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June 14, 2006

The Honorable Barbara J. Pariente
Chief Justice, Florida Supreme Court
Florida Supreme Court Building
500 South Duval Street
Tallahassee, Florida 32399

Dear Chief Justice Pariente:

Attached hereto is the Report of the District Court of Appeal Performance & Accountability Commission on Delay on Appeal in Dependency and Termination Proceedings. Our report makes several recommendations which will require further work. In addition, the Trial Court Performance & Accountability Commission has established a subcommittee to investigate the causes of delay in the process of appointing attorneys and securing transcripts and records. Their work is ongoing.

The study of this issue has presented a good opportunity for the five district courts to compare their management practices and use that information to enhance their own case management. When we compare the time on appeal for cases disposed in fiscal year 2005-06 to those we studied in 2004-05, we hope to find improvements in all of the courts.

The Honorable Barbara J. Pariente
Chief Justice, Florida Supreme Court
June 14, 2006
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After reviewing the report and recommendations, we look forward to receiving further direction from the court on our recommendations and course of action. Thank you for allowing us to provide input on this important issue.

Yours very truly,

A handwritten signature in cursive script that reads "Martha C. Warner".

Martha C. Warner

MCW/lrb
Enclosure

cc: Ms. Lisa Goodner
Ms. Barbara J. French
Members of the Commission on
District Court of Appeal Performance & Accountability
District Court of Appeal Chief Judges
Ms. Jo Suhr

Report of the District Court of Appeal Performance & Accountability Commission On Delay in Child Dependency/Termination of Parental Rights Appeals

In October 2005, the Chief Justice requested the Commission on District Court of Appeal Performance & Accountability to review appeals of child dependency and parental termination of rights cases to improve timeliness of dispositions. The Commission has studied the issue, sampled case dispositions in each of the five district courts, obtained assistance from the Trial Court Performance & Accountability Commission for issues with respect to the appointment of lawyers and transcription of proceedings, and submits this preliminary report for consideration by the supreme court.

The National Experience – A Brief Review

While courts, Congress, and state legislatures have become more cognizant of the harmful effects of delay in dependency and parental termination trial proceedings on the welfare of children, recently that inspection has included the time delay on appeal.¹ Children are affected by delay in court proceedings far more than are businesses or adults, because their sense of time is different than adults and the need for attachment to promote healthy children is great. Ohio Justice Evelyn Lundberg Stratton, one of the early proponents of avoiding delay on appeal presents a sad scenario caused by delay in judicial proceedings:

An abused and neglected two-year-old child is removed from her home and placed into foster care. A social services agency files a dependency action in juvenile court. The child is shifted to a second foster home when her foster parents decide to move. Meanwhile, three attempts at family reunification fail. The court eventually conducts a final hearing three years after the child was removed from her family. Although an adoptive family has been located, the child must remain in foster care, because an appeal is pending. The appellate process takes eighteen months before the court issues its decision. Six months later, the Supreme Court accepts jurisdiction. Another year passes before the Court conducts oral arguments and issues its opinion.

That two-year-old girl is now age eight and permanently scarred from six years of frequent moves among foster homes and sporadic visits with drug-abusing parents. She has watched six summers and holiday seasons pass as she waits to become part of a real family. The family who sought to adopt her as a toddler has

¹ See, e.g. Evelyn Lundberg Stratton, *Expediting the Adoption Process at the Appellate Level*, 28 Capital Univ. L. Rev. 121, 121 (1999); Martha Pierce, *MAKING APPEALS MORE CHILD FRIENDLY*, 17 APR Utah B.J. 20 (2004); Jessica K. Heldman, *Court Delay and the Waiting Child*, 40 San Diego L. Rev. 1001 (2003); Susan C. Wawrose, "CAN WE GO HOME NOW?": *EXPEDITING ADOPTION AND TERMINATION OF PARENTAL RIGHTS APPEALS IN OHIO STATE COURTS*, 4 J App. Prac. & Process 257 (Spring 2002);

reconsidered and now declines to adopt an emotionally troubled eight-year-old. The little girl, now available for adoption, remains in foster care, yearning for new parents. There is no award of interest on a judgment that will make her whole.

Cases involving termination of parental rights and adoption issues are about the lives of children, rather than contracts, insurance, business disputes, or water rights. The legal system views these cases as numbers on a docket. However, to a child, waiting for a resolution seems like forever-an eternity with no real family and no sense of belonging.²

Although the Adoption and Safe Families Act (ASFA), passed by Congress in 1997, has done much to reduce delay in moving children out of the foster care system by setting time standards, the act did not address time standards on appeal. In their report for the National Center for State Courts, Flango and Keith documented 43 states in 2002 as having some sort of expedited procedure for dependency and termination appeals.³ However, most states, including Florida, direct that such appeals should be expedited without providing any specific rules which shorten time for production of transcripts, filing of briefs, or issuing opinions.⁴

Several states have adopted a more aggressive approach to reducing delay on appeal by creating rules to expedite the appellate process. Ohio, Illinois, Colorado, Iowa, and Tennessee have all adopted rules reducing time periods for appeals.⁵ These rules reduce the time allowed for filing the notice on appeal, time for preparation of the transcript, filing briefs, and scheduling oral argument. They also include provisions designed to expedite an appeal, such as requiring the client to sign the notice of appeal,⁶ superintending the preparation of the transcript and record by the trial court,⁷ and provision that the chief judge shall assign court reporting priorities so that transcript deadlines for these appeals are met.⁸ The Illinois rule requires that the appellate court issue its decision within 150 days of the filing of the appeal.⁹

National organizations have created model timelines for dependency/termination appeals. The National Council of Juvenile and Family Court Judges (NCJFCJ) proposal calls for the appeal time from filing to disposition of 150 days, while the ABA standard extends the time to 175 days. These are attached in Appendix A. Only Illinois has adopted a specific time standard from filing to disposition. Other courts do not place a definite time for completion of the opinion.

² Stratton at 121.

³ Keith and Flango, *Expediting Dependency Appeals: Strategies to Reduce Delay*, National Center for State Courts (2002)

⁴ *Id.*

⁵ See Ohio R. App. P. 11.2(C) (as amended West Supp. 2002); Ill S.Ct. Rule 306A; Colorado Appellate Rule 3.4; Tennessee Rule of Appellate Procedure rule 8A (Tennessee's time frame for a termination of parental rights appeal is actually slightly longer than Florida's civil appeal); Iowa Court Rule 6.5 et. Seq.

⁶ See e.g. Colo App R. 3.4(d)

⁷ Ill. App. Rule 306A(d)

⁸ *Id.*

⁹ Rule 306A(f)

The Experience in Florida

Appellate courts in Florida are not immune to the problem of delay on appeal in child proceedings. Justice Kogan decried the delay in adoption proceedings in *In re Adoption of Baby E.A.W.*, 658 So. 2d 961 (Fla. 1995), a case which took nearly two years to wend its way through the appellate court and supreme court of Florida. For many cases, the situation has not improved. The recent case of *B.C. v. Florida Dept of Children and Families*, 887 So. 2d 1046 (Fla. 2004), involving termination of parental rights, commenced in the appellate court in December 2002, was decided in August 2003 with a question certified to the Florida Supreme Court, and decided by the Florida Supreme Court with rehearing denied in November 2004. Thus, the child involved continued in foster care for two years during the appellate process.

Section 39.815, Florida Statutes, states that “The district court of appeal shall give an appeal from an order terminating parental rights priority in docketing and shall render a decision on the appeal as expeditiously as possible.” However, a similar admonition to expedite an appeal of a dependency disposition is not contained in subsection 39.510(1), Florida Statutes, dealing with appeal of dependency orders. Nevertheless, Florida Rule of Appellate Procedure 9.146 provides for expedition of dependency, termination of parental rights, and cases involving families and children in need of services orders (CINS/FINS). It provides:

(a) **Applicability.** Appeal proceedings in juvenile dependency and termination of parental rights cases and cases involving families and children in need of services shall be as in civil cases except as modified by this rule.

(b) **Appeals Permitted.** 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 rules.

(c) **Stay of Proceedings.**

(1) *Application.* Except as provided by general law and in subdivision (c)(2) of this rule, a party seeking to stay a final or non-final order pending review shall file a motion in the lower tribunal, which shall have continuing jurisdiction, in its discretion, to grant, modify, or deny such relief, after considering the welfare and best interest of the child.

(2) *Termination of Parental Rights*. The taking of an appeal shall not operate as a stay in any case unless pursuant to an order of the court, except that a termination of parental rights order with placement of the child with a licensed child-placing agency or the Department of Children and Family Services for subsequent adoption shall be suspended while the appeal is pending, but the child shall continue in custody under the order until the appeal is decided.

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

(e) **References to Child or Parents**. When the parent or child is a party to the appeal, the appeal shall be docketed and any papers filed in the court shall be titled with the initials, but not the name, of the child or parent and the court case number. All references to the child or parent in briefs, other papers, and the decision of the court shall be by initials.

(f) **Confidentiality**. All papers shall remain sealed in the office of the clerk of the court when not in use by the court, and shall not be open to inspection except by the parties and their counsel, or as otherwise ordered.

(g) **Expedited Review**. The court shall give priority to appeals under this rule.

Like most other states, the Florida rule contains no specific timelines but merely directs that the court give priority to dependency and termination appeals. This has resulted in varied practices in the appellate courts that have reduced some delay in these types of appeals but do not achieve anywhere close to the timelines advocated by the ABA or the NCJFCJ.

Examination of Appellate Court Caseload

In order to determine the extent of delay in dependency and termination cases in Florida appellate courts, the Commission reviewed all dependency and termination cases disposed in fiscal year 2004-05.¹⁰ The Commission then reviewed in depth the time on appeal for all cases whose disposition date was more than 180 days from filing of the

¹⁰ The Commission did not include writs because they are not classified in the same way as appeals are. Each court would have to pull all of the juvenile petitions and determine which are generated from dependency and termination of parental rights cases. The commission will review these. However, each court believes that the number is very small (e.g. in the fourth district only five petitions for certiorari were filed last year in cases involving dependency or termination appeals.)

notice of appeal in the district court. For those, each segment of the appellate process was isolated so that the Commission could determine where the delays were occurring. Instead of looking at median or average times, the Commission looked not only at the median (50th percentile) and mean (average), but also at the case at the 90th percentile.

The results revealed some interesting and surprising information. Appendix B contains these figures and should be reviewed in depth. In terms of numbers, in all courts there are relatively few appeals of dependency and termination orders. Statewide in 2004-05 there were only 280 dispositions of TPR appeals and 167 disposition of dependency appeals. What is more surprising is that 41% of the TPR dispositions and 30% of dependency dispositions were handled by the second district. Finding this number disproportionate, OSCA also compared the number of circuit court filings by district, along with population numbers. These show that the second district's percentage of appeals/circuit court filings is in line with the other districts, but the number of circuit filings/population is significantly greater in the circuits comprising the second district than in other circuits. Because of this the second district has a greater case -per-judge ratio of these types of cases than the other courts.¹¹

Of the total dispositions, the statewide average shows that 69% of TPR dispositions and 55% of dependency dispositions in 2004-05 took longer than 180 days from filing to disposition. Broken down by district, the percentage of cases with dispositions over 180 days is as follows:

% Over 180 Days from Filing to Disposition		
District	Termination	Dependency
First	58%	37%
Second	80%	80%
Third	75%	46%
Fourth	58%	42%
Fifth	62%	56%
State	69%	55%

The appendix shows the median, mean, and 90th percentile of days on appeal for terminations. For this group of dispositions, the statewide median is 264 days, the mean is 299 days; and the 90th percentile is 441 days. Thus, for most of the termination appeals in the state, a delay on appeal of around ten months would be “normal,” with some cases taking in excess of a year and a half to decide. Similar results are obtained in dependency appeals.

The significant portion of the delay on appeal, however, occurs in the time required to obtain the record, transcript and briefs of the parties. Statewide, at least two thirds of the time on appeal is spent in these endeavors. However, in the fifth district, less than half of the time on appeal is accounted for prior to perfection. Also, the third district accounts for the greatest percentage of time from filing to perfection. This can be

¹¹ For 2004-05 dependency/termination dispositions combined, the ratios of dispositions per judge are: 1st,5.8; 2d, 11.8; 3d, 5.9; 4th, 5.9; 5th, 8.

accounted for by the third's more liberal extension of time policies for transcript preparation and brief writing. Thus, the practices of individual courts significantly impact the delay on appeal.

The charts also track each appeal segment from the filing of the notice of appeal to the disposition. These numbers also show that the individual practices in each district court affect the length of time on appeal. The fourth and fifth districts have administrative orders that substantially expedite the filing of the record and briefs, and these appear to have reduced delay from filing to perfection more than in other courts. However, from perfection to conference or oral argument, the third district is the fastest with the fifth district being considerably slower than the other courts in getting the case before a panel of judges. The fifth district is also slower in releasing the decision after conference or oral argument. The second district, on the other hand, has a significant problem in getting the record as well as getting briefs filed in a timely fashion. However, from perfection to disposition, their timeliness is not significantly different than the other courts. The first district appears to process its termination appeals faster than its dependency appeals. It also appears that getting the record filed in the dependency appeals (of which there are very few) is slower than in getting the record in termination appeals in all courts but the fifth district. The reader is encouraged to review the materials in the appendix on timeliness of the appeals.

Cognizant of the need to reduce delay, each district provided case management techniques that they presently employ to expedite the cases. These are attached in Appendix C. They reveal that the various districts have different views of "expediting" a dependency/termination case. For instance, in the fourth and fifth districts, a notice is sent out with each acknowledgment of appeal providing an expedited time schedule for these appeals. Most courts allow sparing extensions of time for completion of briefs, but the third district permits 60 days of extensions for briefs on termination s appeals and 90 days for extensions of time for dependency appeals. All courts report case monitoring by either the clerk's office or central staff. The first and the fourth districts ask their judges to review these cases ahead of other cases on their dockets and to dispose of them even in advance of the stated conference date, if possible. In the fourth district, the judges have adopted a policy of disposing of dependency/termination cases within 30 days of conference or OA, with the chief judge monitoring compliance with this provision. Time on appeal is sped up in some courts by giving priority in the clerk's office to the issuance of the decision.

Many of these case management techniques have been in place for considerable time. The courts have adopted some of the policies only recently; therefore, the 2004-05 dispositions do not reflect the application of all of the delay reduction policies of the courts. After July 1, 2006, the Commission will review the 2005-06 dispositions to determine any changes to the mean, median, and 90th percentile in filings to ascertain the effect of the delay reduction policies in each court.

Examination of Delay in Transcript Production and Attorney Appointment

The Commission requested that the Commission on Trial Court Performance & Accountability (TCP&A) study the issue of delay in the transcript and record production process in the trial court as well as the issue of appointment of appellate counsel. Their review of this process is not complete. Of the twenty circuits, all responded with varying levels of applicable data regarding specific time frames on the cases reviewed by our Commission. Without studying the information in detail, issues that have been reported include: the “hand-off” of the case from the trial attorney to the appellate attorney, which slows down the filing of directions to the clerk and designations to the court reporter; clerk of the circuit court practices in making the record available to the appellate attorneys; and delay in obtaining a transcript of the proceedings.

It is apparent that case management practices regarding these types of cases vary widely from circuit to circuit, as does the court reporting methods used to generate transcripts. The variations include the method of recording (steno vs. analog/digital) and transcript production (prepared by court vs. non-court staff). Compounding these issues is the fact that the post- Revision 7 process for obtaining transcripts of proceedings has reportedly resulted in delays due to ignorance of the correct procedures for ordering and paying for transcripts. The TCP&A will also be surveying trial court clerks and court reporters in order to identify patterns that result in delay.

Apparent lack of knowledge of the appellate process is one reason why cases bog down in record preparation and briefing. It is unclear what role the post-Revision 7 process for appointment of attorneys on appeal has had on the availability and experience of appellate counsel for parents. TCP&A will be surveying the attorneys involved in these appeals to determine issues relating to attorney appointment and compensation and how they may impact delay on appeal. The TCP&A will also be surveying the chief judges determine whether the transition to state funding has had any impact on obtaining the services of experienced appellate attorneys in these types of cases.

Because there are significantly more appeals in the second district than in the other districts, the issue of supply of attorneys to handle appeals is more acute in this district. The Commission will also look at the dispersion of attorneys accepting appeals across the state compared to the caseload of each district court of appeal.

While the TCP&A continues to study this issue, the Commission has also contacted the appellate division of the State Guardian Ad Litem Program for comment on the issue of delay on appeal.

Analysis and Recommendations

The Commission’s review of dependency and termination of parental rights appeals reveals that the district courts handle only about one third of their cases within the longer ABA recommended guideline for time on appeal in these cases. Whether the courts could achieve this guideline time for all such appeals depends upon further

analysis of the issues of trial transcription, record, and brief preparation. These issues may depend upon the availability of resources as well as on the determination of the courts to reduce delay.

Nevertheless, it is apparent that the district courts approaches to “expediting” cases vary. The third district’s idea of an acceptable time delay is more liberal than the fourth district’s. Unless there is direction or agreement as to what constitutes an acceptable time on appeal, it will be difficult to require “best management practices” to reduce delay further.

If we are to substantially improve delay on appeal, the Commission recommends that the rules of appellate procedure be amended to incorporate both shortened time periods and case management provisions, such as those contained in the Illinois rule requiring trial court oversight of record, transcription, and attorney appointment issues. The adoption of specific expedited rules will reinforce the importance the courts attach to resolving these issues expeditiously for the children’s sake. Language in the rule merely stating that these cases should receive priority is not sufficient in and of itself to achieve that purpose. Given the work we have done so far on this issue, if the court determines to set a goal, we would recommend that the court adopt a time on appeal goal of not less than 180 days. Any shorter time period would be unrealistic given the current issues with respect to transcript production and attorney availability for appeals. Any rule should cover expedition of writs connected with these types of cases and should also extend to expedition of such cases in the supreme court.

All of these cases require active case management and monitoring on appeal. To address this appropriately, the commission would engage the chief judges of the circuits to develop a rule provision to permit active superintendence of the record preparation and attorney appointment at the trial level. Upon reaching a consensus, the commission would recommend that a proposed rule on case management be implemented by Administrative Order of the Chief Justice to “pilot” before adoption in the rules.

If the Court provides guidance as to the specific time goal for processing these appeals, and TCP&A has provided us with the additional information regarding transcript production and attorney appointment, the Commission could then draft a rule with timelines to achieve this result. This rule would then be circulated to both the juvenile rules and appellate rules committees for consideration.

In the meantime, the Commission would continue to collect information regarding “best practices” of the individual district courts to reduce time from perfection of the appeal to disposition and disseminate them to the courts as a whole. The success of these “best practices” can be measured by reviewing the time segments on appeal for fiscal year 2005-06, much as we have done for the 2004-05 fiscal year. Part of this review would set up institutional reporting mechanisms to inform the chief judge and the chief justice of the progress of these particular cases throughout the appellate process. Aggressive case management of these appeals is critical to reducing delay.

In consideration of the best interests of the children whose lives are affected by these cases, we have the capability of expediting these cases more than we are presently doing. However, concern has been expressed that if our sole objective is speeding up the process, will expediting the appeal affect the quality of appellate review?¹² And, if we expedite these cases, are there other equally worthy types of cases which either need expedition or will not receive it because of our treatment of these dependency/TPR cases?¹³ These are questions which the Commission cannot definitively answer but may generate thoughtful comment on any proposed rule designed to expedite these cases.

¹² See, e.g. *Wawrose*, supra note 1, at fn. 6

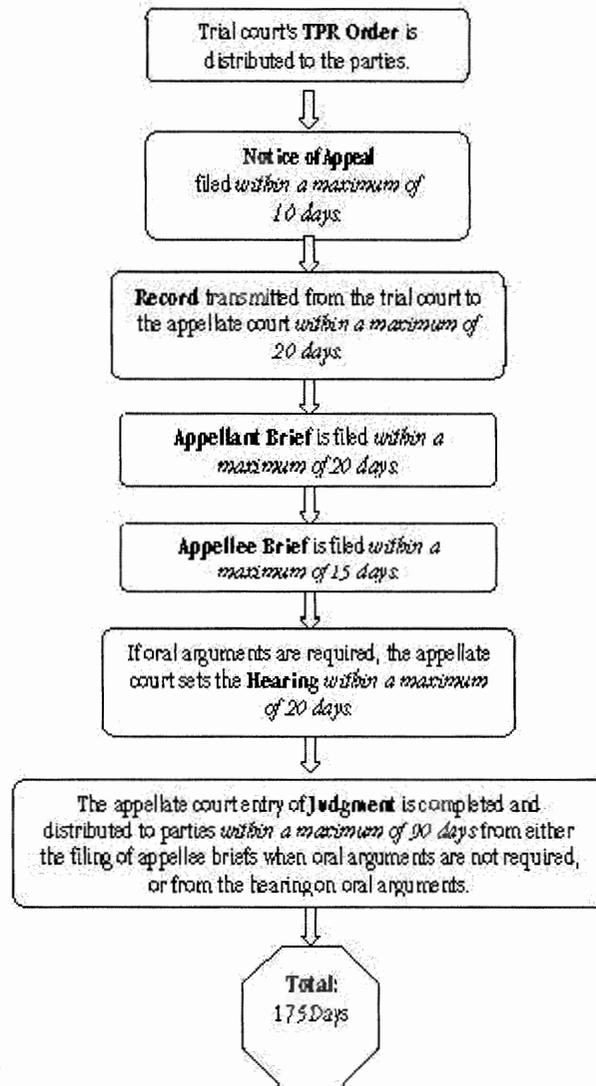
¹³ See, Schumm, Expedited Appeals In Indianan: Too Little, Too Late, *Journal of Appellate Practice and Process*, 4 J. App. Prac. & Process 215, 223 (Spring 2002)(“ Cases involving children and interlocutory appeals, both of which are covered under the current rule, are certainly worthy candidates for meaningful expedited treatment. However, some criminal cases, especially those in which a defendant is serving a short sentence or is near the end of his or her sentence, seem equally meritorious. There may well be other categories of cases or individual cases worthy of expedited treatment....”)

APPENDIX “A”

Proposed National Standard Timelines for Dependency/Termination Appeals

Expediting Dependency Appeals

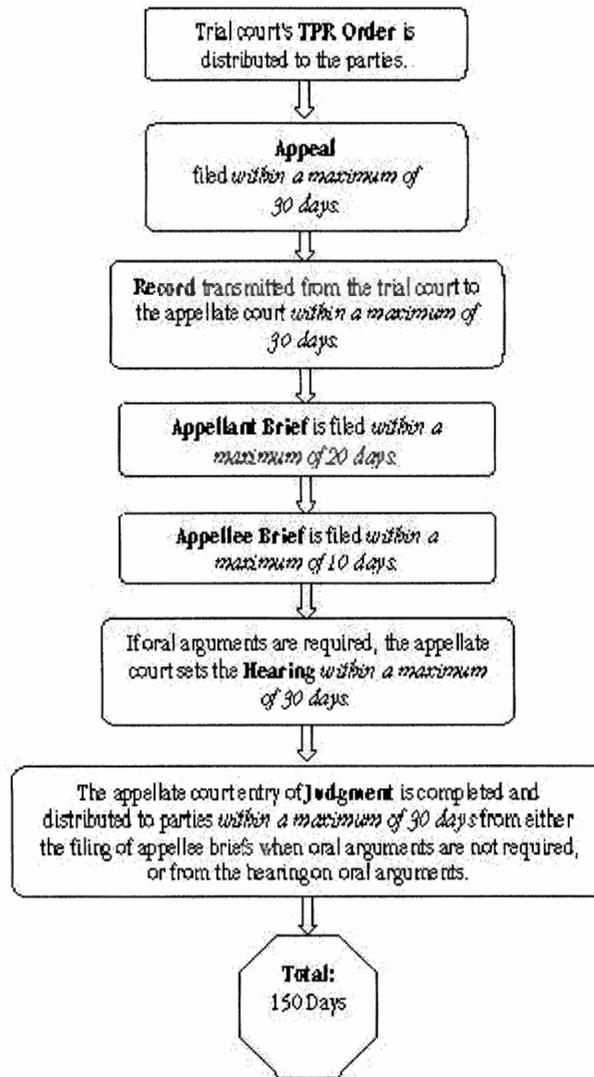
ABA Proposed Appellate Time Lines



ABA COURT RULES 115 (Rule 91 and Commentary) ("These time frames contemplate a 175-day lapse from the filing of the notice of appeal to the court's decision. This acceleration is notable, given that the majority of cases currently take a year or more in many jurisdictions.").

Promising Practices in Expediting Permanency

NCJFCJ Proposed Appellate Time Lines



*Whenever possible, it is in the child's best interest to reduce the time frames even further.

ADOPTION AND PERMANENCY GUIDELINES: IMPROVING COURT PRACTICE IN CHILD ABUSE AND NEGLECT CASES, NCJFCJ (2000).

APPENDIX “B”

**Summary of District Court of Appeal
Case Processing Times for Cases
Disposed Fiscal Year 2004-05**

District Court of Appeal
Termination of Parental Rights and Dependency
Fiscal Year 2004-05 Dispositions

Summary

Termination of Parental Rights

	Statistic	First	Second	Third	Fourth	Fifth	State
Total number of dispositions	N	51	115	28	36	50	280
Dispositions over 180 days	N	30	92	21	21	31	195
	Mean (in days)	266	323	299	232	304	299
	Median (in days)	253	287	226	219	291	264
	90th (in days)	374	483	532	264	397	441
Percent of days spent from:	Percent	66.7%	70.4%	72.8%	64.9%	49.9%	66.4%
	Percent	33.3%	29.6%	27.2%	35.1%	50.1%	33.6%

NOA to Perfection
Dependency
Perfection to Disposition

	Statistic	First	Second	Third	Fourth	Fifth	State
Total number of dispositions	N	37	50	15	35	30	167
Dispositions over 180 days	N	14	40	7	15	17	93
	Mean (in days)	319	320	330	210	283	296
	Median (in days)	317	302	322	208	281	281
	90th (in days)	415	502	432	236	427	425
Percent of days spent from:	Percent	55.7%	69.5%	70.0%	65.7%	47.5%	62.8%
	Percent	44.3%	30.5%	30.0%	34.3%	52.5%	37.2%

NOA to Perfection
Perfection to Disposition

District Court of Appeal
Termination of Parental Rights and Dependency
Fiscal Year 2004-05 Dispositions

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	29	92	20	21	31	193
	Mean	84	153	97	75	98	119
	Median	75	129	84	72	66	90
	90th	142	291	158	94	221	236
Filing of Record to Initial Brief	N	26	77	14	21	30	168
	Median	25	56	32	38	18	37
	90th	108	110	278	63	65	108
Initial Brief to Answer Brief	N	26	76	14	18	30	164
	Mean	40	34	74	20	30	36
	Median	30	31	61	19	25	27
	90th	70	58	160	35	61	68
Answer Brief to Reply Brief	N	5	26	3	9	12	55
	Mean	93	29	22	34	20	33
	Median	20	23	23	28	21	23
	90th	219	53	24	82	28	53
Perfection to Conf/OA	N	26	75	13	21	30	165
	Mean	70	53	37	44	105	63
	Median	71	45	27	39	97	55
	90th	98	87	67	79	143	106
Conf/OA to Disposition	N	11	75	13	21	26	146
	Mean	32	26	31	37	55	34
	Median	20	13	23	13	34	15
	90th	72	71	51	77	163	78
Reply Brief to Disposition	N	5	26	3	9	12	55
	Mean	83	84	38	82	152	96
	Median	98	78	33	58	133	87
	90th	142	127	50	161	221	184

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	13	37	6	14	15	85
	Mean	103	158	114	106	77	124
	Median	108	141	104	74	56	95
	90th	150	317	205	258	199	228
Filing of Record to Initial Brief	N	10	32	5	14	15	76
	Median	17	23	61	15	22	21
	90th	97	110	85	45	102	102
Initial Brief to Answer Brief	N	10	31	4	14	13	72
	Mean	79	30	108	30	35	42
	Median	60	25	124	20	35	32
	90th	198	59	165	53	52	85
Answer Brief to Reply Brief	N	2	8	0	7	5	22
	Mean	26	24	N/A	13	14	18
	Median	26	22	N/A	11	11	21
	90th	29	42	N/A	21	32	29
Perfection to Conf/OA	N	10	29	4	14	16	73
	Mean	116	64	27	39	87	70
	Median	87	57	20	34	90	60
	90th	267	111	56	59	107	105
Conf/OA to Disposition	N	8	30	4	14	14	70
	Mean	34	16	57	30	73	35
	Median	29	9	50	17	25	14
	90th	92	25	115	69	233	81
Reply Brief to Disposition	N	2	8	0	7	5	22
	Mean	122	114	N/A	106	178	127
	Median	122	73	N/A	105	127	114
	90th	181	296	N/A	146	371	181

APPENDIX “C”

Case Management Techniques for Dependency/Termination Appeals

Case Management Techniques for Dependency/Termination Appeals

	1st	2nd	3rd	4th	5th
Initiation of Appeal					
a) Notice to Parties of Expedited Procedures	✓	✓	✓	✓	✓
b) Contents of Notice					
i) case will be expedited					
ii) provide time frame					
15 days from date of order expediting for filing index to record, regardless of whether transcript is filed; 20 days from date of order to file transcript; 65 days from notice of appeal to file record on appeal; 20 days after filing of transcript to file initial brief, or 50 days from date of order if appendix is used in lieu of record; 15 days from service of initial brief for answer brief; 10 days from service of answer brief for reply brief.				✓	
25 days from filing of notice to prepare record; 60 days from filing of notice to transmit record to court; 40 days from date of order expediting to serve initial brief; 15 days from service of initial brief to serve answer brief; 5 days from service of answer brief to file reply					✓
iii) require name and address of court reporter	✓				
iv) require appellant to notify clerk of court and court reporter of requirements of order, although court notifies clerk and official reporter				✓	
v) provide that filing of motions by any party shall not toll running of briefing schedule				✓	
vi) provide for sanctions to parties responsible for delays in appeal					
c) Case Set-Up					
i) use different colored folder for dependency/TPR cases to easily identify cases as being expedited	✓		✓	✓	✓
ii) immediate review by central staff attorney to identify jurisdictional or procedural defects and proper classification of appeal	✓				
Case Monitoring					
a) Clerk's office monitors appeal until assignment to a panel.			✓	✓	
b) Developing an excel spreadsheet to track all pending cases and give chief judge monthly reports				✓	
c) Motions are not held for response but immediately sent to panel.				✓	

	1st	2nd	3rd	4th	5th
i) blue sticky note placed on each motion or other pleading tagged so they can be processed ahead of other pleadings	✓				
d) Each dependency/termination case is reviewed weekly by clerk's office to insure case is proceeding in accordance with rules.	✓				
e) Central Staff monitors to perfection.		✓			
i) order for status report sent to circuit court clerk when record on appeal has not been filed if 50 days has passed since appellant filed notice of appeal.		✓			
ii) if circuit court clerk reports that no designations or directions have been filed, then order is sent to appellant requiring status report (1) once answer brief is filed, case is referred by to clerk's office for assignment					
f) Extension Policies	✓	✓		✓	✓
i) sparing extensions					
ii) set policy 60 days of extensions for briefs on TPR; 90 days of extensions for briefs on dependencies			✓		
Case Assignment Policies					
a) Reserving slots on each calendar for dependency/TPR	✓	✓		✓	
i) number of reserved slots determined by reviewing number of dependency/TPR cases filed last year, with settings clerk monitoring throughout year for adequacy				✓	
ii) cases assigned to panel upon filing of answer brief		✓		✓	
iii) cases are generally assigned to panel within 30 days of answer brief being filed				✓	
iv) cases are generally assigned to panel within 60 to 75 days from perfection to conference	✓				
v) OA cases and cases not assigned to vacant positions on panel are schedule during first week of a month's calendar		✓			
b) Case assigned to next available oral argument or conference calendar.			✓		✓
c) Oral argument/conference scheduled within five or six weeks from filing of answer brief.			✓		

	1st	2nd	3rd	4th	5th
Decision-Making Policies					
a) When case is assigned to chambers, staff attorney responsible for preparation of bench memo gives case priority and provides bench memo to judge upon completion for review instead of with rest of memos for calendar.				✓	
b) Judges and panels are asked to review these cases ahead of other cases.	✓			✓	
c) Judges are encouraged to review case to determine if it can be disposed of prior to conference date.	✓			✓	
d) Case stays on calendar if it is not disposed of prior to that time.				✓	
e) Judges have adopted a policy of disposing of dependency/termination cases within 30 days of conference or OA.				✓	
i) chief judge is authorized to monitor all such cases and to regularly inquire of any dependency/TPR case in a judge's office more than 30 days from date of conference				✓	
ii) case is considered delinquent if case is pending 45 days following conference, and clerk circulates monthly report listing delinquent cases		✓			
Issuance of Opinion/Decision					
a) PCAs will be issued immediately to the parties, rather than waiting until the next weekly release date; however, they will be posted on the WEB and sent to Westlaw on the regular weekly release dates.				✓	
b) Clerk's policy will be to process TPR and dependency cases ahead of all other cases for opinion release.	✓				
c) Written opinions in dependency/TPR cases will be given a one week pre-release circulation (rather than two weeks for all other opinions).				✓	
d) Issuance of Mandate as soon as the motion for rehearing is denied instead of waiting the additional 15 days as provided in Rule 9.340(b).				✓	
Other Policies					

	1st	2nd	3rd	4th	5th
Adoption of Internal Operating Procedures to be posted on the Website. This will include the expedited processing procedures for dependency and termination cases, which will put litigants and lawyers on notice of restricted policies regarding extensions in these cases.	✓				

Draft as of 3/22/06

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

Supreme Court of Florida

500 South Duval Street
Tallahassee, Florida 32399-1925

BARBARA J. PARIENTE
CHIEF JUSTICE
CHARLES T. WELLS
HARRY LEE ANSTEAD
R. FRED LEWIS
PEGGY A. QUINCE
RAOUL G. CANTERO, III
KENNETH B. BELL
JUSTICES

THOMAS D. HALL
CLERK OF COURT

June 30, 2006

Honorable Martha C. Warner, Chair
DCA Performance & Accountability Commission
Fourth District Court of Appeal
1525 Palm Beach Lakes Boulevard
West Palm Beach, Florida 33401

Dear Judge Warner:

On behalf of the Court, we want to thank you and the Commission for the excellent report on Delay on Appeal of the District Courts of Appeal in Dependency and Termination. As you know, I have asked the Chief Judges to get together to see if they can agree in the interim to uniform standards of expediting these time-sensitive cases involving children. I understand that you are still awaiting information from the Trial Court Performance and Accountability regarding the delay connected with obtaining the transcript and the record.

The Court would request that you propose time standards (e.g. how many days to file an appeal; obtain the transcript, etc.) We would also hope you would address time standards for petitions for writs of certiorari that are filed seeking other types of non-final orders in these cases. Finally, we would like revised time standards in which the appellate courts must act.

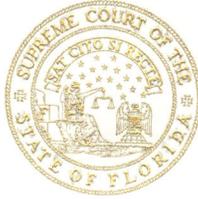
You advised that you believed this stage could be accomplished by January 2007. At that time we would further request that you work in conjunction with the Appellate Court Rules and Juvenile Rules Committees to draft a rule for submission to the Court regarding changes to the time standards for appeals and petitions for writs of certiorari and also changes to the Rules of Judicial Administration. We would like this rule be submitted to the Court no later than July 1, 2007.

Yours very truly,

Barbara J. Pariente

BJP/bdw

cc: Honorable Alice Blackwell-White
DCA Chief Judges
Ms. Deborah Meyer, Director of Central Staff



Supreme Court of Florida

500 South Duval Street
Tallahassee, Florida 32399-1925

BARBARA J. PARIENTE
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JUSTICES

THOMAS D. HALL
CLERK OF COURT

STEPHEN C. ROBERTSON
MARSHAL

MEMORANDUM

TO: Chief Judges of the District Courts of Appeal

FROM: Chief Justice Barbara J. Pariente 

DATE: October 25, 2005

SUBJECT: Time on Appeal for Cases Involving Children

I recently attended the “Justice for Children: Changing Lives by Changing Systems – A National Judicial Leadership Summit on the Protection of Children” sponsored by Conference of Chief Justices and the Conference of State Court Administrators, in conjunction with the National Center for State Courts and the National Council of Juvenile and Family Court Judges. The conference renewed my commitment to improving our trial and appellate courts’ management of children’s cases; decreasing the time on appeal is significant for a child waiting for permanency.

As we all know, each district has developed various policies and operating procedures to address our mutual desire to have cases involving children resolved with thoughtful deliberation and as expeditiously as possible. In the past both the Commission and Office of Court Improvement have reviewed related issues in light of national studies and recommendations. Other states, such as Michigan, Utah and Iowa, have successfully implemented changes in policy and reporting procedures to decrease time on appeal.

Chief Judges of the District Courts of Appeal
October 25, 2005
Page Two

I am writing to notify you that I have asked the Commission on District Court of Appeal Performance and Accountability (Commission) to review the overall time on appeal for cases involving children to determine if any further improvements can be made.

While the Commission commences with its review, I am asking that each of you enhance your internal monitoring of timeliness in cases involving children, including cases involving child custody, dependency, and termination of parental rights. You should consider time from filing to perfection, perfection to conference or oral argument, as well as the standard time from conference or oral argument to disposition. Additionally, the Court will be specifically reviewing the 180 day reports for cases involving children. As you implement your enhanced monitoring efforts, please address any successes, issues or concerns pertinent to the Commission's review with your district's Commission representative or Judge Martha Warner.

Thank you so much for your continued efforts in this regard.

BJP/js

cc: Judge Martha C. Warner
Clerks of the District Courts of Appeal

District Court of Appeal
 Total Notices and Petitions Filed
 Fiscal Year 2005-06 ¹

	First	Second	Third	Fourth	Fifth	State
Total Cases Filed (Notices and Petitions)	6,355	5,989	3,097	4,925	4,669	25,035
Total Notices Filed	4,879	4,607	2,404	3,763	3,796	19,449
Criminal Post Conviction	1,276	1,450	816	1,205	1,230	5,977
Other Criminal	1,288	1,695	445	1,080	1,352	5,860
Civil	883	864	662	849	569	3,827
Family	173	153	161	233	204	924
Juvenile	205	317	158	165	282	1,127
Probate/Guardianship	21	33	36	49	12	151
Administrative	616	95	126	182	147	1,166
Workers' Compensation	417	0	0	0	0	417
Total Petitions Filed	1,476	1,382	693	1,162	873	5,586
Criminal	799	984	458	867	666	3,774
Civil	557	357	185	231	148	1,478
Family	15	10	25	33	12	95
Juvenile	20	27	18	12	39	116
Probate/Guardianship	1	3	1	17	6	28
Administrative	61	1	6	2	2	72
Workers' Compensation	23	0	0	0	0	23

¹ Data as of July 31, 2006.

District Court of Appeal
Total Notices Filed
Fiscal Year 2005-06 ¹

	First	Second	Third	Fourth	Fifth	State
Total Notices Filed	4,879	4,607	2,404	3,763	3,796	19,449
Total Criminal Post Conviction	1,276	1,450	816	1,205	1,230	5,977
3.800	518	667	342	455	464	2,446
3.850	737	747	457	739	751	3,431
3.853	21	36	17	11	15	100
Total Other Criminal	1,288	1,695	445	1,080	1,352	5,860
Habeas Corpus	21	2	70	0	59	152
Judgment and Sentence	1,044	1,540	232	921	1,166	4,903
Other	201	71	115	92	85	564
State Appeals	22	82	28	67	42	241
Total Civil	883	864	662	849	569	3,827
Other	481	856	658	824	552	3,371
Prisoner Litigation	402	8	4	25	17	456
Total Family	173	153	161	233	204	924
Adoption	7	3	2	2	2	16
Child	89	0	9	1	24	123
Other	77	150	150	230	178	785
Total Juvenile	205	317	158	165	282	1,127
Delinquency	112	146	87	87	120	552
Dependency	29	62	23	32	34	180
Other	8	10	3	5	53	79
Termination of Parental Rights	56	99	45	41	75	316
Total Probate/Guardianship	21	33	36	49	12	151
Total Administrative	616	95	126	182	147	1,166
Other	313	68	54	94	80	609
Unemployment Compensation	303	27	72	88	67	557
Total Workers' Compensation	417	0	0	0	0	417

¹ Data as of July 31, 2006.

District Court of Appeal
Total Petitions Filed
Fiscal Year 2005-06 ¹

	First	Second	Third	Fourth	Fifth	State
Total Petitions Filed	1,476	1,382	693	1,162	873	5,586
Total Criminal	799	984	458	867	666	3,774
Certiorari	44	74	31	38	42	229
Coram Nobis	0	2	0	0	0	2
Habeas Corpus	119	124	81	140	79	543
Mandamus	350	390	136	346	166	1,388
Other Original Proceedings	2	7	4	9	4	26
Ineffective Assistance of Counsel	80	134	64	86	124	488
Belated Appeal	173	203	112	205	208	901
Prohibition	31	50	30	43	43	197
Total Civil	557	357	185	231	148	1,478
Certiorari	354	181	142	153	119	949
Habeas Corpus	13	36	3	4	1	57
Mandamus	139	106	13	30	19	307
Other Original Proceedings	4	0	1	0	0	5
Review Orders Excluding Press/Public	1	0	0	0	0	1
Prohibition	46	32	26	43	7	154
Quo Warranto	0	2	0	1	2	5
Total Family	15	10	25	33	12	95
Certiorari	4	2	9	12	2	29
Habeas Corpus	2	1	0	2	3	8
Mandamus	9	3	1	3	1	17
Review Orders Excluding Press/Public	0	0	1	0	0	1
Prohibition	0	4	14	16	6	40
Total Juvenile	20	27	18	12	39	116
Certiorari	1	7	2	3	8	21
Habeas Corpus	15	17	8	9	21	70
Mandamus	1	0	0	0	2	3
Other Original Proceedings	0	0	0	0	1	1
Prohibition	3	3	8	0	7	21

	First	Second	Third	Fourth	Fifth	State
Total Petitions Filed	1,476	1,382	693	1,162	873	5,586
Total Probate/Guardianship	1	3	1	17	6	28
Certiorari	0	1	0	11	3	15
Mandamus	0	1	0	1	1	3
Other Original Proceedings	0	0	0	1	0	1
Prohibition	1	1	1	4	2	9
Total Administrative	61	1	6	2	2	72
Certiorari	9	0	1	0	0	10
Mandamus	24	0	5	2	0	31
Other Original Proceedings	10	0	0	0	0	10
Non-Final Agency Action	13	1	0	0	2	16
Review Orders Excluding Press/Public	1	0	0	0	0	1
Prohibition	4	0	0	0	0	4
Total Workers' Compensation	23	0	0	0	0	23
Certiorari	14	0	0	0	0	14
Mandamus	4	0	0	0	0	4
Prohibition	5	0	0	0	0	5

¹ Data as of July 31, 2006.