

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. Appeal proceedings in juvenile dependency and termination of parental rights cases and cases involving families and children in need of services will be as in civil cases except to the extent those rules are modified by this rule.

(b) Who May Appeal. Any child, any parent, guardian ad litem, or 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) Stay of Proceedings.

(1) Application. Except as provided by general law and in subdivision (c)(2) of this rule, a party seeking to stay a final or nonfinal order pending review must file a motion in the lower tribunal, which has 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 will not operate as a stay in any case unless pursuant to an order of the court or the lower tribunal, 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 Families for subsequent adoption will be suspended while the appeal is pending, but the child will continue in custody under the order until the appeal is decided.

(3) Review. A party may seek review of a lower tribunal's order entered under this rule by filing a motion in the court.

(d) Retention of Jurisdiction. Transmission of the record to the court does not remove the jurisdiction of the circuit court to conduct judicial reviews or other proceedings related to the health and welfare of the child pending appeal.

(e) References to Child or Parents. When the parent or child is a party to the appeal, the appeal will be docketed and,



with the exception of transcripts, any documents filed in the court must 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, documents other than transcripts, and the decision of the court must be by initials.

(f) Confidentiality. Filings will not be open to inspection except by the parties and their counsel, or as otherwise ordered, pursuant to Florida Rule of General Practice and Judicial Administration 2.420.

(g) 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 must be prepared in accordance with rule 9.200, except as modified by this subdivision.

(B) Transcripts of Proceedings. The appellant must 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 must be served on the court reporter on the date of filing and must state that the appeal is from a final order of termination of parental rights or of dependency, and that the court reporter must 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 must transcribe and file with the clerk of the lower tribunal the transcripts and sufficient copies for all parties exempt from service by e-mail as set forth in Florida Rule of General Practice and Judicial Administration 2.516. If extraordinary reasons prevent the reporter from preparing the transcript(s) within the 20 days, the reporter must request an extension of time, must state the number of additional days requested, and



must state the extraordinary reasons that would justify the extension.

(C) Directions to the Clerk, Duties of the Clerk, Preparation and Transmission of the Record. The appellant must file directions to the clerk of the lower tribunal with the notice of appeal. The clerk of the lower tribunal must electronically 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 electronically transmitted to the court, the clerk of the lower tribunal must simultaneously electronically transmit the record to the Department of Children and Families, the guardian ad litem, counsel appointed to represent any indigent parties, and must simultaneously serve copies of the index to all nonindigent parties, and, on their request, copies of the record or portions thereof. The clerk of the lower tribunal must provide the record in paper format to all parties exempt from electronic service as set forth in the Florida Rules of General Practice and Judicial Administration.

(3) Briefs.

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

(B) Times for Service. The initial brief must be served within 30 days of service of the record on appeal or the index to the record on appeal. The answer brief must be served within 30 days of service of the initial brief. The reply brief, if any, must be served within 15 days of the service of the answer brief. In any appeal or cross-appeal, if more than 1 initial or answer brief is authorized, the responsive brief must be served within 30 days after the last initial brief or within 15 days after the last answer brief was served. If the last authorized initial or answer brief is not served, the responsive brief must be served within 30 days after the last authorized initial brief or within 15 days after the last



authorized answer brief could have been timely served.

(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, must be filed with the notice of appeal. The motion and a copy of the notice of appeal must be served on the presiding judge in the lower tribunal. The presiding judge must 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 must be served on the parent and must 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 will 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. Within 5 days of the issuance of an order granting the motion to withdraw, appellate counsel must file a notice with the court certifying that counsel has forwarded a copy of the record and the transcript(s) of the proceedings to the parent or that counsel is unable to forward a copy of the record and the transcript(s) of the proceedings because counsel cannot locate the parent after making diligent efforts.

(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 must state that the appeal is from a final order of termination of parental rights or of dependency, and must 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 must 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; Issuance of Written Opinion. Motions for rehearing, rehearing en banc, clarification, certification, and issuance of a written opinion must 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 of the court must issue such mandate or process as may be directed by the court as soon as practicable.

(h) Expedited Review. The court must give priority to appeals under this rule.

(i) Ineffective Assistance of Counsel for Parents' Claims – Special Procedures and Time Limitations Applicable to Appeals of Orders in Termination of Parental Rights Proceedings Involving Ineffective Assistance of Counsel Claims.

(1) Applicability. Subdivision (i) applies only to appeals to the district courts of appeal of orders in termination of parental rights proceedings involving a parent's claims of ineffective assistance of counsel.

(2) Rendition. A motion claiming ineffective assistance of counsel filed in accordance with Florida Rule of Juvenile Procedure 8.530 will toll rendition of the order terminating parental rights under Florida Rule of Appellate Procedure 9.020 until the lower tribunal files a signed, written order on the motion, except as provided by Florida Rules of Juvenile Procedure 8.530.

(3) Scope of Review. Any appeal from an order denying a motion alleging the ineffective assistance of counsel



must be raised and addressed within an appeal from the order terminating parental rights.

(4) Ineffective Assistance of Counsel Motion Filed After Commencement of Appeal. If an appeal is pending, a parent may file a motion claiming ineffective assistance of counsel pursuant to Florida Rule of Juvenile Procedure 8.530 if the filing occurs within 20 days of rendition of the order terminating parental rights.

(A) Stay of Appellate Proceeding. A parent or counsel appointed pursuant to Florida Rule of Juvenile Procedure 8.530 must file a notice of a timely filed, pending motion claiming ineffective assistance of counsel. The notice automatically stays the appeal until the lower tribunal renders an order disposing of the motion.

(B) Supplemental Record; Transcripts of Proceedings. The appellant must file a second designation to the court reporter, including the name(s) of the individual court reporter(s). The appellant must serve the designation on the court reporter on the date of filing and must state that the appeal is from an order of termination of parental rights, and that the court reporter must provide the transcript of the hearing on the motion claiming ineffective assistance of counsel within 20 days of the date of service. Within 20 days of the date of service of the designation, the court reporter must transcribe and file with the clerk of the lower tribunal the transcript and sufficient copies for all parties exempt from service by e-mail as set forth in the Florida Rules of General Practice and Judicial Administration. If extraordinary reasons prevent the reporter from preparing the transcript within the 20 days, the reporter must request an extension of time, state the number of additional days requested, and state the extraordinary reasons that would justify the extension.

(C) Duties of the Clerk; Preparation and Transmission of Supplemental Record. If the clerk of circuit court has already transmitted the record on appeal of the order terminating parental rights,



the clerk must automatically supplement the record on appeal with any motion pursuant to Florida Rule of Juvenile Procedure 8.530, the resulting order, and the transcript from the hearing on the motion. The clerk must electronically transmit the supplement to the court and serve the parties within 5 days of the filing of the order ruling on the motion, or within 5 days of filing of the transcript from the hearing on the motion by the designated court reporter, whichever is later.

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.

2009 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 (g)(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 (2008), 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.

