

Supreme Court of Florida

No. AOSC17-11
*Corrected*¹

IN RE: DEPENDENCY AND TERMINATION OF PARENTAL RIGHTS
 APPEALS

ADMINISTRATIVE ORDER

The Supreme Court recognizes the need to timely resolve court disputes involving children as court delays may considerably extend a child's temporary placement in foster care. Since 2011, the Commission on District Court of Appeal Performance and Accountability has been charged with monitoring the timeliness of dependency and termination of parental rights appeals cases to ensure expedited outcomes. Through this monitoring process, it is noted that the district courts continue to meet the overall goal of 165 days from Notice of Appeal to Disposition. However, consistently, the districts do not meet the timeframes for document receipt, including Notice of Appeal to Record, Record to Initial Brief, Initial Brief to Answer Brief, and Answer Brief to Reply Brief.

1. A corrected version of this administrative order is hereby issued to reflect that the appropriate citation in Recommendation 34 on page 8, Motions for Extension of Time, is R. 9.146(g)(4)(C), Fla. R. App. P.

Through In re: Commission on Trial Court Performance and Accountability, Fla. Admin. Order No. AOSC 14-40 (July 2, 2014) and In re: Commission on District Court of Appeal Performance and Accountability, Fla. Admin. Order No. AOSC 14-41 (July 2, 2014), the Supreme Court directed a study on the issue of delay in the receipt of essential documents that comprise the record in dependency and termination of parental rights appeals. A joint workgroup was established between the Commission on District Court of Appeal Performance and Accountability and the Commission on Trial Court Performance and Accountability to determine the issues surrounding document receipt delay in these cases and develop processes to address these issues.

Through these efforts, the commissions submitted a joint report to the Supreme Court entitled Recommendations for Dependency and Termination of Parental Rights Appeals (the Report). The Report focuses on suggested practices intended to reduce delay in the receipt of documents in these cases. The recommendations are categorized by participant in the process, including judges, clerks, court administration, and the performance and accountability commissions.

The Report notes that while several rules and court procedures have been developed to address delays in dependency and termination of parental rights cases, these processes may be inadvertently overlooked in practice. For example, Rule 9.200(a)(1), Fla. R. App. P. requires that “[e]xcept as otherwise designated by

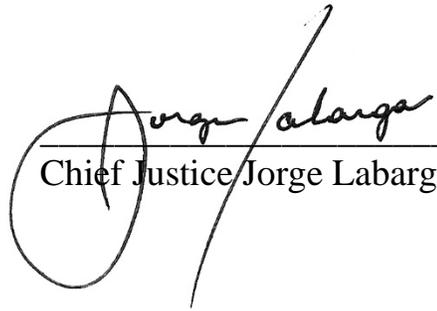
the parties, the record shall consist of all documents filed in the lower tribunal, all exhibits that are not physical evidence, and any transcript(s) of proceedings filed in the lower tribunal. . . .” The Report notes that on occasion in these cases, exhibits are not included in the record, thus requiring appellate counsel to request the exhibits from the trial court clerk, which in turn causes delay. Therefore, the Report recommends unless a party expressly designates that exhibits should not be included, the clerk of the lower tribunal should always include exhibits, other than physical evidence, in the record on appeal.

By correctly following established court rules and the recommendations of the Report, only then can the critical importance of achieving permanency and finality in a child’s life be realized. Thus, several recommendations of the Report reiterate these rules and procedures and encourage conformity. Many other recommendations stress efforts to communicate and provide advance notice in these appeals. Simple efforts on the part of all stakeholders would greatly reduce the delays in these case affecting children.

The Supreme Court appreciates the commissions’ efforts and ideas towards improving timeliness regarding transcript and record production in dependency and termination of parental rights appeals cases. Implementation of these practices on the part of all stakeholders will greatly reduce the delays in these cases, for the benefit of the children involved.

Accordingly, the attached recommendations are hereby adopted and incorporated herein by reference, as a means to alleviate delay in dependency and termination of parental rights cases. These approved polices are effective upon the signing of this order.

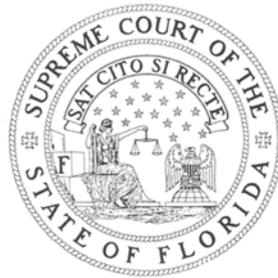
DONE AND ORDERED, at Tallahassee, Florida, on February 28, 2017.


Chief Justice Jorge Labarga

ATTEST:



John Tomasino, Clerk of Court



RECOMMENDATIONS

A. Clerks of Court

Trial Court Clerks

1. Trial court clerks shall fully comply with Rule 9.200, Fla. R. App. P. by including all exhibits in the record for dependency/termination of parental rights appeal cases, other than physical evidence, if there is no designation otherwise.
2. Trial court clerks should provide a courtesy copy of the Notice of Appeal to the trial court judge who heard the original dependency/TPR matter.
3. Trial court clerks should provide courtesy copies of all court reporter designations and signed orders appointing appellate counsel to the manager of court reporting services upon filing.

Appellate Court Clerks

4. Appellate court clerks should request the clerk of the circuit court to transmit to the appellate court with the notice of appeal a copy of the designation to the court reporter and the order appointing appellate counsel.
5. Appellate court clerks should issue standard briefing schedule orders which provide the following:
 - a. Time frames specified in Rule 9.146(g), Fla. R. App. P.
 - b. Requirements for the appellant's counsel to file within five (5) days a certificate indicating the name and contact information for the court reporter(s), the date the designations were served on the court reporter(s) and the date the appellate court's briefing schedule order was served on the court reporter(s), or a certificate indicating that no transcript will be prepared in connection with the appeal.
6. Appellate court clerks should issue orders requiring counsel who filed the notice of appeal to report the status of the appellant's representation, if the order appointing appellate counsel is not transmitted to the appellate court with the notice of appeal.
7. Appellate court clerks should issue orders requiring the court reporter(s) to file the acknowledgment of the designations within five (5) days, as required by Rule 9.200(b)(3), Fla. R. App. P.
8. Appellate court clerks should uniquely distinguish the electronic file for ease of identifying the case as expedited.

9. Appellate court clerks should submit all motions for extensions of time for consideration by the chief judge, assigned judge, or motion panel for judicial action.
10. Appellate court clerks should immediately assign substantive motions in dependency/TPR appeals cases to the chief judge, assigned judge, or appropriate panel for judicial action.
11. Appellate court clerks should maintain a tickler system for due dates of events to monitor the progress of a dependency/TPR appeal.
12. Appellate court clerks should report delinquent cases to the chief judge, assigned judge, or panel for judicial action.
13. Appellate court clerks should serve show cause orders directed to a court reporter, circuit court clerk, or appointed counsel, on the chief judge of the circuit as appropriate to the circumstances of the order.
14. Appellate court clerks should consider assigning a case to a merits panel upon the filing of the last answer brief.
15. Appellate court clerks should give priority assignment on the conference/oral argument calendar to TPR/Dependency cases.
16. Appellate court clerks should consider shortening the time for pre-release review of opinions depending on whether the decision is a written opinion or a non-written opinion.
17. Appellate court clerks should immediately give post-opinion motions to the panel for consideration because Rule 9.146(g)(6), Fla. R. App. P., does not authorize responses to these motions unless ordered by the court.
18. For non-written opinions, appellate court clerks should issue mandates after the expiration of the rehearing time or with the order denying the post-opinion motion.
19. For written opinions, appellate court clerks should issue mandates as prescribed by Rule 9.340, Fla. R. App. P., or as otherwise directed by the court.
20. Appellate court clerks should provide copies to trial court administration of court orders granting or denying motions for extension of time filed by the Office of Criminal Conflict and Civil Regional Counsel or other appointed counsel.
21. Appellate court clerks should provide copies to trial court administration of court orders addressed to the court reporter assigned for transcript production in dependency/termination of parental rights appeals.

B. Commissions

Commission on Trial Court Performance and Accountability

22. The Commission on Trial Court Performance and Accountability should establish time frames for trial court judges from completion of trial to entry of final judgment in dependency/termination of parental rights cases for the Court to consider and eventually act upon via rule.

23. The Commission on Trial Court Performance and Accountability should establish time frames for compliance with Rule 8.517, Fla. R. Juv. P., Withdrawal and Appointment of Counsel, for the Court to consider and possibly amend the rule.

24. The Commission on Trial Court Performance and Accountability should consider pursuing the creation of a court rule that would set forth a fixed time period within which counsel must submit either prepared orders in a dependency case following trial or proposed orders in a termination of parental rights case following trial.

Commission on District Court of Appeals Performance and Accountability

25. When evaluating whether performance goals have been met, five days for service should be added to those dependency/termination of parental rights timeframes involving receipt of documents.

C. Circuits (Chief Judges and Trial Court Administration)

26. Trial court administration, including the administrator, court reporting managers, and other designated personnel, should register for electronic filing for the district court of appeal for their jurisdiction.

27. Court reporting managers should register for the Florida Courts E-Filing Portal.

28. Circuits should require attorneys participate in an educational opportunities on the rules and procedures for dependency/termination of parental rights appeals in order to be placed on the assignment rotation for these cases.

29. Trial court administration, with the approval of the chief judge, should consider excessive requests for extensions when determining eligibility for appointment as appellate counsel.

30. Trial court administration, with the approval of the chief judge, should include provisions for accountability in negotiating contracts with court reporters involved in transcript production for dependency/termination of parental rights appeals.

31. Court reporters should be required to file in the district court a Notice of Filing indicating the date the transcripts were filed with the clerk of the circuit court simultaneously with the filing of the transcript.

32. The chief judge of a circuit should consider issuing an administrative order directing the clerk of court to send a copy of all court reporter designations to the manager of the court reporting services upon filing.

D. Judges

Trial Court Judges

33. Trial court judges should require trial court attorneys in dependency/termination of parental rights cases to fully comply with R. 8.517, Fla. R. Juv. P., Withdrawal and Appointment of Counsel, before granting a motion to withdraw.

District Court Judges

34. District court judges should require parties in dependency/termination of parental rights appeal cases to fully comply with the requirements in R. 9.146(g)(4)(C), Fla. R. App. P., Motions for Extension of Time, including providing the 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.

35. District court judges should require that requests for oral argument in dependency/termination of parental rights appeals case provide a rationale for the request. In considering whether to grant the request, district court judges should determine if granting the request will delay the child's opportunity for permanency.