

**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 servicing 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 A

District Court of Appeal
Termination of Parental Rights and Dependency
Fiscal Year 2005-06 Dispositions

Summary

Termination of Parental Rights

	Statistic	First	Second	Third	Fourth	Fifth	State
Total number of dispositions	N	78	115	47	38	41	319
Dispositions over 180 days	N	47	94	39	20	21	221
	Mean (in days)	281	310	325	210	276	294
	Median (in days)	250	256	309	203	263	253
	90th (in days)	394	524	450	244	392	434
Percent of days spent from:	Percent	61.5%	65.4%	74.5%	65.4%	66.8%	66.5%
	Percent	38.5%	34.6%	25.5%	34.6%	33.2%	33.5%

Dependency
Perfection to Disposition

	Statistic	First	Second	Third	Fourth	Fifth	State
Total number of dispositions	N	48	56	24	30	23	181
Dispositions over 180 days	N	28	35	13	13	16	105
	Mean (in days)	279	319	293	274	243	288
	Median (in days)	267	275	286	232	248	267
	90th (in days)	398	424	422	392	306	392
Percent of days spent from:	Percent	67.3%	67.2%	73.3%	66.0%	49.7%	65.7%
	Percent	32.7%	32.8%	26.7%	34.0%	50.3%	34.3%

Time Frame Segments of Dispositions Over 180 Days (in days)

Termination of Parental Rights

Time Frame Segment	Statistic	First	Second	Third	Fourth	Fifth	State
NOA to Filing of Record	N	47	92	39	20	20	218
	Mean	103	120	78	82	79	102
	Median	93	94	53	76	59	86
	90th	207	241	158	125	155	224
Filing of Record to Initial Brief	N	45	80	25	20	17	187
	Median	11	41	86	6	22	30
	90th	66	128	182	70	55	124
Initial Brief to Answer Brief	N	43	78	25	20	17	183
	Mean	44	37	96	22	38	45
	Median	27	29	85	18	28	29
	90th	117	65	148	37	77	93
Answer Brief to Reply Brief	N	13	25	3	10	5	56
	Mean	29	19	24	19	11	21
	Median	22	20	26	21	12	20
	90th	49	25	32	26	17	28
Perfection to Conf/OA	N	44	77	27	20	18	186
	Mean	84	55	25	40	89	59
	Median	78	45	13	38	85	53
	90th	126	89	71	55	121	107
Conf/OA to Disposition	N	27	79	27	18	13	164
	Mean	41	42	24	36	67	40
	Median	22	9	20	27	62	15
	90th	71	139	43	97	163	105
Reply Brief to Disposition	N	13	25	3	10	6	57
	Mean	107	134	81	79	197	122
	Median	97	112	86	67	181	97
	90th	171	282	106	157	284	250
Motion for Rehearing to Order on Motion	N	2	12	2	3	1	20
	Mean	22	84	30	23	23	60
	Median	22	37	30	27	23	30
	90th	24	166	33	38	23	158

Time Frame Segments of Dispositions Over 180 Days (in days)

Dependency

Time Frame Segment	Statistic	First	Second	Third	Fourth	Fifth	State
NOA to Filing of Record	N	27	24	12	12	14	89
	Mean	120	133	153	107	74	119
	Median	95	113	155	79	47	100
	90th	258	250	242	189	171	242
Filing of Record to Initial Brief	N	27	19	7	11	14	78
	Median	12	45	-17	19	14	18
	90th	72	416	164	61	52	89
Initial Brief to Answer Brief	N	24	26	6	10	13	79
	Mean	45	31	85	45	26	40
	Median	34	24	71	35	24	34
	90th	112	50	154	94	53	84
Answer Brief to Reply Brief	N	10	11	1	2	5	29
	Mean	25	61	37	24	11	36
	Median	24	20	37	24	12	20
	90th	40	88	37	26	14	49
Perfection to Conf/OA	N	24	27	7	9	12	79
	Mean	77	69	53	54	87	71
	Median	72	65	20	39	84	65
	90th	131	78	154	120	113	120
Conf/OA to Disposition	N	13	27	7	8	9	64
	Mean	47	27	17	78	70	42
	Median	35	13	20	32	85	20
	90th	63	79	23	273	114	111
Reply Brief to Disposition	N	10	11	1	2	5	29
	Mean	115	62	33	174	132	99
	Median	101	78	33	174	133	96
	90th	172	196	33	252	189	196
Motion for Rehearing to Order on Motion	N	2	2	0	1	1	6
	Mean	31	24	N/A	12	21	24
	Median	31	24	N/A	12	21	24
	90th	33	25	N/A	12	21	33

Appendix B

Cases Filed, 2006

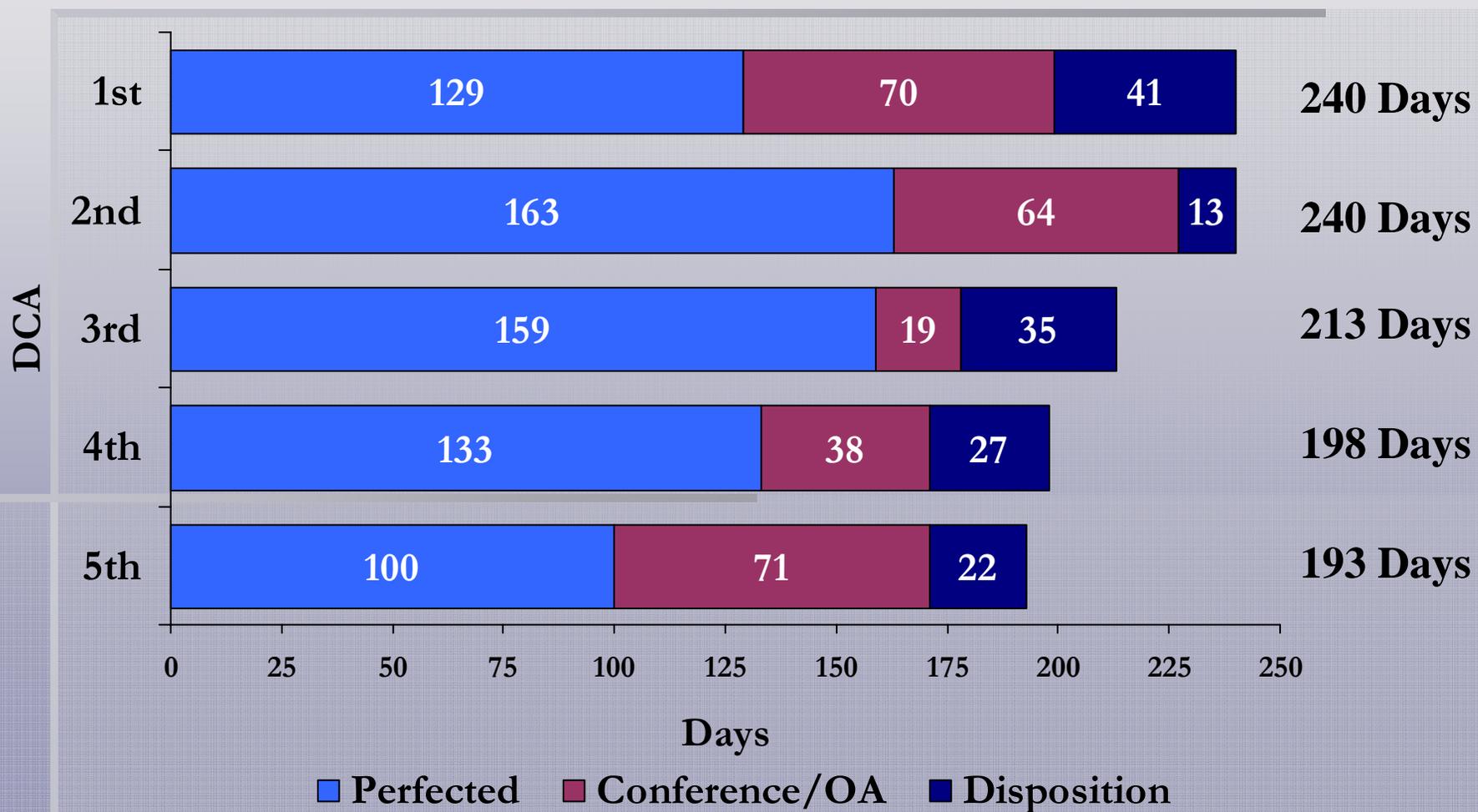
In 2006, a total of 19,560 notices and 5,818 petitions were filed in the DCAs.

DCA	Notices		Petitions*	Total
	Dependency	TPR		
1 st	28	76	2	106
2 nd	56	92	9	157
3 rd	23	37	5	65
4 th	41	39	3	83
5 th	40	91	7	138
State	188	335	26	549

*Notices are from CMS; petitions are certiorari reported by individual DCA clerks.

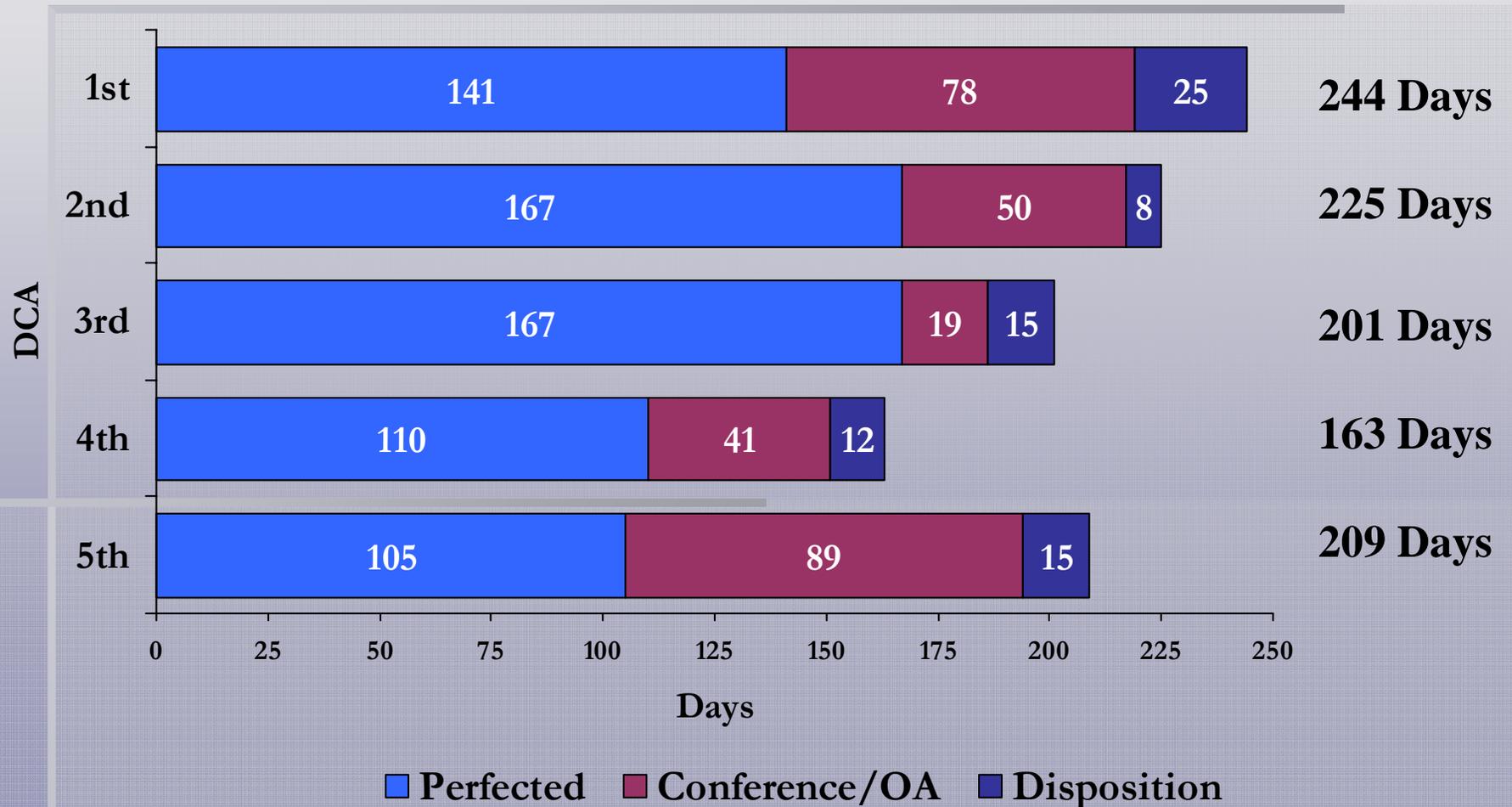
Median Processing Days – Dependency

Notices disposed, 2006

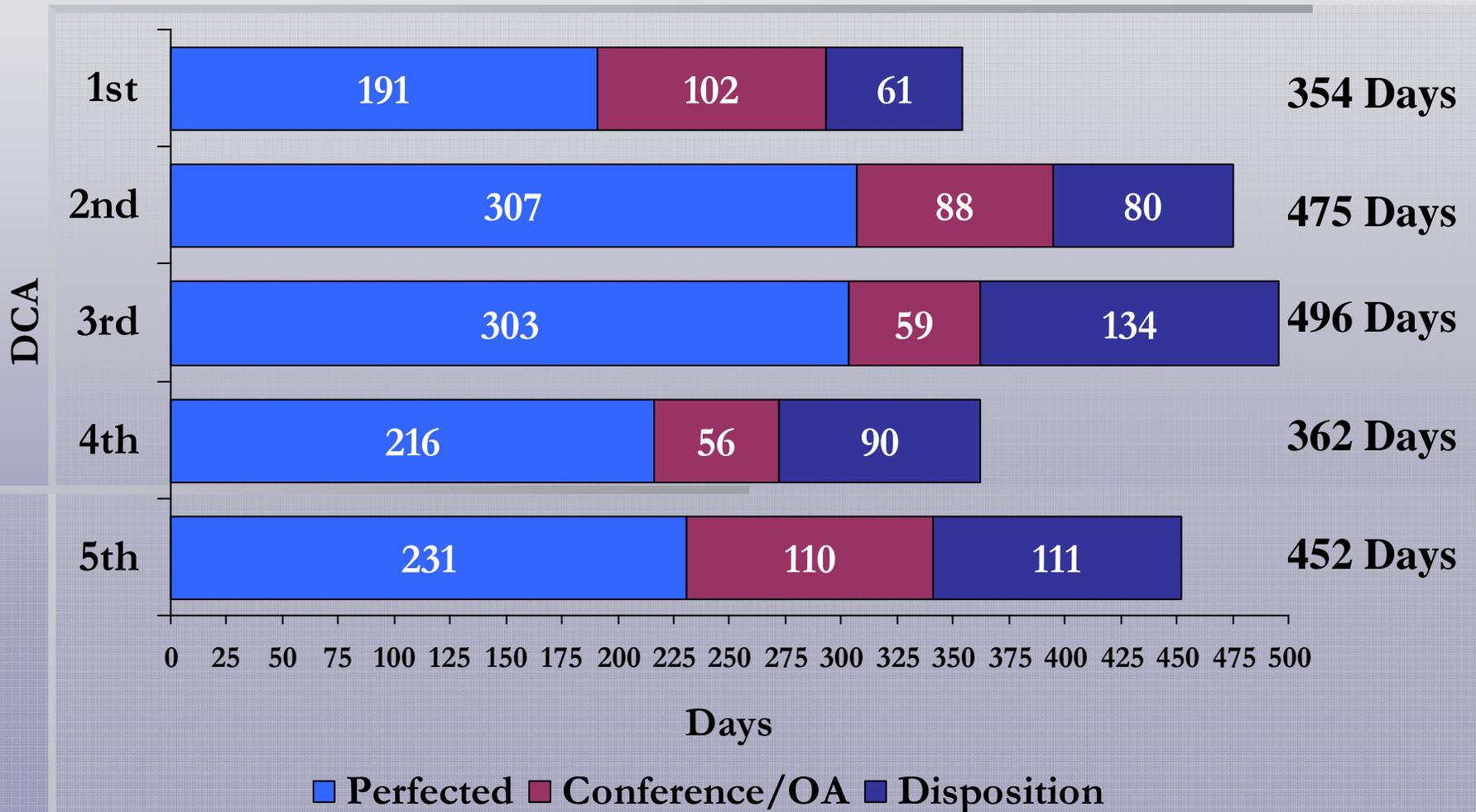


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Notices disposed, 2006

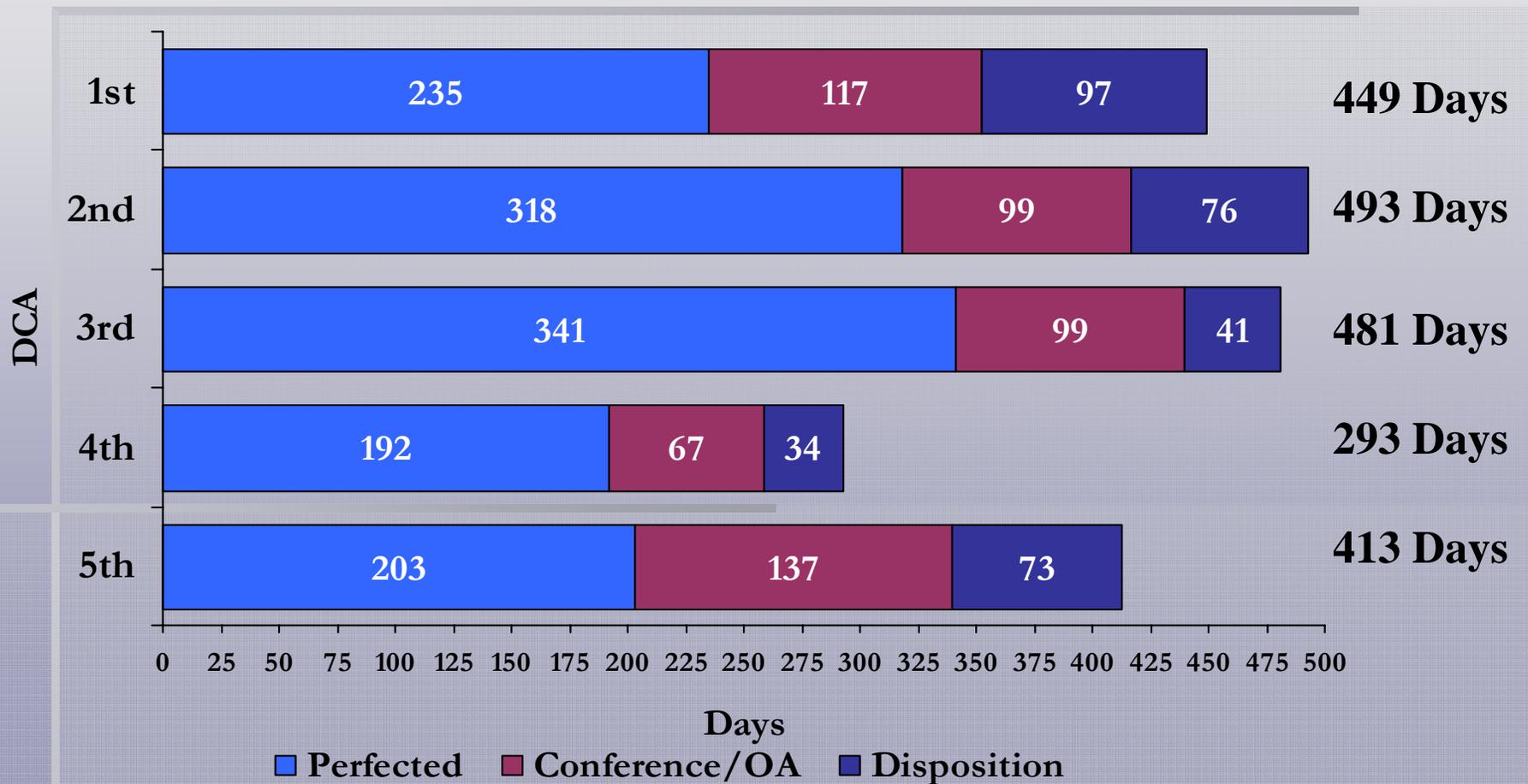


90th Percentile Processing Days – Dependency Notices disposed, 2006

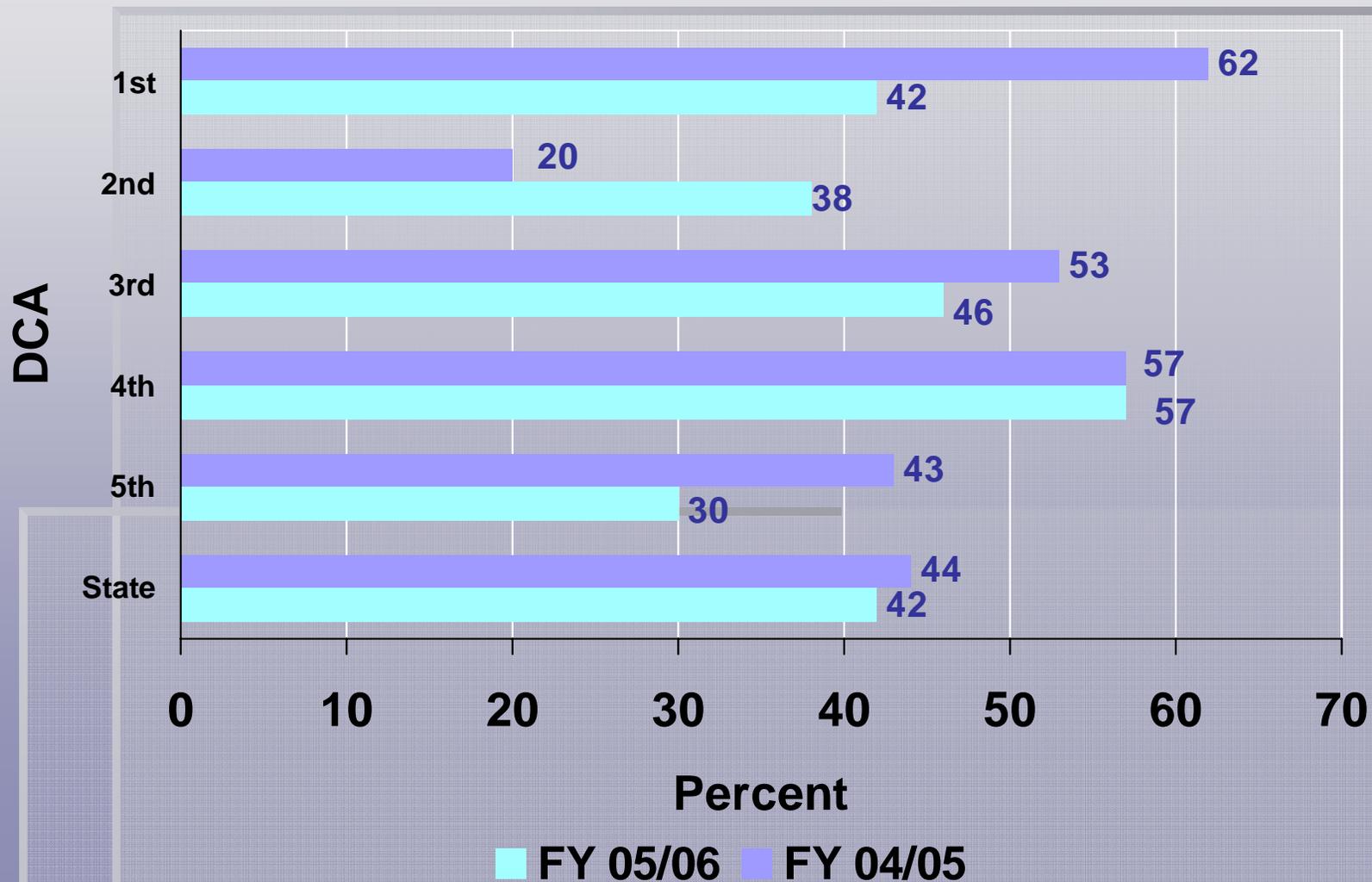


90th Percentile Processing Days – TPR

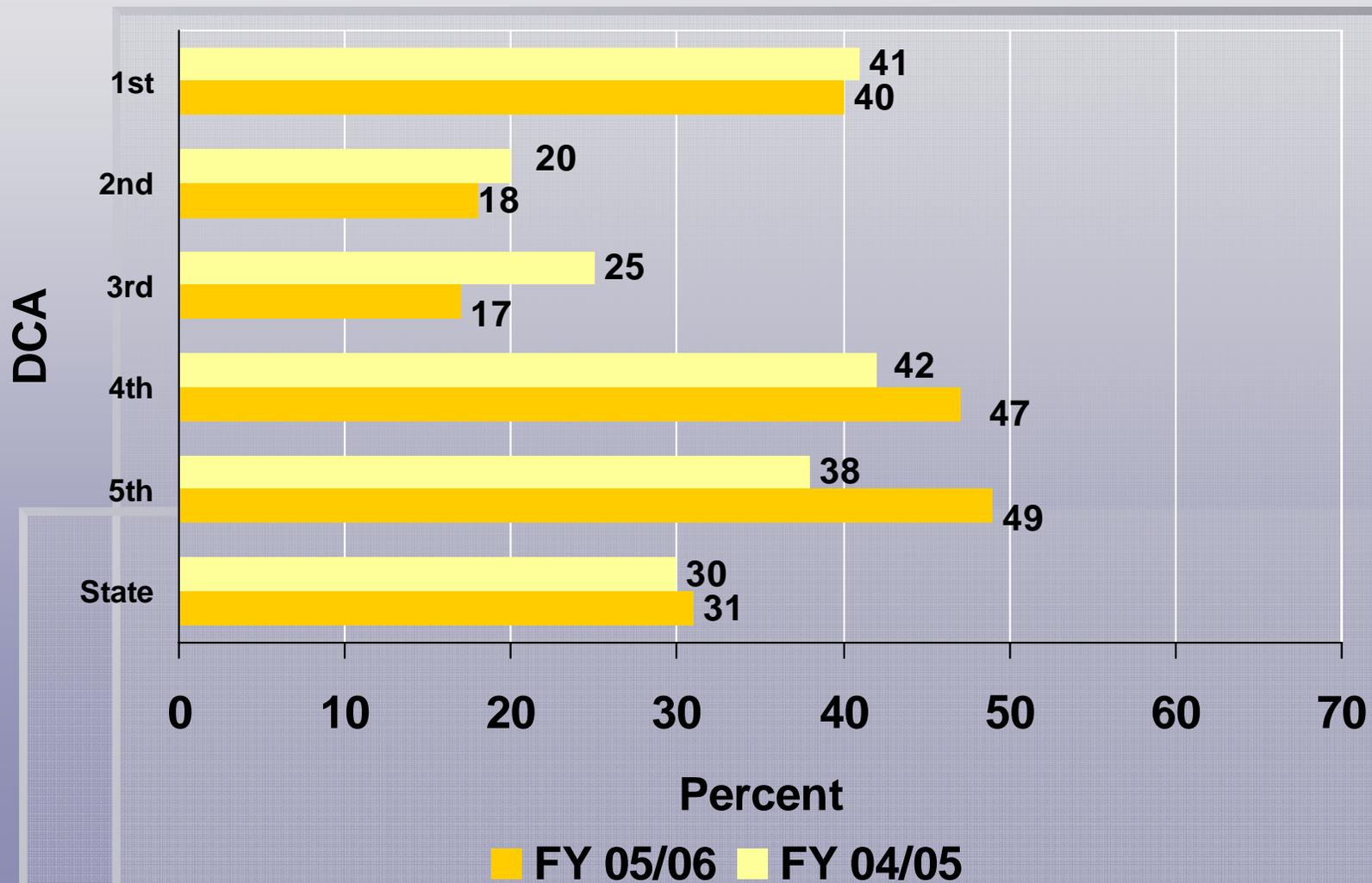
Notices disposed, 2006



% DEPENDENCY CASES WITHIN 180 DAYS FROM DCA FILING TO DISPOSITION



% TPR CASES WITHIN 180 DAYS FROM DCA FILING TO DISPOSITION



Appendix C

Staff Notes from the District Courts' Meetings on Expediting Dependency Appeals

Each meeting's attendance averaged 30 to 40 people. All had representation from: trial court clerks; trial court staff; and attorneys, including GAL, and DCF and parents' counsel. The 1st, 2nd and 4th districts had the participation of trial judges.

The pre-perfection discussions were lively and focused on local issues that varied by and within circuits. The statewide perspective of the GAL attorneys was valuable in terms of providing comparative information. All issues identified to date were discussed, i.e., the hand-off from the trial attorney, designation and transcript issues, clerk practices regarding preparing the record without a transcript, and the general agony over JAC procedures and compensation issues, which are reportedly causing experienced attorneys to drop off the appointment lists. Everyone seemed to agree that the duties and expectations are set forth for all involved, but that they are typically allowed to "slide" in their performance and follow-through.

- **Child appeals are different** – The times set forth in the rule are the right of the child. Each case should be treated separately and individually; motion practice should inform the court of each child's situation, how long the case has been pending below, etc.

Notice of Appeal

- **Shorten time for filing** – Issues include: it is hard for the trial attorney to locate some parents; sometimes that 30 days can be used to avoid an appeal; shortening the time would just increase the cases being subsequently abandoned; and there are lots of deals that are done in these 30 days to resolve the case. Some suggested that DCAs are too generous in reinstating abandoned appeals.

The groups were split on whether to limit time – some suggested confusion might exist with different time deadlines than exist for other appeals. On the other hand, others said there was no reason to delay filing the notice of appeal for 30 days.

- **Parent signing** – A good idea in some ways. If a parent doesn't really understand what an appeal is about and they talk with an attorney then they may not appeal. Another issue is parents not knowing the final judgment has been issued and lack of documentation that the order or final judgment was provided to the parent. Is it the parent's responsibility to stay in touch with his or her attorney? If the parent is in prison, the written communication time could take 30 days. There needs to be an escape valve if parents are not available to sign. A case from the third district states that if an attorney can't contact the client there should be no appeal. Given that there is no conflicting case, this is the law.

Also, at county level, there seems to be a difference in court custom as to whether the trial judge delivers his or her ruling from the bench. In courts

where the judge typically delivers the ruling while the parent is present, the parent and trial attorney could start the appeal discussions at that time. Of course, this will not work in courts where judges typically take the case under advisement. However, there is another coordination opportunity at the 30-day hearing after the TPR, where perhaps they could have the appellate attorney attend and work out designation and record issues.

GAL representatives thought it was a good idea and most parents' attorneys did not because it's hard to locate so many parents. Many thought it was more important to enforce time frames. Another option would be that the notice of appeal should include a certification that the lawyer has spoken with the parent and the parent has authorized the appeal.

- **Renewing indigence determination** – Apparently, some trial judges explain the appellate process to parents when they return for the indigence determination for appeal. There is a relatively recent A.O. in the 11th circuit that requires the trial attorney to file the new financial affidavit, among other things, before withdrawing from the case. There is no evidence of how this is working yet.

There was some concern about the limited value of securing another indigence determination. The \$40 fee that the clerk charges for each indigence affidavit filed was also of concern. One suggestion was that the trial judge have the parent swear as to their continuing indigence status at the last trial court day, so that this is established before the judgment to be appealed is even entered.

Can we have a rule to presume indigence where parent was determined indigent at trial level? If not, should we have the trial judge make a determination of indigence in the final judgment (ask at trial if anything has changed), so that it's there and ready to go for any appeal?

- **Case differentiation** – GAL representatives thought it was important to differentiate between types of dependencies, because some may require more expedition than others, e.g., if the child is in out-of-family placement rather than with a family member.

Handoff

- **Attorneys** – The court-appointed counsel “wheel” process has caused a lot of problems, as has the process of getting through the JAC process. Obtaining orders of indigence for appeal is also a slowing process for these cases.

The value of experienced appellate attorneys cannot be understated. Some suggested that busy trial attorneys should not be appointed for these appeals. Experienced attorneys can identify the issues much more quickly and get things moving. Since these cases are comparable to a “death” case in civil, then the appointed counsel system should work diligently to see that experienced

attorneys do this kind of work. In areas where there are limited attorneys, it would be better to have an experienced attorney from another area of the state take the appeal.

One suggestion was the need to create a packet of forms for filing an appeal – notice, designations for transcript, directions to clerk, forms for determination of indigence – that could be used by the attorneys.

- **Trial court management** – The 11th circuit has an A.O. that identifies the requirements for the trial attorney to withdraw from the case. Essentially he or she has to complete a “package” of information and forms required for the appeal, including: copies of the Notice of Appeal and designation to the court reporter, including all trial dates; an attestation of the parent’s wishes to appeal; an order for payment of transcripts; and current affidavit of indigence. These documents are to be submitted to a case coordinator who will place the motion of appointment of appellate counsel before the judge within 48 hours. (The A.O. in the 11th circuit doesn’t actually require the trial judge to sign the order within 48 hours.)

Trial judges were skeptical that they could ethically do case management conferences with attorneys and the court reporter on cases under active appeal status. Perhaps a staff member could be assigned to “ride herd” on these cases, but it would be better if the trial clerk did it.

- **Rules** – Trial attorneys don’t read rules that start with a “9”. There was some discussion about running parallel trial/appellate attorney hand-off requirements in the juvenile rules. There was some consensus that ideas should be tested before changing a rule and getting stuck with something unintended.
- **Rehearing** – A motion for rehearing in the trial court doesn’t stay the time for appeal and then it becomes a race to get the appeal filed in time.

Shortening the time for rehearing motion in the district court would be okay and would then move up the mandate. This is not a problem because it is not jurisdictional.

Record and Transcripts

- **GAL** – There is concern about the GAL program not getting copies of the record and transcripts, which they are entitled to as parties. This is also true for the child’s attorney, if there is one. This should be specifically addressed in the rule.
- **Record** – There was agreement that these cases would be better served if they followed a criminal case approach in terms of the attorney handoff and the preparation of the record. (About 14 counties treat these like civil records and only provide an index to the attorneys.) There appears to be wide variation as to clerk practices regarding filing the record without a transcript. Binding the transcripts separately could cause confusion if it is a really large record. Some clerks don’t ever do it; some will automatically send the record when due,

regardless of the transcript status; and some will send it if the attorney asks. Although, it doesn't really matter because the attorney can't work up the brief without a transcript. Some clerks said that they wait until after they get a DCA case number back to start preparing the record. Another suggestion was that the clerks call or e-mail the attorneys to notify them that the record is ready. Finally, as chief judges and clerks implement electronic filing in the trial courts, they should consider putting dependency/TPR cases as a priority for the transition; this would allow the attorneys to get the record electronically.

- **Transcripts** – Ensuring that designations are actually served on the court reporter are critical, as is ensuring that the court reporter actually responds. One suggestion was that the notice of appeal should include the designation to the court reporter on the same document and that this would give the attorney a chance to really review the merits of the case. Or, the clerks should be required to automatically prepare a record and initiate the designation to the court reporter (i.e., shelter, adjudicatory hearings, all judicial reviews, and the TPR trial) There was some discussion as to whether the dependency transcripts would be needed. Once these automatic transcripts get started, the appellate attorney can always designate additional transcripts later.

A person in the clerk's office would be in the best position to monitor the transcript preparation. The clerk is in the best position to know when there were actual court events and designations from attorneys are often not specific or are incorrect. These dates should be right the first time to keep the court reporter from looking for events that don't exist. There were many complaints that the trial and appellate attorneys have court reporters searching for records on days that there was no court event for that case recorded. Sometimes proceedings that were integrated into a unified family court docket are a bit more difficult to track down, but it is not a huge issue.

The requirement that the trial judge sign an order for the transcript preparation is causing delay, as most private court reporters will not start typing without one. (Apparently, the requirement that the judge order the transcript is not only a juvenile rule requirement, but a statutory one – the purpose of which is not readily apparent.) The rule should designate what should automatically be transcribed to avoid having all these orders for transcripts/payment entered. (More JAC paperwork and payment complaints reported.)

For transcripts to be produced on an expedited basis, priorities need to be established in the rules (i.e., that these take precedence over everything and that this will be enforced by the circuit chief judge.)

Where the transcript problems can be attributed to limited budget and staff, the GAL could be called upon to help support our legislative budget requests.

- **Electronic (audio) record** – There was one limited discussion about the prospect of the district court accepting an audio recording. The biggest concern was that there is no mutual record for review. For example, the judges may "hear/interpret" something that the attorneys would have not expected and so

there is no common understanding as to what happened, as is the case when everyone is reading from the same document.

- **Expediting orders issued by the district court** – There was some concern that when the DCA issues an order expediting a case, the attorney doesn't give that order to the trial clerk or the court reporter. One suggestion was to require the attorney to notify the appellate clerk of the court reporter's identification so the expedited order can be sent directly to the court reporter. Also, apparently some court reporters don't think that the expedite order from the DCA controls the times set forth in the rule.

Should the district court require a good reason on all requests for extension?

Briefs

- **Shorten time** – If the workgroup is going to squeeze something in this process, it should NOT be the attorney's brief. Records and transcripts can be reasonably expedited without negative impact on the product. Limiting time for a brief can seriously impact quality, especially for attorneys who have busy trial practices. Thirty days would be reasonable, IF it actually gets done in 30 days! It may be possible to take some time off the reply brief time. Another suggestion was that the districts consider the number of volumes in the record when considering how much extension time was warranted. DCAs should consider not waiting on a reply brief to assign a panel.
- **Firm on extensions** – Courts are not firm enough on extension policies.
- **Form briefs** – There was limited discussion of using form briefs used to make attorneys focus on the facts; mostly because participants weren't really aware of their use in other states.
- **Oral argument** – Instead of leaving it to the attorneys to request an O.A., could the practice be changed to presume that there will be no O.A., but that the judges on the panel could initiate one?
- **Prioritizing** – There was some discussion about whether the dependency appeals should take priority over TPR appeals because of the delay in services that occurs pending the dependency appeal. The idea was quickly dismissed, as both dependency and TPR cases have unique reasons why they should be expedited and the real harm that could result from delay. There was also discussion of courts trying to get reversals out more quickly, including prioritizing circulation.

Disposition

- **Shorten time for rehearing; shorten time for mandate**

Other

- **Non-final orders** – A GAL attorney stated that 16% of their cases are non-final orders. There seems to be confusion about how to do these, although the second district judges thought that it had been resolved. There were comments about attorneys waiting on records that are not coming because petitions don't need a record. Also, attorneys may file a notice of appeal and realize that they should have filed a petition but the time to appeal has run. The clerk in the 5th indicates the status on the acknowledgement, which apparently the attorneys don't read. GAL wants clarification on these. It was suggested that there needs to be a time-frame affixed under certiorari for the non-final cases.

One suggestion was that permanency, dependency adjudication, and TPR should be the appealed orders and all else should be filed as petitions.

Another related issue is appealing non-final orders following a final order.

- **Belated appeal** – Should petitions for belated appeal go directly to the district court rather than the circuit court? Other belated appeal issues need to be addressed.
- **Access to case management system docket** – Apparently, due to the fact that the case management system can't block the parties (sometimes a parent) names and addresses, the district courts no longer allow internet access to these dockets. Attorneys really like to be able to look on the docket and see what (and when) documents have been filed in their case; they want this capability back.
- **Pro se parents** – These cases don't move. DCF's experience is that these parents are using their pro se status to drag things out.

Introduction

Objectives

1. Consensus on the Causes of Delay and What Needs to Happen to Reduce Delay
2. Identify the mechanisms to accomplish (rule, statute)

Process - for each area, what is the issue, is there a solution?

Final judgment entered

Decision re appeal

What orders can be appealed?

Notice – time for filing is the 30 days a problem that should be addressed?

Rehearing - Should there be a requirement that the trial judge rule on a motion for rehearing within a certain time frame?

Notice – filing,

Either parent signs or note that client wants to appeal?

Include the information on child's situation for the appellate court?

Handoff–

Appointment of counsel – appt process, availability,

Indigence

Parallel criminal rules put requirements in juvenile rules also

Designation to court reporter – do it like criminal and provide the record.

Service issues so that he/she gets it. Knowing where to serve it.

Directions to clerk

Solutions – all should be done at the same time - package to be filed with Notice of Appeal with forms to be provided,

Sending Dependency phase with TRP records?

JAC

GAL

Briefs - extension policy firm enough?

Appendix D

COMMISSION ON DISTRICT COURT OF APPEAL PERFORMANCE & ACCOUNTABILITY

Expediting Dependency & TPR Appeals Workshop May 11, 2007

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Updated: May 8, 2007

Appendix E

**Dependency/Termination- Nature of Non-Final Notices/Certiorari Cases
2005&06**

DCA

First	13
Second	48
Third	7
Fourth	15
Fifth	12
TOTAL	102

Abbreviations:

N/F – non-final

F Final

N/A not appealable

VD Voluntarily dismissed

Order Reviewed	DCA	Filed As	Disposed As	n
Shelter Order	1 st	N/F	N/F	1
	1 st	Cert	Cert	1
	2 nd	N/F	N/F	1
	4 th	N/F	N/F, Cert	3
	5 th	N/F	N/F	4
Change of Custody after Adj. of Dependency	1 st	F	N/F	3
	1 st	Prohib.(DCF)	Cert	
Adj. Dependency	1 st	N/F	DFR	1
	2 nd	N/F	F	4
Emergency Removal Order	4 th	N/F	N/F	1
Visitation – Modifying/Restoring/ Supervised-Unsupervised	2 nd	N/F, Cert	N/F, Cert	5
	3 rd	Cert	Cert	2
	4 th	F, N/F	N/F/N/A,Cert	2
	5 th	Cert,F	Cert	2

Order Reviewed	DCA	Filed As	Disposed As	n
Modifying Custody/change of placement	2 nd	N/F, Cert.	D, Cert	3
Change of Temporary Placement	1 st	N/F	N/A	1
	4 th	N/F	Cert	1
	5 th	Cert	N/F	1
Reunification	1 st	N/F	VD	1
	2 nd	N/F	N/F or VD	5
	4 th	N/F	Cert	1
Orders after Dependency	4 th	N/F	N/F	1
Accepting Case Plan	2 nd	N/F	N/F	2
Changing Case Plan Goal	4 th	N/F	VD	1
Continuing Dependency w/ permanent placement	2 nd	N/F	N/F	1
Scheduling Mediation	1 st	N/F	VD	1
Subpoenaing DCF Sec. for Hrg	1 st	Cert	Cert	1
GAL Motion to Enforce Placement	2 nd	N/F	VD	1
Denying Transfer of Jurisdiction	2 nd	N/F	N/F	1
Denying Reopen Case	2 nd	N/F, Cert	N/F, Cert	5
Terminating supervision/Long term Placement	2 nd	N/F	F	2

Order Reviewed	DCA	Filed As	Disposed As	n
Denying motion to set aside plea	2 nd	Cert	Cert	1
Intervention	2 nd	N/F, Cert	Cert	3
Confirming Jurisdiction	2 nd	Cert	Cert	1
Status/Judicial Review	2 nd 4 th	N/F N/F	VD Cert.	2 1
Placement of children	2 nd	N/F	N/F	2
Order on Magistrate's Report	2 nd	F,N/F	N/F	2
Physiological Examination/Psychological Exam	2 nd 4 th	N/F,Cert. N/F	N/F/N/A, Cert Cert	2 1
Granting Immediate Return of children	2 nd	N/F		1
Demand for Jury Trial	2 nd	N/F	N/F, N/A	1
DCF Motion to Stay	2 nd	N/F	Cert.	1
Motion to set aside Judgment	2 nd	Cert	Cert	1
Unknown – pro se	2 nd	Cert	Cert	1
Re-evaluate Permanent Placement Options	3 rd	Cert	VD	1
Allowing child to Testify	3 rd	Cert	Cert	1
Order directing DOC to maintain father in Miami-	3 rd	Cert	Cert	1

Order Reviewed	DCA	Filed As	Disposed As	n
Dade County				
Validity of Adoption	4 th	N/F	N/F	1
Consent	5 th	Cert	Cert	1
Appt. of App. Counsel	4 th	N/F	VD	1
Require DCF to pay for drug testing	5 th	Final	Cert	1
Imposing Allowance payment to child	5 th	Cert	Cert	2
Denying Motion to Dismiss TPR Petition	3 rd	N/F	N/F/N/A	2
	4 th	N/F	Cert	1
Denial of Motion to set aside TPR order	1 st	N/F, F	N/F	2
Denial of belated appeal in TPR	1 st	F	N/F	1

Appendix F



FLORIDA STATEWIDE GUARDIAN AD LITEM OFFICE
Angela H. Orkin
Executive Director

M E M O R A N D U M

TO: The Honorable Martha Warner, Chair
Commission on District Court of Appeal Performance and Accountability

FROM: Thomas W. Young, Appellate Counsel
Statewide Guardian ad Litem Office

DATE: May 7, 2007

SUBJECT: Need for rule addressing non-final orders

After the meeting in West Palm Beach on April 11, 2007, regarding expediting dependency appeals, our office decided to formalize our thoughts concerning the need for a rule addressing non-final orders. I wanted to share this information with you prior to the meeting on May 11. The following outlines the case law and practical issues that give rise to the need for a rule addressing review of non-final orders in the district courts of appeal and proposes language for such a rule.

A. 2006 Proposal Deferred by the Florida Supreme Court

The first and perhaps most compelling reason to consider a rule concerning non-final orders in dependency and termination of parental rights case is the fact that the Florida Supreme Court recently deferred adoption of a

proposal to amend Florida Rule of Appellate procedure 9.130, indirectly citing the ongoing work of the Commission on District Court of Appeal Performance and Accountability:

[T]he Committee proposes that subdivision (a)(3)(C)(iii) be amended to authorize appeals of nonfinal orders determining the right to child custody in juvenile dependency and termination of parental rights cases. ... Upon considering all these proposed amendments to rule 9.130, the Court declines to adopt them at this time. This matter currently is the subject of an ongoing study by the Court, and the Court will consider any proposed changes to this rule after that study has been completed.¹

B. Conflict Between the District Courts of Appeal

The second significant reason to consider a rule concerning non-final orders is to address the split of authority that exists among the district courts of appeal. The first, fourth, and fifth districts review non-final orders following an adjudication of dependency through Florida Rule of Appellate Procedure 9.130(a)(4), which permits review of “[o]ther non-final orders entered after final order on authorized motions....”²

¹ *In re Amendments to The Florida Rules of Appellate Procedure (Out of Cycle)*, 941 So. 2d 352, 353 (Fla. 2006).

² *Guardian ad Litem Program v. Dep’t of Children & Fams.*, 936 So. 2d 1183 (Fla. 5th DCA 2006) (change of placement order); *Dep’t of Children & Fams. v. T.L.*, 854 So. 2d 819 (Fla. 4th DCA 2003) (placement without home study); *A.B. v. Dep’t of Children & Fams.*, 834 So. 2d 350 (Fla. 4th DCA 2003) (no contact order); *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”); *Coy v. Dep’t of Health & Rehab. Servs.*, 623 So. 2d 792 (Fla. 5th DCA 1993) (“Order on Judicial Review”); *but see A.P. v. Dep’t of Children & Fams.*, -- So. 2d --, 32 Fla. L. Weekly -- (Fla. 5th DCA May 4, 2007) (“We treat this appeal from a non-final order removing the child from the custody of its parents and reinstating protective supervision of the child as a petition for writ of certiorari pursuant to Florida Rule of Appellate Procedure 9.040(c).”).

The second district, on the other hand, has expressly rejected application of rule 9.130(a)(4) in dependency and termination of parental rights cases.

[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. In this case, the order on the motion to relinquish jurisdiction to another circuit court division did not alter any final aspect of the dependency order; in fact, the court declined to do anything that would alter the status quo other than to transfer the case to another division.³

The third district does not appear to have addressed the issue 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.

C. General Noncompliance with Current Rules

A third reason a uniform rule is needed arises from practice. Most trial attorneys file a notice of appeal regardless of whether the order at issue is final or non-final. This is true even of shelter orders, which in all districts are subject to review only through certiorari because they are not preceded by a final order. Additionally, most trial attorneys do not file an appendix, as

³ *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).

required by Florida Rule of Appellate Procedure 9.130, instead relying on the court reporter and the circuit court clerk to prepare and transmit a record. As a result, petitions for writs of certiorari are rarely filed within 30 days of rendition and initial briefs are rarely filed within 15 days of the notice of appeal, as required by Florida Rules of Appellate Procedure 9.100(c) and 9.130(e). These practices defeat the very purpose of the rules governing original proceedings and appeals of non-final orders, which is to expedite resolution of the immediate issue. One recent example of such a case is the second district's decision in *In re J.T.*, a case in which the Department of Children and Family Services filed a direct appeal from a non-final order "relinquishing jurisdiction" to another division of the same court and which took a full year to conclude following the trial court's order.⁴

D. The Uniqueness of Dependency and Parental Status Termination Cases

The fourth factor demonstrating the need for a rule permitting direct appeals of specified non-final orders is the fact that dependency and termination of parental rights cases are unlike other cases and do not fit neatly within rules designed to apply in other, more standardized, contexts.

As discussed by this court in the context of delinquency proceedings, the orders authorized by chapter 39 of the Florida Statutes do not always fit neatly into the traditional categories of final and non-final orders.⁵

⁴ *J.T.*, 947 So. 2d at 1213, 1218.

⁵ *G.L.S. v. Dep't of Children & Fams.*, 724 So. 2d 1181 (Fla. 1998), quoting *Moore v. Dep't of Health & Rehab. Servs.*, 664 So. 2d 1137, 1139 (Fla. 5th DCA 1995); see also *In re R.B. (D.K.B.)*, 890 So. 2d at 1289 ("Unlike many civil cases, dependency and termination proceedings do not

Because of this uniqueness, at least three types of orders in dependency and termination cases have been deemed “final”: adjudications of dependency, adjudications terminating parental rights, and permanency orders placing a child and intended to continue until the child reaches the age of majority.⁶

The uniqueness of dependency and termination of parental rights cases is also illustrated in practice. Even after rendition of “final” orders, trial court proceedings continue until a child is reunified with her/his parents, adopted, placed in a permanent guardianship, or reaches the age of majority. Judicial review hearings must continue as long as a child is in a permanency setting deemed to be less stable than adoption or permanent guardianship.⁷ Thus, even after a “final” order terminating parental rights, judicial labor can continue for months, even years, particularly in the cases of older youth.

Also unlike cases in other contexts, many non-final orders in dependency and termination cases are life-altering. For instance, a shelter order may abruptly remove a child from parental custody. Two additional examples are orders disrupting stable, bonded placements and orders authorizing the

conclude with a single final order that permits the trial court to close its case. There are several orders that are treated as final orders in dependency and termination cases.”).

⁶ *R.P. v. Dep’t of Children & Fams.*, 945 So. 2d 612 (Fla. 4th DCA 2006) (appeal of final order adjudicating child dependent); *T.S. v. Florida Dep’t of Children & Fams.*, 935 So. 2d 626 (Fla. 1st DCA 2006) (appeal of final order adjudicating child dependent); *J.C.G. v. Dep’t of Children & Fams.*, 780 So. 2d 965 (Fla. 5th DCA 2001) (appeal of final order adjudicating children dependent); *In re D.M.*, 750 So. 2d 128 (Fla. 2d DCA 2000) (appeal of final order adjudicating child dependent); *Gelrod v. Dep’t of Health & Rehab. Servs.*, 648 So. 2d 862 (Fla. 3d DCA 1995) (appeal of final order adjudicating child dependent); *Florida Dep’t Of Children & Fams. v. F.L.*, 880 So. 2d 602 (Fla. 2004) (order terminating parental rights); *In re K.M.*, 946 So. 2d 1214 (Fla. 2d DCA 2006) (permanency order); *Bembry v. Dep’t of Children & Fam. Servs.*, 716 So. 2d 806 (Fla. 3d DCA 1998) (permanency order).

⁷ See §§ 39.6231(5), (7); 39.6241(3), Fla. Stat. (2006).

administration of psychotropic medications. All of these typical, non-final orders have the potential to wreak significant, sometimes irreparable, emotional harm on children notwithstanding their non-final label.

A final example of the unique nature of dependency and termination cases is the fact that, in some circumstances, non-final dependency orders may not be followed by a subsequent final order. For instance, non-final orders affecting a 16-year-old youth permanently placed with a "fit and willing relative" or in "another planned permanency arrangement" will never be followed by a subsequent, final order because all adjudications and permanency orders have been rendered. Thus, when such a youth is adversely affected by non-final orders such as those concerning independent living services or the administration of psychotropic medications, appellate review is not assured as long as review is left to the discretion of the district court.

In conclusion, the GAL believes that an appellate rule specifically authorizing direct appeal of authorized non-final orders and requiring enforcement of the rule governing original proceedings for unauthorized non-final orders will better protect the best interests of thousands of families, children, and youth. Suggested language for amendments that would accomplish the goal of clarifying the method for obtaining expedited review of non final orders appears on the following pages.

Proposed Addition to Rule 9.130

Appeals of non-final orders in dependency and termination of parental rights cases shall be as prescribed by rule 9.146.

Proposed Addition to Rule 9.146

What May Be Appealed.

(1) **Final Orders.**⁸ For purposes of this rule, final orders include those that:

- (A) adjudicate a child dependent;
- (B) dismiss a dependency petition;
- (C) establish a permanent placement for a child 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.**⁹ 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;¹⁰
- (B) require or approve a change of placement for the child;
- (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;

⁸ This language clarifies what constitutes a final order in the unique context of dependency and termination of parental rights cases in conformity with existing case law. The language is necessary to correct widespread misconception in dependency and termination of parental rights cases that an order is final so long as it resolves the issue in dispute.

⁹ Specifying authorized non-final orders that may be appealed directly will resolve conflict among the district courts. The orders in this proposal are those that are particularly important to the children and families involved.

¹⁰ A similar rule (but more broadly worded) was proposed in 2006. The supreme court deferred adoption of the rule pending completion of the Commission's study. *In re Amendments to The Florida Rules of Appellate Procedure (Out of Cycle)*, 941 So. 2d 352, 353 (Fla. 2006).

- (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.

Review of non-final orders not specifically enumerated in this rule must be by original proceedings filed in strict compliance with rule 9.100.¹¹

¹¹ This language clarifies that review, if any, of non-final orders not specifically authorized by rule 9.146 may be reviewed only through original proceedings under rule 9.100 and only if the proceedings are filed in strict compliance with the time requirements of rule 9.100. Strict enforcement of the time constraints in original proceedings is necessary to ensure that appellate review is expedited.

Proposed Rule

Reason for Change

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.

(3) Appeals of non-final orders in dependency and termination of parental rights cases shall be as prescribed by rule 9.146.

(34) 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

Added to resolve conflict between the district courts and to clarify that specified non-final orders in dependency and termination of parental rights cases are appealable but only to the extent specifically authorized by rule 9.146. Review of non-final orders not listed in rule 9.146 must be through original proceedings filed pursuant to rule 9.100.

Renumbered to accommodate addition of subdivision (3).

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.

(45) 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.

Renumbered to accommodate addition of subdivision (3).

(56) 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.

Renumbered to accommodate addition of subdivision (3).

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

Renumbered to accommodate addition of subdivision (3).

- (b) Commencement. [NO CHANGE]
- (c) Notice. [NO CHANGE]
- (d) Record. [NO CHANGE]
- (e) Briefs. [NO CHANGE]
- (f) Stay of Proceedings. [NO CHANGE]
- (g) Review on Full Appeal. [NO CHANGE]
- (h) Scope of Review. [NO CHANGE]

Proposed Rule

Reason 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. [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 this rules.

(c) What May Be Appealed.

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

- (A) adjudicate a child dependent;
- (B) dismiss a dependency petition;
- (C) establish a permanent placement for a child 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 for the child;
- (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;

To facilitate the timely resolution of cases involving children by creating a single, comprehensive rule addressing issues particular to dependency and termination of parental rights cases.

To clarify what constitutes a final order in the unique context of dependency and termination of parental rights cases in conformity with existing case law. The language is necessary because the traditional definition of a final order as one that terminates judicial labor. However, this does not conform to the practical realities of dependency and termination of parental rights cases. Judicial labor continues for months following an adjudication of dependency and sometimes for years following termination of parental rights. During that time, judicial reviews are ongoing and numerous non-final orders are rendered. A definitive list of final orders is suggested to provide clarity to practitioners with regard to which procedures should be followed.

To resolve conflict among the district courts concerning review of non-final orders in dependency and termination of parental rights cases by providing a right to direct appeal of specified non-final dependency and termination of parental rights orders that significantly impact safety and permanency for children.

- (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.

Review of non-final orders not specifically enumerated in this rule must be by original proceedings filed in strict compliance with rule 9.100.

To clarify that review, if any, of all non-final orders not listed in this rule may be reviewed only through original proceedings under rule 9.100 and only if the proceedings are filed in strict compliance with requirements of rule 9.100. Enforcement of the time constraints in original proceedings is necessary to ensure that appellate review in dependency and termination of parental rights cases is expedited.

(ed) Stay of Proceedings. [RE-LETTER ONLY]

(de) Retention of Jurisdiction. [RE-LETTER ONLY]

(ef) References to Child or Parents. [RE-LETTER ONLY]

(fg) Confidentiality. [RE-LETTER ONLY]

(gh) Expedited Review. [RE-LETTER ONLY]