

## GENERAL LEGAL ISSUES

### Appeals

#### Generally.

- Any child, any parent, guardian ad litem, or any other party to a dependency proceeding who is affected by an order may appeal to the appropriate district court of appeal. § 39.510(1); Rule 9.146(b).
- When a party other than DCF files a notice of appeal in the circuit court, an attorney for DCF represents the state (and the court upon appeal), and the clerk must notify them of the appeal. § 39.510(2).

#### Appealable orders.

- The adjudication of dependency may be appealed either from the order adjudicating the child or from the disposition order. A.G. v. Department of Children & Family Services, 731 So. 2d 1260 (Fla. 1999). See G.L.S. v. Department of Children and Families, 724 So. 2d 1181 (Fla. 1999)(order terminating parental rights may be challenged by appeal of subsequent disposition order).

#### Appeals in dependency proceedings proceed as appeals in civil cases, except as modified in Rule 9.146.

- To invoke the jurisdiction of the court, an original and one copy of the notice of appeal (accompanied by filing fees as prescribed by law) must be filed with the clerk of the lower tribunal within 30 days of rendition of the order. Rule 9.110(b).
- A motion for rehearing does not toll the time for taking an appeal. Rule 8.265(b)(3). In the Interest of Baby Boy L., 545 So. 2d 434 (Fla. 4th DCA 1989). However, the court shall rule on the motion for rehearing within 10 days of filing or it is deemed denied. Rule 8.265(b)(3).
- Initials, rather than the names, of the child and parents are used in docketing and in all references in briefs, other papers, or court decisions. Rule 9.146(e).
- All papers remain sealed in the clerk's office and are not open to inspection except by parties and their counsel or by order of the court. Rule 9.146(f).

**The taking of an appeal shall not operate as a supersedeas in any case unless pursuant to an order of the court, except that a permanent order of commitment to a licensed child-placing agency or the department for subsequent adoption shall be suspended while the appeal is pending, but the child shall continue in custody until the appeal is decided. § 39.510(3).**

- Motions to stay an order pending appeal are filed in the lower court. Rule 9.146(c).
- Jurisdiction is retained by the lower court during an appeal to conduct judicial reviews or other proceedings related to the health and welfare of the child. Rule 9.146(d).

### **Appeals in TPR proceedings.**

- Any child, any parent or guardian ad litem of any child, any other party to the proceeding who is affected by an order of the court, or DCF may appeal to the appropriate district court of appeal, which shall give the appeal priority in docketing and shall render a decision as expeditiously as possible. § 39.815(1).
- DCF represents the state upon appeal. § 39.815(2).
- Appeals are filed in the circuit court, where jurisdiction is retained to conduct reviews and enter orders consistent with the best interests of the child. Rule 9.146(c)(1).
- Initials rather than the names of the child and parents are used in docketing and in all references in briefs, other papers, or court decisions. § 39.815(4); Rule 9.146(e).
- All papers remain sealed in the clerk's office and are not open to public inspection. § 39.815(5); Rule 9.146(f).
- A motion for rehearing does not toll the time for taking an appeal, and any appeal must be filed within 30 days of final judgment, regardless of motion for rehearing. Rule 8.265(b)(3). In the Interest of Baby Boy L., 545 So. 2d 434 (Fla. 4th DCA 1989).

**The taking of an appeal of a termination of parental rights order does not operate as a supersedeas unless the court so orders.** However, a TPR order with placement of the child with a licensed child-placing agency or DCF for adoption is suspended while the appeal is pending, but the child shall continue in an out-of-home placement under the order until the appeal is decided. § 39.815(3).

- The court entering an order for termination of parental rights retains jurisdiction over a child committed for adoption to review progress being made toward permanent adoptive placement. That court also retains jurisdiction for all matters pertaining to the child's adoption pursuant to Chapter 63. § 39.813. See §§ 39.811(9), 39.812(4).
- The court may also review the appropriateness of the adoptive placement of the child upon good cause shown by the child's guardian ad litem. §§ 39.811(9), 39.812(4).

**DCF is limited in removing certain children from their placements when DCF does not grant the application for adoption.**

- When a licensed foster parent or court-ordered custodian has applied to adopt a child who has resided with the foster parent or custodian for at least 6 months and who has previously been permanently committed to the legal custody of the department and the department does not grant the application to adopt, the department may not, in the absence of a prior court order authorizing it to do so, remove the child from the foster home or custodian, except when:
  - there is probable cause to believe that the child is at imminent risk of abuse or neglect; § 39.812(4)(a), or
  - 30 days have expired following written notice to the foster parent or custodian of the denial of the application to adopt, within which period no formal challenge of the department's decision has been filed; § 39.812(4)(b), or
  - the foster parent or custodian agrees to the child's removal; § 39.812(4)(c).
- A copy of DCF's consent must be attached to the petition for adoption unless waived pursuant to § 63.062(7). The petition must be accompanied by a statement signed by the

prospective adoptive parents, acknowledging receipt of all information required to be disclosed under § 63.085, and by a form provided by the department that details the social and medical history of the child and each parent and includes the social security number and date of birth for each parent, if such information is available or readily obtainable. The prospective adoptive parents may not file a petition for adoption until the judgment terminating parental rights becomes final. An adoption proceeding under this subsection is governed by Chapter 63. § 39.812(5).

**Expedited review.** Rule 9.146(g).

- For expedited review, the appellate court shall give priority to appeals made under Florida Rule of Appellate Procedure 9.146.