



April 1, 2016

The Honorable Jorge Labarga
Chief Justice, Supreme Court of Florida
Supreme Court Building
500 South Duval Street
Tallahassee, Florida 32399

RE: Performance Study: Dependency and Termination of Parental Rights Appeals

Dear Chief Justice Labarga:

In AOSC14-40 and AOSC14-41, the Commission on Trial Court Performance and Accountability (TCP&A) and the Commission on District Court of Appeal Performance and Accountability (DCAP&A) were directed to collaborate on a joint study to define the issues that cause delay in the receipt of documents at the appellate level in dependency and termination of parental rights (TPR) appeals. The DCAP&A is responsible for monitoring performance measures, including timeframes, for dependency and TPR appeals. Over several years of monitoring, 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 – Notice of Appeal to Record, Record to Initial Brief, Initial Brief to Answer Brief, and Answer Brief to Reply Brief.

The Commissions established a joint workgroup in the fall of 2014 to determine the issues and processes that may alleviate those issues. As detailed in the enclosed report, the workgroup notes that several rules and court procedures have been developed to address these delays, but that these may be overlooked in practice. Thus, the workgroup developed recommendations that reiterate these rules and procedures and encourage conformity. Other recommendations stress efforts at providing communication and notice in advance of these appeals. The

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Commissions believe simple efforts on the part of all stakeholders, including judges, clerks, court reporters, trial court administration, and appellate counsel, would greatly reduce delays in dependency/TPR appeal cases. As a result, through collective effort, these timeframes can be improved. As you know, each reduction in time on appeal is a direct benefit to the child in the time to permanency.

On behalf of the Commissions, thank you for the opportunity to present this information to the Court. Should you have any questions or if the Commissions may be of further assistance, please do not hesitate to contact us.

Sincerely,



Diana L. Moreland
Chair, TCP&A



Vance E. Salter
Chair, DCAP&A

VES/DLM/me
Enclosure

**Commission on District Court of Appeal
Performance & Accountability
and
Commission on Trial Court
Performance & Accountability**

**Recommendations for
Dependency and
Termination of Parental Rights
Appeals**

April 2016

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Executive Summary

After years of study, the Commission on District Court of Appeal Performance and Accountability (DCAP&A) has been charged by Supreme Court, since 2011, with monitoring the management of dependency and termination of parental rights appeals cases. The purpose of this monitoring process, as noted by the DCAP&A, in [*Delay in Child Dependency/Termination of Parental Rights Appeals*](#), is to achieve the goal of reducing time on appeal, in order to resolve issues expeditiously that involve the welfare of children. In establishing a performance monitoring process for dependency and termination of parental rights cases, the Supreme Court issued SC08-1724, which adopted eight time frames in these matters:

- **Final Judgment to Disposition:** the time between the date of the final judgment (lower tribunal date rendered) to the date of the final disposition, with a goal of 195 median days.
- **Notice of Appeal to Disposition:** the time between the filing of the notice of appeal (lower tribunal date filed) to the date of the final disposition, with a goal of 165 median days.
- **Notice of Appeal to Record:** based on Rule 9.146(g)(2)(B), Florida Rules of Appellate Procedure, the time between the filing of the notice of appeal (lower tribunal date filed) to the date of the last record before the last initial brief, with a goal of 25 median days. According to the rule, court reporters are allowed an extension of time for extraordinary reasons.
- **Record to Initial Brief:** based on Rule 9.146(g)(3)(B), Florida Rules of Appellate Procedure, the time between the date of the last record before the last initial brief to the date of the last initial brief, with a goal of 20 median days. Extensions may be granted under Rule 9.146(g)(4)(C), Florida Rules of Appellate Procedure.
- **Initial Brief to Answer Brief:** based on Rule 9.146(g)(3)(B), Florida Rules of Appellate Procedure, the time between the date of the last initial brief to the date of the last answer brief, with a goal of 20 median days. Extensions may be granted under Rule 9.146(g)(4)(C), Florida Rules of Appellate Procedure.
- **Answer Brief to Reply Brief:** based on Rule 9.146(g)(3)(B), Florida Rules of Appellate Procedure, the time between the date of the last answer brief to the date of the last reply brief, with a goal of 10 median days. Extensions may be granted under Rule 9.146(g)(4)(C), Florida Rules of Appellate Procedure.

- **Answer Brief to Conference/Oral Argument:** the time between the date of the last answer brief to the conference/oral argument date, with a goal of 40 median days.
- **Conference/Oral Argument to Disposition:** based on Rule 2.250(a)(2), Florida Rules of Judicial Administration, the time between the date of conference/oral argument to the date of the final disposition, with a goal of 60 median days.

Through the monitoring process, the DCAP&A has noted that the district courts consistently meet four of the eight time frames. However, the data also indicates that, while continued improvements have been made in those time frames involving the receipt of documents, there are issues with meeting the performance goals. The four time frames involving document receipt – Notice of Appeal to Record, Record to Initial Brief, Initial Brief to Answer Brief, and Answer Brief to Reply Brief – have been addressed with definitive time frames by rule amendments in 2009. While extensions of time and lack of resources in the trial courts and with appellate counsel may play a substantial role in the districts' ability to meet the stated time frames, the district courts are committed to continue efforts to address these issues with circuit court staff and parties to an appeal.

In that regard, the Supreme Court directed both the DCAP&A and the Commission on Trial Court Performance and Accountability, in [AO14-40](#) and [AO14-41](#), to establish a joint study to define the issues that cause delay in the receipt of documents at the appellate level for dependency/termination of parental rights appeals and determine processes that may alleviate the issues and improve the time in which the documents are received.

A joint workgroup was established in the fall of 2014. Over the course of several meetings, the workgroup reviewed data, drafted a court reporting manager survey and reviewed the responses, and identified issues to address. Additionally, the workgroup requested that the [Court Reporting Circuit Profiles](#) be updated so more recent data could be evaluated. During the process, the workgroup reached out to the various stakeholders, such as the court reporting managers, the district court clerks, and the trial court clerks.

Through these efforts, the workgroup determined several recommendations to address the issue of delay in document receipt in dependency/TPR appeals. It was noted that several rules and court procedures have been developed to address these delays, but may be overlooked in practice. A portion of the recommendations reiterates these rules and procedures and encourages conformity. Other recommendations stress efforts at providing communication and notice in advance of these appeals. The workgroup noted that simple efforts on the part of all stakeholders, including judges, clerks, court reporters, trial court administration, and appellate counsel, would greatly reduce the delays in dependency/TPR appeal cases. Through collective effort, these cases can be resolved expeditiously for the children's sake.

RECOMMENDATIONS	
A. CLERKS OF COURT	
<i>Trial Court Clerks</i>	
1.	Trial court clerks should fully comply with Rule 9.200, Fla. R. App. P. by including all exhibits, unless otherwise designated, in the record for dependency/termination of parental rights appeal cases.
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.
<i>Appellate Court Clerks</i>	
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: <ol style="list-style-type: none"> 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
<i>Commission on Trial Court Performance and Accountability</i>
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.
<i>Commission on District Court of Appeal Performance and Accountability</i>
25. When evaluating whether performance goals have been met, five days for service should be added to those dependency/termination of parental rights time frames 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
<i>Trial Court Judges</i>
33. Trial court judges should require trial court attorneys in dependency/termination of parental rights cases to fully comply with Rule 8.517, Fla. R. Juv. P., Withdrawal and Appointment of Counsel, before granting a motion to withdraw.
<i>District Court Judges</i>
34. District court judges should require parties in dependency/termination of parental rights appeal cases to fully comply with the requirements in Rule 9.145(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.

Background

In June, 2006, the Commission on District Court of Appeal Performance and Accountability (DCAP&A) submitted a report to the Florida Supreme Court on [*Delay in Child Dependency/Termination of Parental Rights Appeals*](#). The report provided a review of how national organizations and other states have addressed issues that may cause harmful effects on the welfare of children and collected information on the steps that the district courts have taken to address them. The DCAP&A 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 the rules, the DCAP&A’s report noted that such cases required active case management and monitoring on appeal with reporting mechanisms to assure that time parameters are met. The court accepted the report and, subsequently, requested the DCAP&A further study the issue and propose timelines along with any rule changes necessary to expedite these appeals.

As requested, the DCAP&A submitted a [*Supplemental Report & Recommendations*](#) in June 2007. The report proposed specific policy and rule changes intended to expedite dependency and termination of parental rights cases. The recommendations suggested a timeline for the appellate process of 195 days, measured from rendition of the final judgment to rendition of the opinion on appeal. The DCAP&A identified areas in which improvements would be essential to the success of the proposed timeline and provided several recommendations, including:

- Require that an adjudication of dependency or final judgment of termination of parental rights set forth all of the specific days on which the hearing occurred;
- Provide that a parent’s indigent status shall be presumed to continue for purposes of appeal unless revoked by the trial court;
- Require that a motion for appointment of appellate counsel and authorization of payment of transcription costs be filed with the notice of appeal and that the trial judge be served with a copy of the notice of appeal and motion for appointment of appellate counsel;
- Require that directions to the clerk and designations to the court reporter be filed with the notice of appeal and that the designations be served on the court reporter;
- Require that the designation to the reporter include the name of the court reporter and provide twenty days for transcription;

- Require that the transcription of hearings for appeal of dependency and parental termination orders be given priority over transcriptions of all other court proceedings;
- Require the clerk of the court to complete and file the record on appeal within five days after receiving the transcript on appeal and service copies of the record on the parties;
- Require that the initial brief be filed within twenty days of service of the record on appeal, the answer brief within twenty days of service of the initial brief, and the reply brief within ten days of service of the answer brief;
- Provide that motions for extension of time be granted only for good cause shown and only for the necessary amount of time;
- Require that a request for oral argument be served with the party's first brief;
- Permit fifteen days to file a motion for rehearing and require no response unless ordered by the court; and
- Eliminate the additional time for issuance of mandate after the denial of rehearing.

By letter dated October 9, 2007, former Chief Justice Lewis referred the DCAP&A's recommendations, along with a set of draft rule amendments, to the Appellate Court Rules Committee, the Juvenile Court Rules Committee, and the Rules of Judicial Administration Committee. The rules committees were asked to work together to analyze the draft amendments and commission recommendations and to propose any amendments to the rules or forms deemed necessary to implement the DCAP&A's recommendations.

Based on the recommendations in the DCAP&A's 2007 report, the Supreme Court issued [SC08-1724 In Re: Amendments to the Florida Rules of Judicial Administration, the Florida Rules of Juvenile Procedure, and the Florida Rules of Appellate Procedure – Implementation of the Commission on District Court of Appeal Performance and Accountability Recommendations](#), on November 12, 2009. In doing so, the Court agreed with the DCAP&A that "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" and adopted the time frames suggested by the DCAP&A, including:

- Mandating that a district court of appeal should render a decision in juvenile dependency and termination of parental rights cases within 60 days;

- Requiring that the record be provided to the appellate court within 25 days from the notice of appeal;
- Requiring that the initial brief be served within 20 days of the service of the record;
- Requiring that the answer brief be served within 20 days of the service of the initial brief; and
- Requiring that the reply brief be served within 10 days of the service of the answer brief.

Additionally, in [Administrative Order SC08-84](#), the Supreme Court tasked the DCAP&A with monitoring the processing of dependency and termination of parental rights cases. Accordingly, at three meetings held during the 2008-2010 term, the commission reviewed time frame data based on the recommendations contained in both the 2006 and 2007 reports. Working with the district court clerks and staff of the Office of the State Courts Administrator, the DCAP&A developed statistical reports that may be generated from the district court case management system by personnel at any time during the year. These reports provide the median days for eight different time frames and also provide the percent of cases within the recommended time frames for each district. The time frames included:

- **Final Judgment to Disposition:** the time between the date of the final judgment (lower tribunal date rendered) to the date of the final disposition, with a goal of 195 median days.
- **Notice of Appeal to Disposition:** the time between the filing of the notice of appeal (lower tribunal date filed) to the date of the final disposition, with a goal of 165 median days.
- **Notice of Appeal to Record:** based on Rule 9.146(g)(2)(B), Florida Rules of Appellate Procedure, the time between the filing of the notice of appeal (lower tribunal date filed) to the date of the last record before the last initial brief, with a goal of 25 median days. According to the Rule, court reporters are allowed an extension of time for extraordinary reasons.
- **Record to Initial Brief:** based on Rule 9.146(g)(3)(B), Florida Rules of Appellate Procedure, the time between the date of the last record before the last initial brief to the date of the last initial brief, with a goal of 20 median days. Extensions may be granted under Rule 9.146(g)(4)(C), Florida Rules of Appellate Procedure.

- **Initial Brief to Answer Brief:** based on Rule 9.146(g)(3)(B), Florida Rules of Appellate Procedure, the time between the date of the last initial brief to the date of the last answer brief, with a goal of 20 median days. Extensions may be granted under Rule 9.146(g)(4)(C), Florida Rules of Appellate Procedure.
- **Answer Brief to Reply Brief:** based on Rule 9.146(g)(3)(B), Florida Rules of Appellate Procedure, the time between the date of the last answer brief to the date of the last reply brief, with a goal of 10 median days. Extensions may be granted under Rule 9.146(g)(4)(C), Florida Rules of Appellate Procedure.
- **Answer Brief to Conference/Oral Argument:** the time between the date of the last answer brief to the conference/oral argument date, with a goal of 40 median days.
- **Conference/Oral Argument to Disposition:** based on Rule 2.250(a)(2), Florida Rules of Judicial Administration, the time between the date of conference/oral argument to the date of the final disposition, with a goal of 60 median days.

In [Administrative Order SC10-47](#), the Supreme Court directed the DCAP&A to continue to monitor dependency and termination of parental rights case data. With the Supreme Court’s approval of revisions to the rules in November 2009, the DCAP&A determined that the statistics should be reviewed when the rule revisions have been in effect for at least a year. In February 2011, the DCAP&A initiated the first review since rule implementation, on the eight time frames pertinent to dependency/TPR. As a result of that review, the DCAP&A submitted [Performance Monitoring Report: Dependency and Termination of Parental Rights Appeals \(August 2011\)](#), noting that improvements were made across all districts in most of the time frames. The DCAP&A observed, however, that reduced resources in the trial courts, such as limited court reporters to prepare records, and at the appellate level, such as limited regional counsel or conflict counsel available to prepare briefs, may be contributing to delays in receiving the record and the filing of initial briefs.

As directed by [Administrative Order SC12-26](#), a similar review occurred in the 2012-2014 term, resulting in [Performance Monitoring Report: Dependency and Termination of Parental Rights Appeals \(June 2014\)](#). Findings in that review indicated the district courts continued to show improvement in meeting the performance goals. All district courts met the performance goals for Final Judgment to Disposition, Notice of Appeal to Disposition, Answer Brief to Conference/Oral Argument, and Conference/Oral Argument to Disposition. However, it was noted the courts still struggled with meeting the performance goals of those time frames involving the receipt of documents from outside sources. Table 1 provides the median days by time frame, per district court, over the

course of the last six fiscal years. The highlighted portion indicates where the performance goal was not met.

Table 1:

FIRST DCA	GOAL	FY08-09	FY09-10	FY10-11	FY11-12	FY12-13	FY13-14
Final Judgment to Disposition	195	196	149	132	125	135	121
Notice of Appeal to Disposition	165	170	125	108	102	113	98
Notice of Appeal to Record	25	57	37	32	37	32	33
Record to Initial Brief	20	46	27	24	19	26	30
Initial Brief to Answer Brief	20	35	27	21	18	17	21
Answer Brief to Reply Brief	10	23	9	7	10	7	15
Answer Brief to Conference/OA	40	64	27	27	30	27	25
Conference/OA to Disposition	60	8	10	9	10	8	15

SECOND DCA	GOAL	FY08-09	FY09-10	FY10-11	FY11-12	FY12-13	FY13-14
Final Judgment to Disposition	195	255	254	161	168	179	190
Notice of Appeal to Disposition	165	233	233	139	148	161	169
Notice of Appeal to Record	25	77	84	57	61	62	56
Record to Initial Brief	20	43	32	26	29	34	57
Initial Brief to Answer Brief	20	27	27	23	25	27	25
Answer Brief to Reply Brief	10	24	21	17	14	14	10
Answer Brief to Conference/OA	40	70	75	24	20	26	30
Conference/OA to Disposition	60	8	8	7	10	7	9

THIRD DCA	GOAL	FY08-09	FY09-10	FY10-11	FY11-12	FY12-13	FY13-14
Final Judgment to Disposition	195	215	178	162	150	152	141
Notice of Appeal to Disposition	165	203	157	137	126	124	124
Notice of Appeal to Record	25	70	56	38	42	44	41
Record to Initial Brief	20	27	34	20	27	19	24
Initial Brief to Answer Brief	20	25	26	24	24	28	25
Answer Brief to Reply Brief	10	14	18	13	21	17	15
Answer Brief to Conference/OA	40	34	27	10	13	19	17
Conference/OA to Disposition	60	37	21	38	23	24	42

FOURTH DCA	GOAL	FY08-09	FY09-10	FY10-11	FY11-12	FY12-13	FY13-14
Final Judgment to Disposition	195	167	186	182	168	168	154
Notice of Appeal to Disposition	165	143	166	165	141	144	130
Notice of Appeal to Record	25	39	63	39	41	37	62
Record to Initial Brief	20	39	38	41	33	39	27
Initial Brief to Answer Brief	20	27	28	26	22	28	27
Answer Brief to Reply Brief	10	8	14	16	12	11	13
Answer Brief to Conference/OA	40	55	56	55	39	40	38
Conference/OA to Disposition	60	9	5	6	5	5	21

FIFTH DCA	GOAL	FY08-09	FY09-10	FY10-11	FY11-12	FY12-13	FY13-14
Final Judgment to Disposition	195	180	202	209	187	157	140
Notice of Appeal to Disposition	165	162	180	189	169	131	124
Notice of Appeal to Record	25	66	64	40	51	54	51
Record to Initial Brief	20	15	17	29	26	33	37
Initial Brief to Answer Brief	20	25	28	31	34	28	28
Answer Brief to Reply Brief	10	13	12	16	15	12	12
Answer Brief to Conference/OA	40	105	105	99	86	21	28
Conference/OA to Disposition	60	15	6	6	NA	9	8

It was suggested by the DCAP&A that a joint study with the Commission on Trial Court Performance and Accountability (TCP&A) be established to define the issues causing the delays in receipt of documents and determine processes that could alleviate the issues.

Establishment of a Joint Workgroup on Dependency and Termination of Rights Appeals Issues

In July 2014, through [AO14-40](#) and [AO14-41](#), the Supreme Court directed the DCAP&A and the TCP&A to establish a joint study to look at issues that may cause a delay in the receipt of documents at the appellate level in dependency/TPR cases. The major goal of the study is to provide recommendations on processes that may improve time frames in receipt of documents which compromise the record in dependency/TPR appeals.

Following this directive, the DCAP&A and the TCP&A established a joint workgroup to look at these issues. Initially, the workgroup consisted of circuit judges, a trial court administrator, a district court judge, a district court clerk, a trial court clerk representative, court reporting managers, and a representative from the Office of Criminal Conflict and Civil Regional Counsel. Additionally, there was representation from the DCAP&A and the TCP&A. It was also determined that representation from the Department of Children and Families (DCF) and the Statewide Guardian ad Litem office (GAL) would provide some beneficial perspective to the group. Accordingly, two members were added from DCF and GAL.

The workgroup began meeting in September of 2014. Over the course of several meetings, the workgroup reviewed data, drafted a court reporting manager survey and reviewed the responses, and identified issues to address. Additionally, the workgroup requested that the [Court Reporting Circuit Profiles](#) be updated so more recent data could be evaluated. During the process, the workgroup reached out to the various stakeholders, such as the court reporting managers, the district court clerks, and the trial court clerks.

Through these efforts, the workgroup determined several recommendations to address the issue of delay in document receipt in dependency/TPR appeals. It was noted that several rules and court procedures had been developed to address these delays, but these processes may be overlooked in practice. A portion of the recommendations reiterates these rules and procedures and encourages conformity. Other recommendations stress efforts at providing communication and notice in advance of these appeals. The workgroup noted that simple efforts on the part of all stakeholders, including judges, clerks, court reporters, trial court administration, and appellate counsel, would greatly reduce the delays in dependency/TPR appeal cases. Through collective effort, these cases can be resolved expeditiously for the children's sake.

Joint Workgroup Members

- *The Honorable Kathleen J. Kroll*, Circuit Judge, Fifteenth Judicial Circuit, CHAIR
- *Mary Cay Blanks*, Clerk, Third District Court of Appeal
- *Melanie Casper*, Assistant Regional Counsel, Office of Criminal Conflict and Civil Regional Counsel
- *Wendie Cooper*, Appellate Director, Statewide Guardian ad Litem Program
- *Melissa Geist*, Director of Court Operations, Orange County Clerk of Courts
- *Gay Inskip*, Court Administrator, Sixth Judicial Circuit
- *The Honorable Leandra G. Johnson*, Circuit Judge, Third Judicial Circuit
- *Michael Kazoroski*, Manager, Court Reporting Services, Eighteenth Judicial Circuit
- *Nikki Peters*, Manager, Court Reporting Services, Ninth Judicial Circuit
- *The Honorable Martha C. Warner*, Appellate Judge, Fourth District Court of Appeal
- *Stephanie C. Zimmerman*, Children's Legal Services Deputy Director and Statewide Director of Appeals, Department of Children and Families

Recommendations

The following recommendations are categorized by participant in the process. These recommendations are suggested practices intended to improve delay in the receipt of documents in dependency/TPR appeals cases, but due to local conditions may be adjusted to fit the circumstances of the jurisdiction.

A. Clerks of Court

Trial Court Clerks

- 1. Trial court clerks should fully comply with Rule 9.200, Fla. R. App. P. by including all exhibits, unless otherwise designated, in the record for dependency/termination of parental rights appeal cases.**

It was noted that on occasion in dependency/termination of parental rights appeal 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 in these matters. Rule 9.200(a), Fla. R. App. P. provides that, “except as otherwise designated by the parties, the record shall consist of the original documents, all exhibits that are not physical evidence, and any transcript(s) of proceedings filed in the lower tribunal, except summonses, praecipes, subpoenas, returns, notices of hearing or of taking deposition, depositions, and other discovery.” Therefore, unless a party expressly designates that exhibits should NOT be included, the clerk of the lower tribunal should automatically include exhibits in the record on appeal. By providing all exhibits in the initial record, these delays may be alleviated.

- 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.**

By alerting the trial court judge of an appeal, some delays in the appointment of counsel for the appeal may be avoided. It is noted that the Florida Courts Technology Commission (FCTC) recently approved changes to the statewide Florida Courts E-Filing Portal that will allow those filing a notice of appeal to electronically serve the judge who entered the order being appealed at the same time the notice of appeal is filed. The change in the Portal will become operational in April 2016. However, consideration should be given to whether the rules of procedure should be amended to require service of the notice of appeal by the filer on the trial judge who entered the order in a dependency/termination of parental rights case.

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.

By providing notice to the manager of court reporting services, steps can be taken to assure the timely production of the transcript.

Appellate Court Clerks

Termination of parental rights and dependency appeals are given priority in the district courts of appeal, and are closely monitored for timely processing by either the clerk's office or central staff in each district court. As part of this joint study, the district court clerks provided recommendations pertinent to their role to facilitate and improve the timely processing of these appeals. The clerks note that some of the practices are ones which have already been implemented in the district courts and have facilitated bringing overall processing times below the 195 day goal. Others are new practices aimed towards improving specific subsets of processing times, such as the time between the filing of the notice of appeal and the receipt of the record.

- 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 provides the following:**
- c. Time frames specified in Rule 9.146(g), Fla. R. App. P.**
 - d. 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 considering 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.**

The practice of receiving court orders from the district clerk to the court reporter would allow trial court administration to immediately address any concerns with the court reporter.

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.**

As noted previously, the Commission on District Court of Appeal Performance and Accountability established time frames to meet in dependency/termination of parental rights appeals, such as 195 days from final judgment in the trial court to disposition in the appellate court. It is suggested that the TCP&A also establish time frame requirements for these cases within the trial court.

For instance, sections 39.506(1) and 39.507(1)(a), Fl. Stat. require the trial court to hold an adjudicatory hearing within 30 days of the arraignment and at the conclusion of the adjudicatory hearing, a disposition hearing be scheduled within 30 days of the last day of the adjudicatory hearing. Neither statute nor rule similarly establishes a time limit for rendering the final order once concluded. To prevent delay in reaching permanency, it is critical that orders be timely rendered by the trial court. The appellate process cannot begin until the trial court findings are reduced to writing. Therefore, it is suggested that the written order be entered no later than 60 days from the conclusion of the dependency disposition or termination of parental rights adjudicatory hearings.

- 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.**

It was noted that there are often extensive periods of time before an Order Appointing Counsel or Notice of Appeal is filed, causing some dependency/termination of parental rights appeal cases to languish. Similar to the time frames established for the appellate courts in these matters, establishing time frame requirements from trial to final judgment and to complete the requirements of Rule 8.517 would help expedite these matters.

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.

Typically, in these cases, counsel asks for 30 days to submit proposed orders, following trial, and then the court will take about a week to review the proposed orders and create its own order. A rule requiring a shorter time period, such as 30 days for TPR orders and 15 days for all other orders, would shorten the time from the conclusion of the trial to the filing of the notice of appeal.

Commission on District Court of Appeal 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 time frames involving receipt of documents.

Including the five days for service in those time frames involving receipt of documents (Notice of Appeal to Record, Record to Initial Brief, Initial Brief to Answer Brief, and Answer Brief to Reply Brief) would provide more accuracy in the data. Anecdotal evidence suggests that appellate participants currently account for the five days for service with respect to the time frame requirement.

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.

All district courts in Florida receive the record on appeal through electronic filing. Many of the recommendations in this report suggest appellate clerks provide courtesy copies of orders of the district courts to trial court administration. In order to effectuate this service,

personnel of trial court administration need to be registered for electronic filing for the respective district court.

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

Managers of court reporting services can be added to the list of Portal users. FCTC would have to approve this change. The filer of the designation to the court reporter can then serve a copy of the court reporter designations directly on the manager. Court administration, as it does with judges and judicial assistants, can manage the list of court reporter managers to ensure it is always current. It is noted that the Appellate Court Rules Committee of The Florida Bar is currently reviewing the rule regarding service of the designation of a court reporter to clarify the requirements of service by the filer of the designation, including possible copies to court reporter managers.

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

Some appellate attorneys in dependency/termination of parental rights cases are unfamiliar with the rules and procedures in these matters, which contributes to delay. Educational opportunities may be offered by The Florida Bar or local bar organizations, district courts, or trial court administration in order to provide reminders of the rules, procedures, and local court processes. By requiring attorneys to take advantage of these opportunities in order to be placed on the assignment rotation, delays may be avoided.

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.

In conjunction with Recommendation 20, by noting appellate attorneys who frequently request extensions, this information could be used by trial court administration to determine which attorneys are eligible for the assignment process for appellate work.

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.

In order to emphasize the importance of timeliness in dependency/termination of parental rights appeals, contracts with court reporters should have language addressing

accountability for timeliness. Trial court administration may consider including a provision in the contracts that require contract court reporters to provide monthly statistics for dependency/TPR transcript requests, including the transcript request data, delivery date of the completed transcript, and if necessary, an explanation of why the transcript was produced late and the number of late days.

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.

The Ninth Judicial Circuit issued Administrative Order No. 2009-09 (see Appendix A) requiring the clerk of court to provide copies of designations to the court reporting manager, in an effort to stem consistent issues with lack of notice to the court reporters. The administrative order has proven helpful in increased notices to the court reporters that a designation had been filed. It is suggested that other circuits consider this avenue.

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 Rule 8.517, Fla. R. Juv. P., Withdrawal and Appointment of Counsel, before granting a motion to withdraw.

There is concern overall that the procedures enumerated in Rule 8.517 to withdraw as counsel may be overlooked, thus causing delay and confusion as the case is appealed. Rule 8.517 requires that the counsel of record may not withdraw until the following have occurred:

- The attorney has discussed appellate remedies and certifies that the parent or legal guardian does not want to appeal; or
- The attorney has discussed appellate remedies and certifies that the parent or legal guardian does want to appeal; and
 - A notice of appeal containing the signatures of counsel and the parent or legal guardian has been filed;
 - Directions to the clerk have been filed;

- A motion to transcribe the requisite proceedings has been filed;
- A designation to the court reporter specifying 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 has been filed; and
- An order appointing appellate counsel, if any, has been entered.

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 Rule 9.145(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.

By complying with the requirements of Rule 9.145(g)(4)(C), district court judges would have the necessary information to determining whether an extension should be granted. If the required circumstances are not provided, it would be grounds to deny the motion.

35. District court judges should require that requests for oral argument in dependency/termination of parental rights appeals cases 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.

It is noted that some appellate attorneys may request oral argument as a matter of course, in order to achieve board certification in appellate law, which in turn may delay dependency/TPR appeals in concluding. Rule 9.320, Fl. R. App. Proc. states “[o]n its own motion or that of a party, the court may require, limit, expand, or dispense with oral argument.” Some appellate courts, such as the Fourth DCA, do require that a reason be provided in a request for oral argument. In [Notice to Attorneys and To Parties Representing Themselves](#), the Fourth DCA states “[a] request for oral argument shall be a separate filing, clearly designated as such, and shall contain no other subject. It shall not be made as part of a brief or appendix. The request must contain a specific but brief reason as to why oral argument is necessary.” Requiring a rationale as part of the request will provide district court judges with the information necessary to approve or deny the request.

Other Considerations

Through the course of the workgroup's tenure, much discussion focused on the role of the appellate and trial court attorneys in dependency/TPR appeals cases. While recommendations have been made to courts and clerks that would require some accountability on the part of trial court and appellate court counsel for following the requirements for expediting dependency/TPR cases, the workgroup strongly suggests that the attorneys in these matters familiarize themselves with the pertinent rules and deadlines. See Appendix B – Recommendations Affecting Counsel. Additionally, The Florida Bar and local bar organizations should provide training and education opportunities in the area of dependency/TPR circuit and appellate cases.

Furthermore, the workgroup suggests that the attorney supervisors of the Office of Criminal Conflict and Civil Regional Counsel, the Statewide Guardian ad Litem Office, and the Department of Children and Families provide oversight of these matters. For instance, by keeping track of their attorneys' requests for extensions, issues may be brought to light that can be remedied. Efforts of all participants in dependency/TPR cases can only help to improve delay.

Conclusion

The latest data indicate that all district courts are meeting the overall performance goal of 195 median days from final judgment to disposition, with substantial improvement achieved statewide, from a high of 208 median days in FY 2008-2009 to a low of 150 median days in the 1st half of FY 2013-2014. Additionally, all districts are meeting the performance goals for Notice of Appeal to Disposition, Answer Brief to Conference/Oral Argument, and Conference/Oral Argument to Disposition. In several of the time frames noted above, the number of cases meeting the performance goal has also increased. These particular time frames appear to be directly affected by continued efforts to streamline the process in the district courts, including implementing orders with specific requirements and time limitations intended to expedite Dependency/TPR appeals and adopting new docket procedures in order to address Dependency/TPR matters as quickly as possible.

However, the data also indicate that, while continued improvements have been made in those time frames involving the receipt of documents, there are still issues with meeting the performance goals. The four time frames involving document receipt – Notice of Appeal to Record, Record to Initial Brief, Initial Brief to Answer Brief, and Answer Brief to Reply Brief – have been addressed with definitive time frames by rule amendments in 2009. While extensions of time and lack of resources in the trial courts and with appellate counsel may play a substantial role in the districts' ability to meet the stated time frames, the recommendations contain herein offer practices which may reduce

the delay in these cases. Through concerted effort by trial court and appellate judges and clerks, trial court administration, both DCAP&A and TCP&A, and attorneys, the judiciary can uphold the public policy of expediting cases involving children.

Appendix A – Sample Administrative Order

ADMINISTRATIVE ORDER
NO. 2009-09

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE AND OSCEOLA
COUNTIES, FLORIDA

**ADMINISTRATIVE ORDER DIRECTING THE CLERK OF COURT, ORANGE
COUNTY AND OSCEOLA COUNTY, TO SEND A COPY OF ALL
COURT REPORTER DESIGNATIONS TO THE MANAGER OF
COURT REPORTING SERVICES UPON FILING**

WHEREAS, pursuant to Article V, section 2(d) of the Florida Constitution and section 43.26, Florida Statutes, the chief judge of each judicial circuit is charged with the authority and the power to do everything necessary to promote the prompt and efficient administration of justice; and

WHEREAS, to create and maintain an organization capable of effecting the efficient, prompt, and proper administration of justice for the citizens of this State, the chief judge is required to exercise direction, *see* Fla. R. Jud. Admin. 2.215(b)(2), (b)(3); and

WHEREAS, Florida Rule of Appellate Procedure 9.200(b) provides copies of designations shall be served on the court reporter; and

WHEREAS, the designation is essential notice to the court reporter of what must be transcribed; and

WHEREAS, it has become evident that there has been a routine failure of service of copies of designation upon the court reporter resulting in a failure of notice to the court reporter that a designation has been filed;

NOW THEREFORE, I, Belvin Perry, Jr., pursuant to the authority vested in me as Chief Judge of the Ninth Judicial Circuit of Florida under Florida Rule of Judicial Administration 2.215, hereby order the following, effective **immediately**:

The Clerk of Court for Orange County and the Clerk of Court for Osceola County shall send a copy of all designations filed pursuant to Florida Rule of Appellate Procedure 9.200(b) to the manager of Court Reporting Services upon filing of the designation by appellant.

DONE AND ORDERED at Orlando, Florida, this 26th day of August, 2009.

_____/s/_____
Belvin Perry, Jr.
Chief Judge

Copies provided to:

Clerk of Court, Orange County
Clerk of Court, Osceola County
General E-Mail Distribution List
<http://www.ninthcircuit.org>

Appendix B – Recommendations Affecting Counsel

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