes.

Subdivision (c) requires the parties to use initials in all references to the child and parents in all briefs and other papers filed in the court in furtherance of the appeal. It does not require the deletion of the names of the child and parents from pleadings and other papers transmitted to the court from the lower tribunal.

2006 Amendment. The title to subdivision (b) was changed from "Appeals Permitted" to clarify that this rule addresses who may take an appeal in matters covered by this rule. The amendment is intended to approve the holding in *D.K.B. v. Department of Children & Families*, 890 So. 2d 1288 (Fla. 2d DCA 2005), that non-final orders in these matters may be appealed only if listed in rule 9.130.

2008 Amendment. New subsection (b) lists appealable final and non-final orders. Subsection (c), formerly subsection (b) has been revised to conform to the definition of a party contained in section 39.01(5), Florida Statutes.

EXHIBIT "C"--MEMO FROM JAY THOMAS

Those who may appeal an order of dependency are "any party to the proceeding who is affected by an order of the court" and DCF. § 39.510(1). The definition of party, however, does not include "legal custodian":

> "Party" means the parent or parents of the child, the petitioner, the department, the guardian ad litem or the representative of the guardian ad litem program when the program has been appointed, and the child.

§ 39.01(50). Rather, a legal custodian is included under the rubric of "participant," which is a status separate from (and not a subcategory of) "party." See § 39.01(49) (defining "participant"). "Participants" are not included in the list of entities that may appeal a dependency action. § 39.510(1).

Rule 9.146 includes the following provision:

> (b) Who May Appeal. Any child, any parent, guardian ad litem, or legal custodian of any child, any other party to the proceeding affected by an order of the lower tribunal, or the appropriate state agency as provided by law may appeal to the appropriate court within the time and in the manner prescribed by these rules.

Rule 9.146(b) (emphasis added). (Juvenile rule 8.610, which defines "party" to include the "the custodian," applies only to "Proceedings for Families and Children in Need of Service," not dependencies or terminations)

On its face, rule 9.146(b) contradicts section 39.510(1), which does not list "legal custodians" as an entity that may appeal and provides for appeals only by "any party." Furthermore, the phrase "any other party" in the rule implies that a legal custodian is a party, but this contradicts the definition of "party" in section 39.01(50), which does not include legal custodians.

What appears to have happened is that the rule, promulgated in 1996, see Amendments to the Florida Rules of Appellate Procedure, 685 So. 2d 773 (Fla. 1996), reflects the statutes in effect at that time but has not been updated to be consistent with statutory amendments. The statute in effect at the time read: "Any child, any parent, guardian ad litem, or legal custodian of any child, any other party to the proceeding who is affected by an order of the court, or the department may appeal to the appropriate district court of appeal ...." § 39.413, Fla. Stat. (1995). This provision was amended and renumbered as section 39.510 and then further amended to delete "legal custodian." See ch. 98-403, § 72, Laws of Fla. (renumbering section 39.413 as section 39.510; effective October 1, 1998); ch. 99-193, § 34, Laws of Fla. (amending section 39.510 from "Any child, parent, guardian ad litem, caregiver, or legal custodian of any child, any other party to the proceeding who is affected by an order of the court . . . may appeal . . ." to "Any party to the proceeding who is affected by an order of the court . . . may appeal"; effective July 1, 1999); see also id. at § 4 (deleting "legal custodian" from the definition of "party" and adding "the legal custodian of the child" to the definition of "participant" in section 39.01).

Because "[a] statute conferring a right to appeal upon a litigant relates to a substantive, rather than a procedural right," State v. Kelley, 588 So. 2d 595, 597 (Fla. 1st DCA 1991) (citations omitted), it would seem that the statute supersedes the rule.

EXHIBIT "D"--MEMO FROM TOM YOUNG.

Review of Non-final Dependency and Parental Termination Orders

According to the final report of the Commission on District Court of Appeal Performance and Accountability ("Commission"):

> [T]he courts have been fairly inconsistent in how various appeals are to be handled. Some courts have handled similar proceedings in several different ways. When filed as non-final appeals, not all of the courts accord them the expedited procedures that they deserve, leading to substantial delay in a pending proceeding.

Commission on District Court of Appeal Performance and Accountability, *Study of Delay in Dependency/Parental Termination Appeals Supplemental Report and Recommendations* 13 (June 2007) ("Study").

The first, fourth, and fifth districts have permitted direct appeal of nonfinal dependency orders pursuant to rule 9.130(a)(4). See, e.g., Guardian ad Litem Program v. Dep't of Children & Fams., 936 So. 2d 1183 (Fla. 5th DCA 2006) (converting certiorari petition to a direct appeal in a case involving denial of a motion to change placement);[6] Dep't of Children & Fams. v. T.L., 854 So. 2d 819 (Fla. 4th DCA 2003) (placement without home study);[7] Ayo v. Dep't of Children &

[6] Intra-district conflict appears to exist in the fifth district, where recent case law suggests that non-final dependency orders should be reviewed through certiorari. D.W.G. v. Dep't Of Children & Fams., 961 So. 2d 1022 (Fla. 5th DCA 2007); S.H. v. Dep't of Children & Fams., 950 So. 2d 1267 (Fla. 5th DCA 2007).

[7] The fourth district has also denied motions to dismiss "appeals" of shelter orders, which have commonly been understood to be unappealable non-final orders. See In re Amendments to The Florida Rules of Appellate Procedure (Out of Cycle), 941 So. 2d 352, 353 (Fla. 2006) (declining to adopt proposed rule that would have authorized direct appeals of "nonfinal orders determining the right to child custody in juvenile dependency and termination of parental rights cases.")

Fam. Servs., 788 So. 2d 397 (Fla. 1st DCA 2001) (order on "periodic review of an adjudication of dependency and disposition").

The second district created inter-district conflict on the question of whether non-final dependency and parental termination orders are directly appealable by expressly rejecting appellate jurisdiction under rule 9.130(a)(4).

> The only potential appellate jurisdiction for this order derives from rule 9.130(a)(4), which states, "Other non-final orders entered after final order on authorized motions are reviewable by the method prescribed by this rule." ... [A] crucial issue in this context is whether the order was entered "on authorized motion," which we construe as a term of art, much as it is used in the rendition rule, Fla. R. App. P. 9.020(h)(1), which lists specific motions that will suspend rendition until the court files a written order disposing of the motion as to any party against whom relief is sought. All of the authorized motions enumerated in the rendition rule are directed to some aspect of true finality in the original order or judgment; such motions seek rehearing, new trial, alteration or amendment of the judgment, arrest of judgment, correction of a sentence, and the like. ... We have searched the juvenile, civil, and family law rules of procedure but have discovered nothing suggesting that this motion would be considered "authorized" for purposes of rule 9.130(a)(4).

In re J.T. (Dep't of Children & Fam. Servs. v. Heart of Adoptions, Inc.), 947 So. 2d 1212, 1217 (Fla. 2d DCA 2007); see also In re R.B. (D.K.B. v. Dep't of Children & Fam. Servs.), 890 So. 2d 1288 (Fla. 2d DCA 2005).[8] The third district does not appear to have addressed the question in a formal opinion, but its practice is generally to require all non-final orders to be reviewed as original proceedings, which aligns the third district with the second district.

[8] R.B. (D.K.B.) provided the basis for the 2006 amendment of rule 9.146(b).

A rule clarifying the basis for jurisdiction and procedures followed in review of non-final dependency and parental termination orders is desirable for several reasons, including the following:

1. A rule specifically listing the orders that may be the subject of a nonfinal appeal will resolve the inter-district conflict and provide uniform procedures for reviewing non-final orders in dependency and parental termination cases;

2. A rule listing appealable nonfinal orders in rule 9.146 (and cross-reference in and to rule 9.130) will provide express guidance to parents' attorneys, many of whom have little or no appellate experience and are not familiar with the intricacies of the Florida Rules of Appellate Procedure; and

3. A rule listing specific appealable non final order will improve the courts' ability to expedite review of non-final orders by eliminating confusion among counsel and circuit clerk's offices about what constitutes a final order and when a record is required to be prepared and transmitted.

The Commission did not attempt to resolve what the rule should provide. It expressed preference for review by certiorari but acknowledged that the standard of review for certiorari may pose problems. Study at 15. The Commission ultimately chose to leave determination of "what types of orders should be appealed by way of non-final appeal" to the Appellate Court Rules Committee and the Juvenile Court Rules Committee. Id. To date, the Juvenile Court Rules Committee has not addressed the issue.

Permitting direct appeal of a limited number of specified non-final orders is reasonable and laudable, provided the list of appealable orders is limited to orders that have the most significant impact on the family unit and the ability of children and youth to achieve stability. In my experience, the orders listed in the proposed rule fall into that category.

Florida Statute § 39.0136

39.0136. Time limitations; continuances

(1) The Legislature finds that time is of the essence for establishing permanency for a child in the dependency system. Time limitations are a right of the child which may not be waived, extended, or continued at the request of any party except as provided in this section.

(2) The time limitations in this chapter do not include:

(a) Periods of delay resulting from a continuance granted at the request of the child's counsel or the child's guardian ad litem or, if the child is of sufficient capacity to express reasonable consent, at the request or with the consent of the child. The court must consider the best interests of the child when determining periods of delay under this section.

(b) Periods of delay resulting from a continuance granted at the request of any party if the continuance is granted:

1. Because of an unavailability of evidence that is material to the case if the requesting party has exercised due diligence to obtain evidence and there are substantial grounds to believe that the evidence will be available within 30 days. However, if the requesting party is not prepared to proceed within 30 days, any other party may move for issuance of

an order to show cause or the court on its own motion may impose appropriate sanctions, which may include dismissal of the petition.

2. To allow the requesting party additional time to prepare the case and additional time is justified because of an exceptional circumstance.

(c) Reasonable periods of delay necessary to accomplish notice of the hearing to the child's parent or legal custodian; however, the petitioner shall continue regular efforts to provide notice to the parents during the periods of delay.

(3) Notwithstanding subsection (2), in order to expedite permanency for a child, the total time allowed for continuances or extensions of time may not exceed 60 days within any 12-month period for proceedings conducted under this chapter. A continuance or extension of time may be granted only for extraordinary circumstances in which it is necessary to preserve the constitutional rights of a party or if substantial evidence exists to demonstrate that without granting a continuance or extension of time the child's best interests will be harmed.

(4) Notwithstanding subsection (2), a continuance or an extension of time is limited to the number of days absolutely necessary to complete a necessary task in order to preserve the rights of a party or the best interests of a child.

CREDIT(S)

Added by Laws 2006, c. 2006-86, § 4, eff. July 1, 2006.

Minutes of the ACRC Family Law Practice Subcommittee
March 19, 2008

Present: Denise Powers, chair, Tom Young, vice-chair, Fran Toomey, Calianne Lantz, Celene Humphries, Porsche Shantz, Susan Hugentugler

Excused: Michael Korn

The meeting began started at 2:05 p.m..

Denise advised the subcommittee that we needed to push our recommendations so that Steve Brannock could have the full committee vote and send the recommended rule changes to the Board of Governors.

We first discussed Rule 9.430(c), which the full committee sent back to the subcommittee.

This rule was:

Rule 9.430. Proceedings

(a)-(b) [No change]

(c) **Indigent Parents in Juvenile Dependency and Termination of Parental Rights Cases.** A parent who has been declared indigent for purposes of juvenile dependency or termination of parental rights proceedings in the lower tribunal shall be presumed indigent for purposes of appeal, unless the parent's indigent status is revoked by the trial court.

The subcommittee did not recall having any problems with this subsection proposed by the DCAP&A Report. We had little discussion previously.

The presumption is that the parents are indigent. Tom thought it is the same presumption. Fran suggested adding the same presumption to existing subsection (a).

Subsection (b) is for incarcerated parties. Porsche suggested retitling (b) to "presumptions." Fran said that Tom Hall thought it should be moved to (a). Fran referred to the minutes of the ACRC January meeting as to what Tom Hall thought.

Tom noted that the new subsection would just be in parental termination proceedings.

Denise noted that the purpose of the rule was to show TPR parents where to go. Tom indicated that there is the funding statute § 27.5304(6) and the payment of trial and appellate attorneys.

Fran and Denise noted that it is only applicable to filing fees for the appellate tribunal. Tom thought that it may have applicability to other issues which were discussed at DCA meeting.

Tom has seen cases where the trial judge does not hold up appointment of appellate counsel.

Porsche thinks that the conflict that Tom Hall referred to has to do with the sentence "If the motion is granted, the party may proceed without further application to the court and without either the prepayment of fees or costs in the lower tribunal or court or the giving of security thereof." (from rule 9.430 (a))

Fran thought that mere indigency below was okay for the appellate court. Porsche noted the problem that the affidavit of indigency may not be in the appellate court because it is the record. If there is already a determination of indigency, there is no need for a new motion in the appellate court. Porsche thought it would be best to send the indigency affidavit to the appellate court separately from the record.

Calianne has seen in Dade that the indigency status has changed and questioned if that is a good idea. She does not think that the formal appointment of appellate counsel should be automatic.

Tom said that in his practice no body goes in fronts of the courts in the 1, 2 or 5 DCAs, but does in 4th DCA which will dismiss the appeal if the filing fee is not paid and then the parent has to file a motion to reinstate the appeal.

Denise asked why not file the notice of indigency with Notice of Appeal. Calianne has seen a difference when there is counsel versus when the parent is pro se. If the 3rd DCA kicks back the appeal, then you file a motion.

Tom finds that the 3rd is different from the rest of state in trial attorneys. He finds that Miami-Dade is the exception not the rule.

Fran indicated that the intent is that there is no check in the appointment of trial and appellate counsel. She thinks that it is more logical for a change in the Juvenile Rules rather than the Appellate.

Calianne thought that you can't put it in (c) because in (b) it refers to "incarcerated parties."

Fran proposed to add a (c). Calianne would like a (c) but change the language by making it "parties" not "parents."

Proposed rule 9.430(c):

(c) **Parties in Juvenile Dependency and Termination of Parental Rights**

Cases.
Presumption. In the absence of evidence to the contrary, the court may, in its discretion, presume that in cases involving dependency or termination of parental rights, any party who has been declared indigent for purposes of proceedings in the lower tribunal remains indigent.

David Silverstein joined the conference and was updated as to where we were.

Fran sees some conflict in the proposed rule but thinks that it is a red herring and not problematic.

Calianne has some problem with people hiding assets after the trial court makes the factual determination. She wants the language back in (a). Tom disagrees with putting it in (a).

Denise thinks the purpose is so that there is no new factual determination.

Fran does not think that we should rewrite (a).

Calianne asks about delinquency. Tom says the purpose is to move more quickly.

Calianne says that the department does not pay filing fees and the guardian ad litem does have to pay except for those people who are parents or custodians.

Tom thinks rule is broader enough so that the trial court could require a parent to do a new affidavit to order transcripts. He thinks that it has to do more with fees than costs. He has only seen a problem in the 4th and some in 3rd.

Calianne would attach a copy of the order appointing counsel of record and the determination of indigency order to the notice of appeal and would type "Respondent is indigent" on the notice of appeal, attach the order appointing counsel, and also if there is one a separate finding of indigency

Tom noted that the trial attorney files the notice of appeal. The trial counsel is supposed to file what needs to be filed. He has seen where trial counsel files the notice of appeal but there is no ordering of transcripts, not notification of appointment of appellate counsel.

Calianne thinks that there should there be language of indigency in the "commencement" and put in the notice of appeal.

Porsche likes the criminal rule which does not let trial counsel off until everything is done.

Denise emailed the proposal under discussion to everyone again.

Fran suggested eliminating a comma. We also discussed the difference between "appellate court" vs. "the court."

Porsche asked why not have "assertion that affidavit true" which can be a real problem
as in (A).

Calianne explained why it was different for criminal proceedings in that the incarcerated parties are not able to go to court and they do not have enough have lawyers or counselors.

Porsche thought we should mimic the rule provisions in 9.430(b)(A)

Fran did not think that changing other parts of the presumption rule was within our purview.

Calianne and Tom proposed the following rule:

Rule 9.430

(c) **Parties in Juvenile Dependency and Termination of Parental Rights Cases.** *Presumption.* In the absence of evidence to the contrary, an appellate court may, in its discretion, presume that any party in a dependency or termination of parental rights case who has been declared indigent for purposes of proceedings in the lower tribunal remains indigent.

Celene proposed the following rule:

(c) **Parties in Juvenile Dependency and Termination of Parental Rights Cases.**
Presumption. In cases involving dependency or termination of parental rights, an appellate court may, in its discretion, presume that any party who has been declared indigent for purposes of proceedings by the lower tribunal remains indigent, in the absence of evidence to the contrary.

David Silverstein asked why we were discussing this rule and Denise updated him.

Fran moved and Calianne seconded the motion to vote on the proposed addition to rule 9.430 (c) as proposed by Celene Humphries.

The subcommittee voted unanimously to suggest the above rule change to rule 9.430(c).

The subcommittee then turned to where we had left off the last meeting on rule 9.146.

Denise (g) (1) to the subcommittee and Tom sent his proposal to everyone

Rule 9.146 (g)

(4) Motions.

(A) Motions for Appointment of Appellate Counsel; Authorization of Payment of Transcription Costs. A motion for the appointment of appellate counsel, when authorized by general law, and a motion for authorization of payment of transcription costs, where appropriate, shall be filed with the notice of appeal. The motion shall be served on the trial judge with a copy of the notice of appeal. The trial judge shall promptly enter an order on the motion.

Calianne asked about "served in the lower tribunal" and why "authorized by general law."
Tom explained that section 27.5304 on adjudication of dependency or termination. If you don't set it out it would otherwise be part of the flat fee.

The rule needs to acknowledge when you get appellate counsel.

Calianne suggested a committee note. Tom was going to prepare a committee note on the issue and the subcommittee agreed that we would vote on it by email.

Fran thought that we should change to lower tribunal instead of trial judge to be consistent.

New proposed rule:

4) Motions.

(A) Motions for Appointment of Appellate Counsel; Authorization of Payment of Transcription Costs. A motion for the appointment of appellate counsel, when authorized by general law, and a motion for authorization of payment of transcription costs, where appropriate, shall be filed with the notice of appeal. The motion shall be served in the lower tribunal with a copy of the notice of appeal. The lower tribunal shall promptly enter an order on the motion.

Denise sent email of the revision to all.

Fran read the change to all and was going to email the discussed changes to everyone. While she was doing that David Silverstein asked the subcommittee opinion on JR rule 8.517.

David Silverstein thought that you should have to file the directions before withdraw as counsel. Porsche said that was in the criminal rules. David thought that we should add directions to clerk, designation to court reporter, and motion to transcribe the requisite proceedings to the rule. The Juvenile Rules Committee has revisions to rule 8.517 but does not have a rule on appeals.

The Juvenile Proposed Rule 8.517 is attached and was discussed.

Tom noted that there is a rule on transcription in rule 8.255(g) The last sentence says "only on order of court." Many people don't know about this rule.

No one from the subcommittee had any issues with the proposed Juvenile Rule 8.517.

Tom likes the rule and also likes the part about the signature of a parent. Also, the parent needs to sign for lawyer to get paid.

Denise thinks that the rule does not create jurisdiction for the need for the parent's signature. The statute refers to time limits in the rules of appellate procedure.

Fran asked about the reference to 1088 and Tom answered that was the number of the 2007 senate bill and is now section 27.5304(6) (the funding bill).

Calianne suggested that there be no parents' signature but that it be served on the parents. Also, she thought that it should not be the particular court reporter, but the firm. She commented that there are more demands on the system and less money.

David asked for our subcommittee's opinion rule 8.517. We voted that we generally liked it but it was up to juvenile.

The subcommittee voted that they generally thought that JR rule 8.517 was okay and did not suggest any changes.

Next the subcommittee started to discuss the issue of appeals versus certiorari with David Silverstein. We generally discussed the issues and concerns and the different standard of review and whether orders were appealable under rule 9.130(a)(4). See Tom Young's memo attached. The memo explains the different ways the courts are treating the issue of non-final appeal versus certiorari and the intra-district conflicts that exist. This memo was sent to David Silverstein.

Tom moved to accept the prior language. Calianne wanted it resent and Denise resent.
Calianne asked if we were using "judge" or "judge of the lower tribunal."

Denise read 9.100(c) and the Committee Note that says that the judge gets copies of original proceedings but is not a party.

Fran suggested we use serve on "judge" and not use "lower tribunal" so that the judge is aware of the order and it does not languish in the clerk's office. This also helps to make sure that the judge presiding over the case knows what is going on.

Fran suggested the following language:

4) Motions.
(A) Motions for Appointment of Appellate Counsel; Authorization of

Payment of Transcription Costs. A motion for the appointment of appellate counsel, when authorized by general law, and a motion for authorization of payment of transcription costs, where appropriate, shall be filed with the notice of appeal. The motion and a copy of the notice of appeal shall be served on the presiding judge in the lower tribunal. The presiding judge shall promptly enter an order on the motion.

Upon motion and second the subcommittee unanimously voted to propose this subsection.

Next the subcommittee discussed the following proposed language which Denise resent to all for 9.146(g):

(B) Times for service. The initial brief shall be served within 20 days of service of the record on appeal or the index to the record on appeal. The answer brief shall be served within 20 days of service of the initial brief. The reply brief, if any, shall be served within 10 days of the service of the answer brief.

Fran reminded us that the issue of 60 days and the potential need for more than 60 days had come from the Court. The issues with lack of designation to court reporter and lack of appointment of the court reporter should be cured by other rules.

Calianne said that the problem with court reporters had most to do with of the filing of the briefs without a transcript and on clerk. How will rules be enforced? Will it be up to attorneys? She sees a problem in Dade County and a problem with money. Will people follow the rules with such low pay to do appeals?

Calianne wanted to add that extensions "will be discouraged." Fran wanted to keep the language as is.

Celene asked if there was an alternative to "record on appeal or the index to the record on appeal." The rule (9.146(g)(2)(C) says that the record is served simultaneously on parties who get the record and the index to non-indigent parties. Celene asked if it would make a difference.
Fran said that only non-indigent parties get only the index.

Upon motion and second the subcommittee voted unanimously to propose the following rule to 9.146(g)(3):

(B) Times for service. The initial brief shall be served within 20 days of service of the record on appeal or the index to the record on appeal. The answer brief shall be served within 20 days of service of the initial brief. The reply brief, if any, shall be served within 10 days of the service of the answer brief.

The subcommittee then discussed proposed rule 9.146(g)(4)(B) which covers *Anders* type appeals. The proposed language is:

> **(B) Motions to Withdraw as Counsel.** If appellate counsel seeks leave to withdraw from representation of an indigent parent, the motion to withdraw shall be served on the parent and shall contain a certification that, after a conscientious review of the record, the attorney has determined in good faith that there are no meritorious grounds on which to base an appeal. The parent shall be permitted to file a brief pro se, or through subsequently retained counsel, within 20 days of the issuance of an order granting the motion to withdraw.

Susan noted that without an Anders type brief the courts are giving different time frames and cases are holding up adoptions.

Tom fixed a typo in the email sent and the above was resent to all.
The subcommittee unanimously voted to propose the above rule 9.146(g)(4)(B).

Next the subcommittee addressed 9.146(g)(4)(C) on extensions of time. Fran's proposed language is:

> **(C) Motions for Extensions of Time.** An extension of time will be granted only for extraordinary circumstances in which the extension is necessary to preserve the constitutional rights of a party, or in which substantial evidence exists to demonstrate that without the extension the child's best interests will be harmed. The extension will be limited to the number of days necessary to preserve the rights of the party or the best interests of the child. The motion shall state that the appeal is from a final order of termination of parental rights or of dependency, and shall set out the extraordinary circumstances that necessitate an extension, the amount of time requested, and the effect an extension will have on the progress of the case.

Fran commented that she took out any time limitations and that the Court can put them in if they want. Tom said we can see how it shakes out.

The subcommittee took a preliminary vote as to whether the rule should have a 60 day limit. The vote was a tie with Tom and Fran in favor of the 60 day limit and Celene and Calianne against the 60 day limit. Celene expressed her concern over a drop dead time limit.
Denise, the chair, voted against the 60 day time limit.

Based on the above vote and upon motion and second the subcommittee voted on the above proposed language to 9.146(g)(4)(C).

The vote was unanimous to recommend the above rule 9.146(g)(4)(C) with the noted objection as shown above to the lack of 60 day time limit on extensions.

The subcommittee next discussed the following changes to rule 9.146(g):

(6) Oral Argument. A request for oral argument shall be in a separate document served by a party not later than the time when the first brief of that party is due.

(7) Rehearing. Motions for rehearing shall be in accordance with rule 9.330. No response to a motion for rehearing is permitted, unless ordered by the court.

(8) The Mandate. The clerk shall issue such mandate or process as may be directed by the court as soon as practicable.

Calianne disagreed as to the provision in (7) of no response permitted unless ordered by court. She suggested it was better to limit the response time.

Due to the late hour, we limited ourselves to (6) and (8) above. Both passed unanimously.

Members had to leave so the subcommittee started a general discussion on rule 9.146(g)(5) as suggested by Fran:

(5) Stay of Proceedings, exception. The taking of an appeal shall not operate as a stay unless pursuant to an order of the court, except that a termination of parental rights order **that** place**s a** child with a licensed child-placing agency or the Department of Children and Family Services for subsequent adoption shall be suspended while the appeal is pending, but the child shall continue in custody under the order until the appeal is decided.

Tom asked is the Guardian ad Litem an arm of the State for automatic stay?

We discussed the very visible case in Miami where DCF argued that it was entitled to an automatic stay without permission from the trial court. In that case the appellate court upheld the automatic stay. Tom does not think that is a major issue other than in special cases.

Calianne remembered that just renumbering does not change the law and she did try to agree to an automatic stay when it was necessary, but a stay under rule 9.330 is bad policy for kids.

The next meeting we will need to deal with non-final orders and the different standard of review from certiorari.

The meeting adjourned at 5:24 p.m.

RULE 8.517. Appeal (Proposed by Juvenile Rules Committee)

(a) Appeals. Parties may appeal orders of the court pursuant to the Rules of Appellate Procedure that pertain to dependency and termination of parental rights proceedings.

(b) ~~w~~Withdrawal and ~~a~~Appointment of ~~c~~Court-~~a~~Appointed Counsel for Appeal

(~~(a1))~~ **Order Adjudicating Child Dependent or Terminating Parental Rights.** If an appeal from an order adjudicating a child dependent or terminating parental rights will be filed, the court-appointed counsel of record for a ~~party~~ **parent** in a dependency or termination of parental rights proceeding shall not be permitted to withdraw as counsel of record until the attorney files a motion to withdraw and the following documents have been filed and copies attached to the motion to withdraw:

~~(1)~~I. Notice of appeal containing the signatures of counsel *and the parent.*~~;~~[9]

~~(2)~~ ii. Directions to clerk, if necessary.

~~;~~

~~(3)~~iii. Motion to transcribe the requisite proceedings and for payment of transcription costs, if appropriate.

~~;~~

~~(4)~~iv. Designation to the court reporter specifying **the name of the individual court reporter**, the proceedings that must be transcribed in order to obtain review of the issues on appeal and ~~designating~~ the parties to receive a copy of the transcripts.

~~; and~~

~~(5)~~v. Order appointing appellate counsel.

(2) **Service of Order Appointing Counsel.** Following rendition of an order appointing appellate counsel, the court shall serve a copy of the order on the appointed appellate counsel and the clerk of the appellate court.

~~Conformed copies of each of the foregoing documents shall be attached to the motion to withdraw.~~

(~~b~~c) **Appeals from Other Orders.** -Appeals from all orders other than orders adjudicating a child dependent or terminating parental rights shall be completed by court-

[9] Author Trukowski does not support this provision requiring the signature of the parent of the proposed rule. Author Wimsett included because of the requirement in 1088.

appointed trial counsel, and appellate counsel shall not be appointed.

~~(c)~~ **Service of Order Appointing Counsel.** ~~Following rendition of an order appointing appellate counsel, the court shall serve a copy of the order on the appointed appellate counsel and the clerk of the appellate court.~~

Review of Non-final Dependency and Parental Termination Orders
(Memo by Tom Young)

According to the final report of the Commission on District Court of Appeal Performance and Accountability ("Commission"):

> [T]he courts have been fairly inconsistent in how various appeals are to be handled. Some courts have handled similar proceedings in several different ways. When filed as non-final appeals, not all of the courts accord them the expedited procedures that they deserve, leading to substantial delay in a pending proceeding.

Commission on District Court of Appeal Performance and Accountability, *Study of Delay in Dependency/Parental Termination Appeals Supplemental Report and Recommendations* 13 (June 2007) ("Study").

The first, fourth, and fifth districts have permitted direct appeal of nonfinal dependency orders pursuant to rule 9.146(a)(4). See, e.g., Guardian ad Litem Program v. Dep't of Children & Fams., 936 So. 2d 1183 (Fla. 5th DCA 2006) (converting certiorari petition to a direct appeal in a case involving denial of a motion to change placement);[10] Dep't of Children & Fams. v. T.L., 854 So. 2d 819 (Fla. 4th DCA 2003) (placement without home study);[11] Ayo v. Dep't of Children & Fam. Servs., 788 So. 2d 397 (Fla. 1st DCA 2001) (order on "periodic review of an adjudication of dependency and disposition").

The second district created inter-district conflict on the question of whether non-final dependency and parental termination orders are directly appealable by expressly rejecting appellate jurisdiction under rule 9.146(a)(4).

> The only potential appellate jurisdiction for this order derives from rule 9.130(a)(4), which states, "Other non-final orders entered after final order on authorized motions are reviewable by the method prescribed by this rule." ... [A] crucial issue in this context is whether the order was entered "on authorized motion," which we construe as a term of art, much as it is

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[10] Intra-district conflict appears to exist in the fifth district, where recent case law suggests that non-final dependency orders should be reviewed through certiorari. D.W.G. v. Dep't Of Children & Fams., 961 So. 2d 1022 (Fla. 5th DCA 2007); S.H. v. Dep't of Children & Fams., 950 So. 2d 1267 (Fla. 5th DCA 2007).

[11] The fourth district has also denied motions to dismiss "appeals" of shelter orders, which have commonly been understood to be unappealable non-final orders. See In re Amendments to The Florida Rules of Appellate Procedure (Out of Cycle), 941 So. 2d 352, 353 (Fla. 2006) (declining to adopt proposed rule that would have authorized direct appeals of "nonfinal orders determining the right to child custody in juvenile dependency and termination of parental rights cases.")

> used in the rendition rule, Fla. R. App. P. 9.020(h)(1), which lists specific motions that will suspend rendition until the court files a written order disposing of the motion as to any party against whom relief is sought. All of the authorized motions enumerated in the rendition rule are directed to some aspect of true finality in the original order or judgment; such motions seek rehearing, new trial, alteration or amendment of the judgment, arrest of judgment, correction of a sentence, and the like. ... We have searched the juvenile, civil, and family law rules of procedure but have discovered nothing suggesting that this motion would be considered "authorized" for purposes of rule 9.130(a)(4).

In re J.T. (Dep't of Children & Fam. Servs. v. Heart of Adoptions, Inc.), 947 So. 2d 1212, 1217 (Fla. 2d DCA 2007); see also In re R.B. (D.K.B. v. Dep't of Children & Fam. Servs.), 890 So. 2d 1288 (Fla. 2d DCA 2005).[12] The third district does not appear to have addressed the question in a formal opinion, but its practice is generally to require all non-final orders to be reviewed as original proceedings, which aligns the third district with the second district.

A rule clarifying the basis for jurisdiction and procedures followed in review of non-final dependency and parental termination orders is desirable for several reasons, including the following:

4. A rule will resolve the inter-district conflict and provide uniform procedures for reviewing non-final orders in dependency and parental termination cases;
5. A rule incorporated into rule 9.146 through cross-reference in rule 9.130 will provide express guidance to parents' attorneys, many of whom have little or no appellate experience and are not familiar with the intricacies of the Florida Rules of Appellate Procedure; and
6. A rule will improve the courts' ability to expedite review of non-final orders by eliminating confusion among counsel and circuit clerk's offices about what constitutes a final order and when a record is required to be prepared and transmitted.

The Commission did not attempt to resolve what the rule should provide. It expressed preference for review by certiorari but acknowledged that the standard of review for certiorari may pose problems. Study at 15. The Commission ultimately chose to leave determination of "what types of orders should be appealed by way of non-final appeal" to the Appellate Court Rules Committee and the Juvenile Court Rules Committee. Id. To date, the Juvenile Court Rules Committee has not addressed the issue.

Permitting direct appeal of a limited number of specified non-final orders is reasonable and laudable, provided the list of appealable orders is limited to orders that

[12] R.B. (D.K.B.) provided the basis for the 2006 amendment of rule 9.146(b).

have the most significant impact on the family unit and the ability of children and youth to achieve stability.

Minutes of the ACRC Family Law Practice Subcommittee
March 26, 2008

Present: Calianne Lantz, Fran Toomey, Porsche Shantz, Celene Humphries, Denise Powers, chair, Tom Young, vice chair, Susan Hugentugler

Excused: Mike Korn

The meeting began at 2:05 p.m.

Denise gave a brief recap of where we had left off. We had been discussing rehearing, stay and appealable orders under rule 9.146.

Fran had proposed to put the stay provision in subsection 9.146(g)(5):

> **(5) Stay of Proceedings, exception.** The taking of an appeal shall not operate as a stay unless pursuant to an order of the court, except that a termination of parental rights order **that** place**s a** child with a licensed child-placing agency or the Department of Children and Family Services for subsequent adoption shall be suspended while the appeal is pending, but the child shall continue in custody under the order until the appeal is decided.

The current stay provision is in rule 9.146 (c)(2). It is basically the same as the existing rule. Fran has made some word changes.

Denise doesn't like it separate. The way Fran has it, it is in the revised part of g and also remains part of new (d). Th stay provision is not the same for termination and dependency.

Celene asked for the reason for putting part of the provision in a separate place, not in (g). Fran explained that the reason that they are separate is because (g) deals with final orders in both TPR and dependency. Fran said that they may be better were they originally were. It maybe easier to reference the rule since this does not apply to dependency appeals in (c)(2). She has no strong feelings one way or another. The above language comes directly from 9.146(c)(2).

Celene likes it all in one place, keeping all together and only referring to termination in (g).

Calianne disagrees that it should be separate. It is better for the department, attorneys, judges, and guardians where presently exists, rather than in (g).

Tom thinks the stay provision is better in new (d).

The subcommittee voted unanimously to leave the stay provision in new subsection (d).

Some members worked on drafting the language for new section (d) on stay, making the changes that had been discussed. There would be a (d)(1) and (2).

While some members were working on circulating proposed language on stay, the subcommittee started to tackle the issue of rehearing. Although we had some discussions at the last meeting, we had not voted on any language.

Tom advised us that DCAP&A commission suggestion had caused quite a discussion. He explained the intent of what was going on in the first DCAP&A Report 2006 was to shorten time frames in cases involving children, based on the examples of various organizations, like the ABA and other organizations which had different time lines. 180 days is the goal. If you count the days in the DCAP&A Report proposed rules, it came to 195. At both the local and big meetings, they did not want to shorten the time to file a notice of appeal from 30 days. So they decided to shave off days from rehearing. Since most motions have no merit, the courts can rule on the motion without a response. If they want one, they could ask for a response.

Calianne thought that you may need to tweak a decision, even if you have won, especially if you are an institution. She is opposed to the limit on a response as it may be violation of due process.

Porsche noted that there is no reference to motions for clarification or certification. Tom thinks that DCAs are dealing most frequently with motions for rehearing.

Calianne thought splitting the types of motions was bad too. Porsche says you could file a response if the motion says both rehearing and clarification.

Calianne said that you may have an issue that needs to be addressed but you didn't move for clarification or rehearing. You decided not to clarify but the appellant does say something about the language in the decision and then you feel you need to respond.

Tom if counsel feels the need to file a response you could file a motion for leave to respond. Porsche noted that if the motion is so outrageous you could leave it to the court to deny. But is this just for a motion for rehearing or is it also for clarification and certification.

Fran asked what is the prejudice if the motion for rehearing is denied before the response
Porsche thinks that the rule includes certification, clarification and en banc as in rule 9.331.

Tom thought that we could change the language to add reference to rules 9.330 and 9.331 since practically the time will be affected. Fran said that the 2d DCA holds motion for rehearing in clerk's office until there is a response. If there is no response,

then it is sent to the primary judge. If there is a response, then both are sent to the primary judge.

Each court could adopt it own rule. Is 10 days that big a deal if it prevents the judge from seeing motion?

Susan said that what is the reason for the rule. If it is important, the court would order a response. Fran noted that frivolous motions can be denied without responses.

Tom's suggestion for 9.146(g)(7):

> **(7) Rehearing; Rehearing En Banc; Clarification; Certification.** Motions for rehearing, rehearing en banc, clarification, and certification shall be in accordance with rules 9.330 and 9.331, except that no response to these motions is permitted unless ordered by the court.

The subcommittee voted unanimously to suggest this proposed rule.

Next the subcommittee reviewed the following proposes rule that had been circulated:

> (d) **Stay of Proceedings.**
> (1) **Application**. Except as provided by general law and in subdivision (~~c~~ d)(2) of this rule, a party seeking to stay a final or non-final order pending review shall file a motion in the lower tribunal, which shall have continuing jurisdiction, in its discretion, to grant, modify, or deny such relief, after considering the welfare and best interest of the child.
>
> (2) **Termination of Parental Rights.** The taking of an appeal shall not operate as a stay unless pursuant to an order of the court, except that a termination of parental rights order ~~with placement of~~ that places the child with a licensed child-placing agency or the Department of Children and Family Services for subsequent adoption shall be suspended while the appeal is pending, but t[T] he child shall continue in custody under the order until the appeal is decided.

Porsche asked which court does it mean since when it says "court" means it means the appellate court, not the lower tribunal, but the intent should be appellate court. Nothing in committee notes explains this. Fran says you seek the stay in the lower tribunal. Porsche asked what does it mean. Fran says it could be "court order." Tom suggested the title "placement for adoption." Fran doesn't like that suggestion.

The regular stay rule in rule 9.310 has a review provision.

Porsche suggested "pursuant to order of the lower tribunal" but it still does not have review provision. Fran suggested adding a sentence to the retention of jurisdiction, like the language of rule 9.310(f).

Celene made the following proposal:

> **(2) Termination of Parental Rights.** The taking of an appeal shall not operate as a stay unless pursuant to an order of the court, except that a termination of parental rights order ~~with placement of~~ that places the child with a licensed child-placing agency or the Department of Children and Family Services for subsequent adoption shall be suspended while the appeal is pending~~, but the. The~~ child shall continue in custody under the order until the appeal is decided.

Denise asked if it should be applicability or application in subsection (1). Fran said "application" because you are making an application for a stay.

Porsche noted that there are two "orders" in the prior sentence. Fran said we could change order. She said that are we using nebulous language. Instead we could put in "termination of parental rights" for clarification.

A member asked how did the adoption went through pending the appeal in *ET v State*. Tom explained that the father did not move to stay. Since there was no stay, the adoption went through. There was a PCA of the TPR appeal with no stay.

Susan thought that there was no need to put TPR in last sentence.

Fran made this new proposal:

> (d) **Stay of Proceedings.**
> (1) **Application**. Except as provided by general law and in subdivision (~~c~~ d)(2) of this rule, a party seeking to stay a final or non-final order pending review shall file a motion in the lower tribunal, which shall have continuing jurisdiction, in its discretion, to grant, modify, or deny such relief, after considering the welfare and best interest of the child. Review of orders entered by lower tribunals under this rule shall be by the court on motion.
>
> (2) **Termination of Parental Rights.** The taking of an appeal shall not operate as a stay unless pursuant to an order of the ~~court~~ lower tribunal, except that a termination of parental rights order ~~with placement of~~ that places the child with a licensed child-placing agency or the Department of Children and Family Services for subsequent adoption shall be suspended while the appeal is pending~~, but~~. The child shall continue in custody under the order until the appeal is decided.

Everyone gave their thanks to Fran for the above new section.

The subcommittee unanimously voted to suggest the above proposed rule.

Next the subcommittee tackled the DCAP&A Report suggested rule that Fran had reworked:

(b) Appealable Orders.

(A) Final Orders. For purposes of this rule, final orders include those that:

(i) adjudicate a child dependent;

(ii) dismiss a dependency petition;

(iii) permanently place a child and are intended to continue until the child reaches the age of majority;

(iv) adjudicate termination of parental rights;

(v) dismiss a petition for termination of parental rights;

(vi) adjudicate a child or family in need of services; and

(vii) dismiss a petition for adjudication of a child or family in need of services.

(B) **Non-Final Orders.** Appeals of non-final orders in dependency and termination of parental rights cases are limited to those that

(i) are rendered at the conclusion of a shelter hearing;

(ii) require or approve a change of placement into, out of, or within foster care;

(iii) deny motions to amend the child's case plan;

(iv) commit the child to a residential treatment facility;

(v) authorize or approve the administration of psychotropic medications to a child;

(vi) deny independent living services;

(vii) deny appointment of an attorney ad litem;

(viii) deny a child access to records pertaining to the child's case, property, or public benefits; and

(ix) pertain to a child who will turn 18 within 24 months of rendition of the non-final order.

The procedure for review of the specifically enumerated non-final orders is in

accordance with rule 9.130(b) - (h). Review of non-final orders not specifically enumerated in this rule must be by an original proceeding filed in strict compliance with rule 9.100.

Tom offered to field questions on the above subsection. It is not an exhaustive list of the types of cases for TPR and dependency. In every file that he reviews, it is always called a "final order." There is no appreciation in system as to what is final and what not final. The list of final orders is exhaustive.

The non-final order list is not exhaustive but contains what are the most common and mostly applies to older youths who are affected in a drastic way.

Tom thinks that we need to do something because you don't know what method of review to use in the 5th DCA due to conflict in intra-district policy. In the 2d there are no non final dependency appeal under rule 9.130(a)(4). Now in the 3d DCA there are no non-final appeals. Previously there were appeal under 9.130(a). In 1993 the 5th DCA allowed direct appeals but now uses certiorari and it does discuss rule 9.130(a)(4).

Fran said that she found cases out there that do not state the basis for jurisdiction. Three cases refer to rule 9.130 (a)(4).

The issue dogging Tom and Fran is that you can also get review as non-final appeals in the 2d DCA. Fran is attuned to the issue of jurisdiction.

The standard of review is affected. In the 4th DCA you can have a non-final appeal but they are using cert. language in the review.

Parents are only entitled to separate counsel for adjudication of dependency and TPR (termination of parental rights). Now appellate counsel assumes appointment after the funding statute; other wise trial counsel must do the appeal. Counsel now has to do more than before and has to do more for less money.

Tom filed a petition for cert. in the 5th DCA which converted it to an appeal under rule 9.130 (a)(4). Last year he had an appeal changed to cert. The above is the genesis of the issue. If the group wants review of these orders to be by cert., then let it be cert. Tom referred the subcommittee to pages 15 and 16 of Report of the DCAP&A Commission which didn't like the provision for non-final appeals because of the concern that there would be more appeals. They basically punted on the issue in general in general.

Fran questioned if we will need to cross reference 9.130 if we enumerate the non-final orders. Tom agreed that there might need to be changes to rule 9.130 but that would be for the general subcommittee.

The subcommittee decided that the initial issue should be whether the orders to be reviewed should be enumerated.

Do we enumerate the orders to be reviewed?

Fran thinks that there is a lot of confusion of what is a non-final order under rule 9.130. You could still have issues if the plan of reunification with the parents is ongoing.

Tom said that no one follows the time line for non-final appeals and he has not seen a change in number of orders taken as non-final appeals based on the statute on funding. The answer may be that the trial attorneys may have been appointed before the effective date of the funding statute.

Tom thinks that we need to do something. This is what you have: people who do work for parents are not experienced appellate attorneys or are recent graduates with little experience.

Calianne suggested why not enumerate the orders. It should not have a chilling effect if you don't enumerate.

Celene is usually not in favor of enumeration, but for the explanation of the full committee, she is in favor of the delineation for the sake of clarity.

Tom explained that the proposed rule tracts the criminal rule of what a criminal defendant can appeal. If we don't delineate the non final orders, it is critical that there should there should be some review. Some orders should be reviewable by direct appeal. If review is by cert., then there is no need for a list of orders.

Porsche asked what orders are reviewable by direct appeal. Tom said that the list has the issues that Tom thinks are most important to parents, not youths. For example, iv, v, vi, vii, viii, and ix, have to do with putting older kids on the streets without support. These decisions can be made without appellate review.

Denise said that if review were by cert., then there would be a higher standard of review.

Tom listed the orders for review based on his experience, including those orders most critical to kids and parents. For example, "i" putting a child in shelter: the parent is denied custody of the child but it is not a final order under rule 9.130(a)(4). Subsection "ii," affect the parents and "require or approve a change of placement into, out of, or within foster care." The child could be with a grandparent, sibling, or other family member. With foster care there is a disruption if there is a change of foster care and the attachment that is being broken has long term ramifications. These issues are critical to the family unit and the child's health.

Porsche noted that Tom knows the details. Look at what is a final order and what is non-final even in same district.

Calianne thinks it is difficult to study. In her opinion, any order can be taken up

for review although it is different in the 2nd and 5th DCAs.

Calianne thought that you can have due process violations as basis for raising issues for the parents without the higher standard of review.

Tom said that his list is subjective; other people may disagree with it. For example, subsection (B)(iii), re the case plan. The trial court may deny motions on the case plan and deny what someone thinks is best for the plan. If a parent is ordered to undergo a psychiatric exam, the parent would have to go to cert. Also older kids will not get review without provisions.

Fran noted that rule 9.130(a)(3)(C)(iii) refers to non-final orders that determine "the right to immediate monetary relief or child custody in family law matters." These revisions caused a lot of comments to the Florida Supreme Court. If we suggest that we enumerate the orders, we will get more feed back. She is in favor of enumeration.

Fran noted that the rush is on DCA recommendations. If they want to vote via email, it should be limited to subsection (g) and keep (c) for the full committee. There are very few people on the full committee who do this stuff and even fewer will understand the issues. The full subcommittee agreed with Fran. Denise will advise Steve and Joanna that we do no think voting via email will be best.

The subcommittee upon motion and second voted whether or not to enumerate non-final orders. In favor of enumeration: Tom Young, Fran Toomey, Celene Humphries, Calianne Lantz, and Susan Hugentugler. Against enumeration: Porsche Shantz.

Calianne thought that Porsche should do a minority view memo. Fran said that we would revise her memo for the full committee.

The full committee then voted on the following proposed section for rule 9.146:

(b) Appealable Orders.

(A) Final Orders. For purposes of this rule, final orders include those that:

(i) adjudicate a child dependent;

(ii) dismiss a dependency petition;

(iii) permanently place a child and are intended to continue until the child reaches the age of majority;

(iv) adjudicate termination of parental rights;

(v) dismiss a petition for termination of parental rights;

(vi) adjudicate a child or family in need of services; and

(vii) dismiss a petition for adjudication of a child or family in need of services.

(B) **Non-Final Orders.** Appeals of non-final orders in dependency and termination of parental rights cases are limited to those that

(i) are rendered at the conclusion of a shelter hearing;

(ii) require or approve a change of placement into, out of, or within foster care;

(iii) deny motions to amend the child's case plan;

(iv) commit the child to a residential treatment facility;

(v) authorize or approve the administration of psychotropic medications to a child;

(vi) deny independent living services;

(vii) deny appointment of an attorney ad litem;

(viii) deny a child access to records pertaining to the child's case, property, or public benefits; and

(ix) pertain to a child who will turn 18 within 24 months of rendition of the non-final order.

The procedure for review of the specifically enumerated non-final orders is in accordance with rule 9.130(b) - (h). Review of non-final orders not specifically enumerated in this rule must be by an original proceeding filed in strict compliance with rule 9.100.

In favor: Tom Young, Fran Toomey, Celene Humphries, Calianne Lantz, and Susan Hugentugler. Against: Porsche Shantz.

The meeting ended at 4:23 p.m.

Note from your chair: Subcommittee members, the numbering/lettering on the section on "Appealable Orders" had to be changed to conform to the proper form.

This is the new proposed rule. The only change is numbering.

(c) Appealable Orders.

(1) Final Orders. For purposes of this rule, final orders include those that:

(a) adjudicate a child dependent;

(b) dismiss a dependency petition;

(c) permanently place a child and are intended to continue until the child reaches the age of majority;

(d) adjudicate termination of parental rights;

(e) dismiss a petition for termination of parental rights;
(f) adjudicate a child or family in need of services; and

(g) dismiss a petition for adjudication of a child or family in need of services.

(2) **Non-Final Orders.** Appeals of non-final orders in dependency and termination of parental rights cases are limited to those that

(a) are rendered at the conclusion of a shelter hearing;

(b) require or approve a change of placement into, out of, or within foster care;

(c) deny motions to amend the child's case plan;

(d) commit the child to a residential treatment facility;

(e) authorize or approve the administration of psychotropic medications to a child;

(f) deny independent living services;

(g) deny appointment of an attorney ad litem;

(h) deny a child access to records pertaining to the child's case, property, or public benefits; and

(i) pertain to a child who will turn 18 within 24 months of rendition of the non-final order.

The procedure for review of the specifically enumerated non-final orders is in accordance with rule 9.130(b) - (h). Review of non-final orders not specifically enumerated in this rule must be by an original proceeding filed in strict compliance with rule 9.100.

ACRC FAMILY LAW SUBCOMMITTEE REPORT
ON COMMENTS RECEIVED ON PROPOSED RULE AMENDMENTS

May 25, 2008

TO: Steve Brannock, chair ACRC
Joanna Mauer, Florida Bar Liason

From: Denise Powers, Chair Family Law Subcommittee

In response to the recent email from Steve Brannock on the Family Law Subcommittee's proposed rule amendments to the Commission on District Court of Appeal Performance and Accountability Report to expedite cases involving dependency and termination of parental rights, only one comment was received.

David Miller sent the following comment:

> Here are some technical comments, for what they are worth -
>
> Pg. 55 of materials, Subdivision (c)(2) last sentence - I think the word "must" should be changed to "may." I also think the adjective "strict" is superfluous, as it makes "compliance" look insufficient. Does "compliance" otherwise mean something less than "strict" compliance?
>
> Pg. 57, Subdivision (h)(2)(C) "report" should be "reporter" I also think this sentence would read better if it said, "The clerk shall transmit the record to the court within 5 days of the filing of the notice of appeal, or if a designation to the court reporter is also filed, within 5 days of the date the court reporter files the transcript."
>
> On the substantive side, I have some concern about expanding the appellate courts' nonfinal jurisdiction to the extent set forth in the proposal, and wonder if Fran could direct me (a non-family law lawyer) to the place in the materials where immediate appeal for all these types of orders is justified.
>
> Thanks!

The subcommittee met on Friday, May 23, 2008 and discussed each of Mr. Miller's concerns.

As to the first suggestion, the subcommittee unanimously voted to change the word "must" to "shall" in the last sentence of proposed rule 9.146 (c)(2). The members felt that this better comports with the language used throughout the rules. The concept was one of a mandatory use of the procedure if review of non-specified orders was

sought.

The subcommittee unanimously accepted Mr. Miller's suggestion and rationale that the word "strict" be eliminated from this same sentence.

The new proposed last sentence to 9.146(c)(2) would now read:

The procedure for review of the specifically enumerated non-final orders is in accordance with rule 9.130(b) - (h). Review of non-final orders not specifically enumerated in this rule shall be by an original proceeding filed in compliance with rule 9.100.

As to Mr. Miller's comments to 9.146(h)(2)(C), the correct word is "reporter." "Report" is a typo. (Joanna, would you please fix that mistake.) As to Mr. Miller's comment on changing the wording of this subsection, the subcommittee envisioned that designation was more common. The wording was done with this purpose in mind and was the reason why the subsection was worded this way. The subcommittee declined unanimously the proposed suggestion.

On the substantive issues raised in Mr. Miller's email, Fran Toomey responded directly to his questions. Her response was:

> Good morning. The materials on this particular proposal are Tom Young's memo (ex D), Porsche Shantz's minority memo (Ex E), the Commission's report (ex A, pg 12-15) and the March 26th minutes beginning on p. 6 (I think that's right, the page numbers aren't appearing when I bring it up). The minutes are a bit misleading--this was not my proposal, or the Commissions, Tom Young actually came up with it. I've copied him on this message--he's out of state right now but will likely check his e-mail. To give you a bit of background that may not appear in any of these documents, this all began several years ago when Ryan Truskowski, a lawyer who represents parents in these matters, proposed an amendment to rule 9.130(a)(3)(C)(iii), which concerns nonfinal appeals in family law matters. His suggestion was to make that rule applicable to juvenile matters as well. The subcommittee as it was then constituted voted to propose such an amendment, and the full committee agreed, but the Supreme Court did not adopt it. Tom, who is an appellate lawyer w/the guardian program opposed the proposed amendment to 9.130, I think because he believed it was too broad. The subcommittee's main concern back then was that the standard of review of similar orders, i.e. temporary child custody, was different in divorce matters than dependency matters. The divorce orders could be appealed, while the dependency orders were only reviewable by cert. There has been massive confusion in the DCAs concerning which dependency orders are appealable and which are reviewable by cert. Part of the problem was a version of rule 9.146(b) that courts were reading to provide jurisdiction to review any order in a

juvenile dependency or termination matter by appeal. We proposed an amendment to that rule, which was adopted and which we though resolved the problem. But no, lawyers for parents are still filing nonfinal appeals of orders that should be reviewed by cert. and sometimes calling them final orders. If a nonfinal order is entered after a dependency adjudication, some courts are treating such orders as nonfinal and appealable under 9.130(4). Some courts are not, and some courts treat them as appeals one day and certs the next. Tom keeps his eye on this issue, and because his office participates in appeals statewide, he sees the variety of treatments given in the various districts. One component of the problem is that the lawyers filing these nonfinal appeals (or certs) are not appellate lawyers--under the statutes, the trial lawyers must handle nonfinal appeals in juvenile proceedings. So many of them don't understand the difference between final orders and nonfinal orders, and don't know when the review should be by appeal or cert. Tom believed that a specific list might help resolve the confusion in the courts and in the legal community. I'll let him pipe in with more info if he reads this because he is far more well versed on this issue than I am. Hope this recitation was helpful. Fran.

Tom Young also responded to Mr. Miller. His response was:

Thanks, Fran. You''e summary of the problem is correct. The district courts are all over the map. I even ran across a 2006 case the other day in which the fourth district reviewed a shelter order by direct appeal. The courts do not address prior inconsistent panel rulings when they go a different direction. The situation is a complete mess. There is also an equal protection issue underlying the disparate treatment of dependent children at least insofar as nonfinal custody orders are concerned. Nondependent children's best interests are immediately reviewable under rule 9.130(a)(3)(C)(iii), but most courts say that rule doesn't apply to dependent children. There is dicta in the second district suggesting it might. Of course, custody changes are arguably more detrimental to dependent children whose lives are already in turmoil.

The subcommittee felt that no change was necessary in response to Mr. Miller's substantive comment. In addition to the Commission Report, the issue is fully briefed in the memoranda by Tom Young (the majority position) and by Porsche Shantz (the minority position). These memoranda are included in the materials previously sent by Steve to the full ACRC.

I certify that these rules and forms were read against West's *Florida Rules of Court – State* (2008).

_____

Ellen H. Sloyer, Associate Editor
Legal Publications
The Florida Bar