

IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO THE FLORIDA
RULES OF JUVENILE PROCEDURE
(THREE-YEAR CYCLE)

Case No. SC09-141

**APPENDIX TO
COMMENTS OF THE FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES**

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Rule 8.235 Motions

(e) Motion for Post-Termination Relief. A motion seeking post-termination relief on the basis that a parent's constitutional rights were violated as the result of the acts or omissions of counsel may be filed as allowed by this subdivision. The motion shall be under oath and must include the nature of the relief sought as well as a brief statement of the facts (and other conditions) relied upon in support of the motion, including the specific acts or omissions that are alleged to have caused the violation. A response to the motion may be filed within 7 days, either admitting or denying the asserted violation.

(1) Motion Before Appeal. During the time allowed for the filing of a notice of appeal of an order terminating parental rights, a parent may file a motion for post-termination relief.

(A) This motion shall stay rendition under Florida Rule of Appellate Procedure 9.020(h).

(B) Unless the trial court determines that the motion can be resolved as a matter of law without a hearing, it shall hold a calendar call no later than 10 days from the filing of the motion, with notice to all parties, for the express purpose of either ruling on the motion or determining the need for an evidentiary hearing. If an evidentiary hearing is needed, it shall be set no more than 10 days from the date of the calendar call. Within 30 days from the filing of the motion, the trial court shall file an order ruling on the motion. If no order is filed within 30 days, the motion shall be considered denied.

(C) On the filing of a motion for post-termination relief, the clerk shall forward the motion and file to the court. If the motion, files, and records in the case conclusively show that the movant is entitled to no relief, the motion shall be denied without a hearing. In those instances when the denial is not predicated on the legal insufficiency of the motion on its face, a copy of that portion of the files and records that conclusively shows that the movant is entitled to no relief shall be attached to the order.

(2) Motion Pending Appeal. If an appeal is pending, a parent may file in the trial court a motion for post-termination relief. The motion may be filed by appellate counsel and must be served before the party's first brief is served. A notice of pending motion for post-termination relief shall be filed in the appellate court, which notice automatically shall extend the time for the filing of the brief until 10 days after the clerk of the court transmits the supplemental record under Florida Rule of Appellate Procedure 9.146(h).

(A) The motion shall be served on the trial court and on all trial and appellate counsel of record. Unless the motion expressly states otherwise, appellate counsel will represent the movant on the motion.

(B) The trial court shall resolve this motion in accordance with the procedures in subdivision (e)(1)(B) and (C), except that, if the portions of the files and records that conclusively show that a movant is not entitled to relief are contained in the record on appeal, the trial court may give page references to those portions in its order, rather than attaching copies to the order.

(C) In accordance with Florida Rule of Appellate Procedure 9.146(h), the clerk of circuit court shall supplement the appellate record with the motion, the order, any

amended or new order of termination, and, if designated, a transcript of any additional portion of the proceedings.

Rule 8.515 Providing Counsel to Parties

(a) Duty of the Court.

- (2) The court shall appoint counsel for indigent parents as provided by law. The court may appoint counsel for other parties as provided by law. The court shall not appoint trial counsel to represent a parent on appeal unless the parent waives any conflicts and any potential claims of constitutional violations arising from the acts or omissions of such counsel that are not raised on appeal. Upon such a waiver, the court shall have the discretion to appoint trial counsel for appellate purposes should it choose to do so. In the event that a parent wishes to have trial counsel continue representation on appeal without appointment, the court shall advise the parent that continued representation will constitute such a waiver.

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

(h) Supplemental Record for Motion for Post-Termination Relief Pursuant to Florida Rules of Juvenile Procedure 8.235(e)

- (A) The clerk of circuit court shall automatically supplement the appellate record with any motion pursuant to Florida Rule of Juvenile Procedure 8.235(e), any response, any resulting order, and any amended or new order of termination. The clerk shall transmit the supplement to the appellate court within 5 days of the filing of the order ruling on the motion. If an order is not filed within 30 days from the filing of the motion, this time shall run from the expiration of the 30 day period, and the clerk shall supplement the record with motion and a statement that no order was timely filed.
- (B) If any appellate counsel determines that a transcript of a proceeding relating to such a motion is required to review the post-termination issue, appellate counsel shall, within 5 days from the transmittal of the supplement described in subdivision (A), designate those portions of the proceedings not on file deemed necessary for transcription and inclusion in the record. A copy of the designation shall be filed with the appellate court. The procedure for this supplementation shall be in accordance with this subdivision, except that counsel is not required to file a revised statement of judicial acts to be reviewed, the court reporter shall deliver the transcript within 10 days, and the clerk shall supplement the record with the transcript within 5 days of its receipt.