CHAPTER 14: APPEALS OF ORDERS FROM DEPENDENCY AND TERMINATION OF PARENTAL RIGHTS CASES

A. Introduction.

This Chapter is intended to aid pro se parents involved in dependency and termination of parental rights proceedings, which are governed by Chapter 39, Laws of Florida. Pro se means that the parent does not have an attorney and has to represent himself or herself. If the trial court has already found that a parent is indigent in the trial-level proceedings (i.e., that the parent does not possess the financial means to afford an attorney), then an attorney will often also be appointed to represent the parent in the appeal. If the court-appointed attorney for the appeal does not find anything of merit to argue after a thorough review of the appellate record, the attorney will withdraw from the appeal without filing an initial brief on behalf of the parent. Under those circumstances, the parent will usually be allowed a short period of time to file his or her own pro se initial brief. This Chapter provides guidance to the parents who file their own briefs in the appellate courts in Chapter 39 cases.

B. Parties to a Chapter 39 Proceeding.

Although the Department of Children and Families is involved in the majority of proceedings involving children under Chapter 39, there are cases where private petitions are filed and the Department is not involved. Thus, the Department is not always party. Section 39.01(51), Florida Statutes, defines the parties as the petitioner, the parents of the child, the child, the Department if involved, the Guardian ad Litem or a representative of the Guardian ad Litem program, if appointed.

C. The Right to Counsel in Chapter 39 Proceedings.

At the trial level, Florida Rules of Juvenile Procedure 8.320 and 8.515 generally provide that:

1) At each stage of the proceedings, the court will advise the parent of the right to have counsel present.
2) The court will appoint counsel to indigent parents or others who are so entitled as provided by law, unless appointment of counsel is waived by that person.
3) The court will ascertain whether the right to counsel is understood.

Chapter 39 proceedings are handled in circuit (trial) courts without a jury, and they typically involve three different phases:

i) Shelter Hearing – where the petitioner seeks to have the child removed from the parent's custody and placed outside the home. Section 39.402(5)(b)2., Florida Statutes, provides that a parent has the right to have an attorney at the shelter hearing, and to have an attorney appointed if found indigent.

ii) Dependency Case – The petitioner seeks to have the child adjudicated dependent based on allegations of abuse, abandonment, or neglect, or a substantial risk of such harm, against the parent or legal custodian. Section 39.505, Florida Statutes, provides that the court should inform the parent that he or she has the right to have an attorney present or appointed before the adjudicatory hearing. An adjudicatory hearing is another name for a trial.

iii) Termination of Parental Rights Case – The petitioner seeks to have the parent's rights to the child terminated. Termination permanently severs the parent's legal rights to the child. Section 39.807, Florida Statutes, provides that the court should advise the parent that he or she has the right to have an attorney present, and to have an attorney appointed if found indigent.

To be declared indigent in the trial court, the parent must appear before the court and complete a financial affidavit detailing all assets and debts. If, after reviewing the financial affidavit, the trial court finds the parent to be indigent, it will appoint an attorney to represent the parent. If the case goes from the dependency phase to a termination of parental rights proceeding,

the court may appoint the same lawyer who represented the indigent parent in the dependency proceeding or a different lawyer. The lawyer who represents the indigent parent in the termination proceeding stays on the case until a final judgment is entered. The same or different attorney may be appointed for the appeal.

D. The Right to Counsel on Appeal from Dependency and Termination Orders.

If the trial court enters an order adjudicating a child dependent or a final judgment terminating parental rights and the parent wants to appeal that order or final judgment, the parent should tell the court-appointed attorney that he or she wants to appeal. Then, the attorney is required to file a notice of appeal no later than 30 calendar days after the order being appealed is rendered. The date that an order or final judgment is rendered is the date when the order or final judgment is filed in the clerk's office of the circuit court where the trial was held. The attorney will often also file directions to the clerk to order the record and designation to court reporter to order any hearing transcripts required for the record. If the parent was not found indigent and wants to represent himself or herself on appeal, the parent is responsible for timely filing the notice of appeal, directions to the clerk and designation to the court reporter. (See Chapter 3: Pulling Together the Record on Appeal.) After the notice of appeal is filed in the trial court, the trial court clerk will send it to the district court of appeal that handles the appeals for that circuit court. Rule 9.146 provides the time-frames for the court reporter to complete and file the transcript(s) with the clerk who is responsible for electronic transmission of the record to the appellate court.

Even though dependency and termination cases are similar to criminal appeals in many ways, they are civil cases and the appellate rules concerning civil cases generally apply. Florida Rule of Appellate Procedure 9.146 is specifically related to Chapter 39 appeals. If the appellate rules concerning civil cases is different, then Rule 9.146 controls. An important difference in appeals in Chapter 39 cases is that the law requires appeals involving dependency and termination

orders to be handled in an expedited or speedy manner. This means that district courts of appeal give dependency and termination appeals first priority and consider them before other types of appeals. Because the court expedites dependency and termination cases, the typical appeal may be decided in as little as six months.

E. Representation During the Appeal.

Once the record is prepared, the attorney representing the parent will review the record. In many cases, the attorney will find valid issues to raise on appeal. Also, in many cases, the same attorney will represent the parent all the way through the end of the appeal proceeding. The attorney will file the required briefs, respond to any motions, and represent the parent at oral argument, if granted. The attorney will keep the parent informed of the progress of the appeal.

F. What Happens When the Attorney Withdraws from Representation?

Sometimes court-appointed attorneys cannot find any valid issues to appeal based on their professional judgment. If that happens, the attorney will file a motion to withdraw from representing the parent in the appeal. The court-appointed counsel does not owe the parent the duty of a perfect appeal. But the attorney does owe the parent a duty to support and advance the appeal to the best of his or her ability. The Rules Regulating The Florida Bar (the code of ethics that regulates all attorneys who practice law in Florida) require that an attorney who is deciding whether to advance an appeal must examine the record to determine what, if any, issues should be appealed. Attorneys are forbidden by the code of ethics from filing "frivolous" documents in courts. Frivolous documents are ones that have no serious purpose or meaning or lack research of the law and facts before filing them.

When the court-appointed attorney finds no valid issues, the attorney will file a motion to withdraw from representing the parent in the appeal. The motion to withdraw will be served on the parent and all the opposing attorneys. The attorney will certify in the motion that he or she has

reviewed the record and has determined in good faith that there are no grounds that have merit on which to base an appeal.

If this motion is granted by the appellate court, the attorney will provide the parent with the record and all the court documents; this is so that the parent can begin his or her self-representation. In granting the motion to withdraw, the appellate court will generally give the parent 20 days from the date of the order, to file his or her pro se brief. However, each district court handles the exact procedure differently. For example, the First District Court of Appeal usually requires the parent to file a notice of intent to file a brief, and then grants the parent 20 days to file the brief. In the order granting withdrawal, the court will warn the parent that if no brief is timely filed, the appeal will be dismissed for failure to prosecute.

The parent may, if he or she can obtain the funds, seek to retain a new attorney to represent the parent in the appeal after the court-appointed attorney withdraws; however, the indigent parent must be aware that a trial court cannot appoint another appellate attorney after the first appellate attorney has withdrawn on the basis of finding nothing of merit to argue. If the parent wants to hire a new attorney, the new attorney must be hired before the 20-day period for filing the initial brief ends, and the new attorney must inform the appellate court of the representation.

Parents who will be filing their own briefs should consult Chapters 5 and 6 on Writing an Appellate Brief and the Checklist for Appellate Briefs for guidance on how to write their briefs. The parent's pro se brief must comply with the Florida Rules of Appellate Procedure, especially Rules 9.146 and 9.210. The pro se brief must also be served on all other parties. If the other parties are represented by attorneys, the parent must serve those attorneys.

G. Appealing Orders in Dependency Proceedings.

In dependency proceedings, a parent can generally file a notice of appeal from orders of adjudication of dependency or orders of disposition of dependency. The order of adjudication is

entered after an evidentiary hearing at which the petitioner (Department of Children and Families, or other petitioner) has the burden to prove the child is "dependent." For a trial court to adjudicate a child dependent, the petitioner must prove by a preponderance of the evidence that the child (1) has "been abandoned, abused, or neglected by the child's parent," or (2) is "at substantial risk of imminent abuse, abandonment, or neglect by the parent." An order of disposition is entered after a child has been adjudicated dependent. The order of adjudication of dependency and the order of disposition are considered "final orders" for appeal purposes. Another common order appealed is an order that places the child outside the custody of the parent, and terminates the Department's protective supervision in the case.

Appeals from final dependency orders must be filed in accordance with the Florida Rules of Appellate Procedure, especially Rule 9.146. To be timely, an appeal notice must be filed within 30 days after rendition of either the order adjudicating a child dependent or 30 days after rendition of the disposition order following the dependency adjudication. The safest thing to do to preserve the right to appeal is to file an original and one copy of the notice of appeal, both with copies of the appealed-from order attached, in the clerk's office of the trial court within 30 days of rendition of the dependency order and not to wait for the disposition order.

H. Appeals from Orders Terminating Parental Rights.

A parent may appeal from the final judgment terminating his or her parental rights, or if there is a separate order of disposition, the parent may also appeal from that order. The order terminating parental rights permanently severs the legal bond between the parent and child. For a trial court to terminate parental rights, it must find that grounds exist for termination. The petitioner (Department of Children and Families or other petitioner) generally must prove one or more of the following grounds by clear and convincing evidence: (1) the parent abandoned the child; (2) the parent engaged in conduct toward the child or toward other children that demonstrates

that the continuing involvement of the parent in the parent-child relationship threatens the life, safety, well-being, or physical, mental, or emotional health of the child irrespective of the provision of services; (3) the parent has been convicted of certain violent or sex crimes or the parent will be incarcerated for a significant period of the child's minority; (4) the parent has failed to substantially comply with the case plan for at least 12 months; (5) the parent engaged in egregious conduct or had the opportunity and capability to prevent and knowingly failed to prevent egregious conduct that threatens the life, safety, or physical, mental, or emotional health of the child or the child's sibling; (6) the parent has subjected the child or another child to aggravated child abuse, sexual battery, sexual abuse, or chronic abuse; (7) the parent committed murder, manslaughter, aiding or abetting the murder, or conspiracy or solicitation to murder the other parent or another child, or a felony battery that resulted in serious bodily injury to the child or another child; (8) the parent's rights to a sibling have been terminated involuntarily; (9) the parent has a history of extensive, abusive, and chronic alcohol or drug use that renders the parent incapable of caring for the child and the parent has refused or failed to complete alcohol or drug treatment during the three years before the termination; (10) a test administered at birth shows that the child has alcohol or drugs in his or her blood, urine, or meconium, and the biological mother has had at least one other child adjudicated dependent based on harm due to alcohol or drugs and the mother has been provided with an opportunity to have substance abuse treatment; (11) on three or more occasions the child has been placed in out-of-home care and the reason that led to the child being placed outside the home was caused by the parent; (12) the court determines that the child was conceived as a result of sexual battery made unlawful under Florida law or similar law of another state, territory possession, or Native American tribe where the offense occurred; or (13) the parent is convicted of an offense which requires the parent to register as a sexual predator under s. 775.21, Fla. Stat. *See* Section 39.806, Florida Statutes.

In addition to finding at least one of the above grounds for termination, the court must also find that termination is in the manifest best interest of the child. In deciding the best interest of the child, the court must consider factors such as: (1) any suitable permanent custody arrangement with a relative of the child; (2) the parent's ability to care for the child and to provide the child with food, clothing, and medical care; (3) the parent's ability to care for the child's safety, well-being, and to not endanger the child's physical, mental, or emotional health; (4) the child's present and future mental and physical health; (5) the love, affection, and other emotional ties existing between the child and parent, siblings, and other relatives, and the degree of harm to the child if parental rights are terminated; (6) the likelihood the child, especially if older, will remain in long-term foster care if parental rights are terminated; (7) the child's ability to form a strong relationship with a parental substitute and be able to enter into a more stable and permanent family relationship; (8) the length of time that the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity; (9) the depth of the relationship existing between the child and the present custodian; (10) the reasonable wishes of the child; and (11) the recommendations for the child provided by the guardian ad litem. *See* Section 39.810, Florida Statutes.

Finally, the court must also find that termination of parental rights is the least restrictive means of protecting the child from serious harm. This least restrictive means element involves due process concerns. It requires the Department of Children and Families to show that it has made a good faith effort to rehabilitate the parent and reunite the family, such as through a case plan for the child (except in extraordinary cases, such as those involving egregious abuse).

I. Non-Final Orders.

A parent may also appeal from the lower court's denial of a motion for relief from judgment under Florida Rule of Juvenile Procedure 8.270, which is a non-final order listed in Florida Rule of Appellate Procedure 9.130. Appeals from non-final orders must also be filed within 30 days of

the order being appealed. Also consult Chapter 9 of this Handbook on Appeals from Non-Final Orders.

If a non-final order does not fall within the types described in Rule 9.130, it is not appealable. However, the non-final order may be reviewed by a petition for writ of certiorari, if certain requirements are met. Consult Chapter 10 "Extraordinary Writs – Civil," regarding the limited situations in which review of a non-final order may be had in the district court of appeal by petition for writ of certiorari, and the time limits applicable to those petitions. The 30-day time limit for filing appeals also applies to petitions for extraordinary writs, such as writ of certiorari – the petition must be filed within 30 days after rendition of the order being appealed.

J. Getting Started in Writing the Pro Se Brief.

Florida Rule of Appellate Procedure 9.146(e) requires that in briefs and other papers filed, the parents and children who are parties can only be referred to by initials, not by name. The parent's job in writing the pro se brief is to show that reversible error occurred during the trial court proceeding. The pro se brief must comply with the Florida Rules of Appellate Procedure, including 9.210. Please also refer to Chapters 5 and 6 of this Handbook about how to write the pro se brief.

To write the pro se brief, a parent should first read the entire the record on appeal from the trial court case, including all the legal documents that were filed, and the transcripts from the hearings and trial, if any. When writing the pro se brief, a parent should not rely just on his or her memory of what happened in the trial court. The appellate court will only consider the facts that appear in the record on appeal, which will contain the documents, pleadings, motions, hearing/trial transcripts, and like documents, from the proceedings in the trial court. Notes taken while reading the record may assist a parent in later citing the correct page number for the document and testimony when referring to the record in the brief.

Second, a parent should decide what the issues are to be raised and argued in the brief by thinking about what occurred during the proceedings. Did the trial attorney make a motion or an objection that the trial court ruled against? Did the trial attorney state that something would happen and it did not? What arguments were made by the attorneys for the Department and/or Guardian ad Litem? Did the trial judge fail to allow or exclude certain evidence, and/or fail to make findings to support its decision?

Third, a parent should consider whether the record is missing any documents or transcripts needed to present the issues to be raised on appeal. Sometimes a hearing transcript, a motion, or some other document which was filed in the trial court and is needed for the appeal may get left out of the appellate record. If that happens, then the party wanting to include the document may need to file a motion to supplement the record under Florida Rule of Appellate Procedure 9.200(f). The motion to supplement is discussed in more detail in Chapter 3 on Pulling Together the Record on Appeal. The motion briefly explains what document or transcript is missing and why it is needed. The appellate court will issue an order granting or denying the motion to supplement. If granted, the appellate court will indicate the time to have the documents filed. The appellate court will send a copy of its order to the lower tribunal clerk, who should file the documents. However, it remains the appealing party's responsibility to be sure the missing documents are filed within the allowed time. If the missing documents are not filed, that party should ask for an extension of time in the appellate court and contact the lower tribunal court clerk. If the missing document is a hearing or trial transcript, the party will file a motion to transcribe in the trial court so that an order can be entered directing the court reporter to transcribe the hearing or trial.

Fourth, the parent does legal research to find case law and statutes that support his or her argument. Sometimes the legal research will show that an issue is not a valid one. On the other hand, the legal research might show that there is an issue to raise that the parent had not thought

of by him or herself. Most law schools and courts have law libraries where any parent can do legal research. Public libraries also often have computers with internet access, where a parent could conduct legal research on the internet.

Fifth, the party appealing determines the standard of review for each issue being raised on appeal. The relevant case law will often explain what standard of review should be applied for the type of error being discussed. There are several different standards of review. For example, if the trial court applied the wrong law, then the appellate court applies the "de novo" standard. A court's interpretation of a statute is an example of a legal issue subject to the de novo review standard. When the de novo standard is applied, the appellate court is not bound by what the lower tribunal court ruled and it considers the issue anew. In other instances, the trial court has discretion to make a ruling. Its decisions to admit evidence or continue a case are discretionary rulings. These discretionary rulings will be reviewed under the "abuse of discretion" standard. To prove that the trial court abused its discretion, it must be shown that no reasonable judge would have made the same ruling. A third standard of review is whether there is competent substantial evidence to support the court's factual findings. It requires that there be some evidence in the record to support the court's findings. The fact that a parent believes the evidence he or she presented is more believable than the evidence the petitioner (Department or other) presented is not a basis for reversing the order.

Next, the parent drafting the brief should make an outline of the argument sections of his or her brief. That outline lists the issues the pro se parent intends to raise and the standards of review for each of those issues. The parent makes notes about the facts that support these arguments that will be included in the brief. The parent makes similar notes about the case law and statutes that support the argument. This outline will help organize the arguments and present it to the appellate court in a clear and concise manner when writing the brief.

In deciding what issues to raise in the pro se brief, a parent should remember the role and limitations on the functions of the court of appeal. The court of appeal will not reweigh the evidence that the trial court heard and received into the record. If the record includes evidence presented in accordance with the rules of evidence and the trial court applied the correct law, the dependency or termination order will not be reversed.

K. The Parts of the Pro Se Brief.

Statement of the Case and Facts: The pro se brief must contain a statement of the facts, but it should not simply restate all the facts. Instead, the parent will limit the statement of the facts to those that are needed to understand the issues raised in the brief. For example, if the parent believes in a dependency proceeding that the record did not reflect that he or she abandoned, abused or neglected the child, the brief will include facts about the acts found in the dependency order that the court relied on in finding the child was abandoned, abused or neglected. In a termination case, if the parent believes that the grounds for termination were not proven, then the statement of the facts should include facts about the ground relied on by the court in making its ruling. Each fact statement in the brief must include a citation to the page in the record where the fact is contained.

Summary of Argument: The summary of the argument is located before the argument in the pro se brief. But it is often written last. It summarizes the argument and does not exceed five pages, although it is usually much shorter. *See* Fla. R. App. P. 9.210(b)(4). Once the argument is written, the pro se party should pick out the key ideas from the argument and use those key points as the summary of argument. (Or, if the summary of the argument is written first, it can be used as an outline for writing the issues in the argument section).

Argument: A parent can use the outline he or she made to organize the argument into sections for each issue. First, the parent should state the issue. The parent should then give the

standard of review for that issue. Next, he or she should explain the general law that applies to that issue, and cite a few cases and statutes that support the argument. The parent should also explain how the facts in the case show that an error was made. Case law and statutes that most closely relate to the issues being raised in the specific appeal should be cited to support the arguments (although it is not generally necessary to cite a large number of cases that say much the same thing, the most relevant cases should be cited). A parent should also be sure to cite to the volume and page number in the appellate record to direct the appellate court to the facts that support his or her case. Finally, the parent should explain what relief or outcome he or she is asking for in the appeal, which is usually for the dependency or termination order to be reversed, and/or for a new trial or hearing.

This same procedure is repeated for each issue raised in the pro se brief.

Conclusion: At the end of the brief, one paragraph is included that tells the appellate court what relief or outcome the pro se parent is asking for. For instance, the parent will usually ask the appellate court to reverse the dependency order or termination order, and/or request a new trial or hearing.

Table of Contents: After the parent has finished writing his or her brief, each section of the brief is listed in the table of contents with the page numbers where each section begins. Each issue within the Argument section should also be listed with its beginning page number.

Table of Citations: All cases and legal authorities cited in the brief should be listed in alphabetical order, along with the page numbers of the brief where each is cited. Any statutes cited in the brief should be listed in numerical order. If other authorities cited, such as law books or articles, those should be included in the table of citations as well, along with the page numbers where each authority is cited.

Certificate of Service and Certificate of Typeface Compliance: A certificate of service

must be included at the end of the pro se brief to show the parent has mailed a copy of the brief to all parties to the proceedings, with the exception of the child unless the child was represented by an Attorney ad Litem. An example of a certificate of service for a pro se litigant is included in Florida Rule of Appellate Procedure 9.420(d)(2). If the pro se parent is an inmate, he or she should review the example of certificate of service in Rule 9.420(d)(1). If the pro se brief is typed, it must be typed in either Times New Roman 14-point font or Courier New 12-point font, and must include a certificate at the end of the brief saying the brief is typed in one of those fonts. *See* Florida Rule of Appellate Procedure 9.210(a). If the brief is handwritten, it must be printed (not in script), but it is not necessary to include a certificate of typeface compliance.

Page Limit: The brief generally cannot exceed 50 pages.

L. Motions for Extension of Time.

Florida Rule of Appellate Procedure 9.146(g)(3)(B) requires the initial brief to be served within 20 days of service of the record on appeal or the index to the record on appeal. However, some district courts have shortened the time-frame even more, so the parent should check the notice issued at the beginning of the case or call the appellate court clerk to check. The pro se parent completes the brief and mails it to the court and opposing counsel within that time limit.

Because dependency and termination cases are expedited in the appellate court, extensions of time are generally only granted in the case of an emergency. If an emergency, such a serious illness or hospitalization, prevents the pro se parent from completing the brief in the time allowed, the parent must file a motion for extension of time to serve the pro se brief, before the brief is due, to ask the court for additional time. Before filing the motion, the pro se parent must call each party's attorney to determine if those attorneys object to the extension. In the motion, the pro se parent must inform the court of the other parties' position. If a party does object, the parent only needs to say in the motion that the party objects. The parent does not need to give a reason. It is

the duty of the objecting party to let the court know why he or she objects.

M. Filing and Serving the Pro Se Brief.

After the pro se parent has finished writing the brief, he or she must file the original signed brief with the appellate court and must also serve a copy of the brief to the opposing attorneys (usually by mail or delivery). For service, the parent can obtain the names and addresses of the attorneys and any other party by either reviewing the certificate of service in the parent's former attorney's motion to withdraw or by asking the appellate court clerk's office. The parent must complete the certificate of service at the end of the brief stating the date the parent served (mailed) the brief to the opposing attorney or attorneys.

For filing with the appellate court, most courts used to require pro se appellants to deliver the original and three copies of the brief to the appellate court. But now most appellate courts only require that the original signed copy of the brief be filed. This does not change the requirement that the pro se appellant still must also serve a copy of the brief to the opposing attorney or attorneys.

Most courts now permit pro se parties to serve (send) documents to other parties by e-mail, and to file documents electronically with the court, if certain requirements are met. The pro se parent should examine Florida Rule of Appellate Procedure 9.420 and Florida Rule of Judicial Administration 2.516, as well as the specific procedures for the appellate court where the appeal is pending (often found on the court's website or by calling the clerk of court's office), to determine whether he or she may be permitted to file and/or serve the brief electronically.

N. Answer Briefs.

If the Department of Children and Families and the Guardian ad Litem are parties, they may each file an answer brief to respond to the arguments raised in the pro se brief. A copy of all answer briefs filed must be mailed to the parent, just as the pro se parent must mail a copy of the

initial brief to the opposing counsel. Answer briefs are addressed in more detail in Chapter 5 on Writing an Appellate Brief.

O. Reply Brief.

Upon receipt of the answer brief(s), the pro se parent should carefully read the brief(s) and take notes to outline the arguments that are made in the answer brief. The pro se parent is not required to file a reply brief but should file one if he or she wants to respond to any of the arguments made in the answer brief(s). Even if there are two answer briefs, the parent may file only one reply brief. That one reply brief should respond to the arguments made in both answer briefs. Florida Rule of Appellate Procedure 9.146(g)(3)(B) requires the reply brief to be served within 10 days of the service of the answer brief. If the answer brief was served by mail or e-mail, then 5 more days are added to the due date of the reply brief.

Like the initial brief, the reply brief should also contain a table of contents, table of citations, summary of argument, argument, conclusion, a certificate of service, and certificate of typeface compliance. It is not necessary to include another statement of the case or facts but the reply brief may do so if it is necessary to refute facts stated in the answer brief. The reply brief is limited to 15 pages, not including the table of contents, the table of authorities and the certificate of service. The reply brief is supposed to present argument that responds to the arguments in the answer briefs. It is not supposed to merely restate arguments from the initial brief, and it cannot raise new arguments that were not raised in the initial brief. Reply briefs are addressed in more detail in Chapter 5 on Writing an Appellate Brief.

P. Disposition in the Appellate Court.

After all the briefs have been filed in the appellate court, the case will be assigned to a panel of three appellate judges for review. Often, a law clerk or staff attorney will review the record on appeal first and the briefs and prepare a memorandum for the judges to review. Each

judge will review the memorandum, briefs, record on appeal and appellate case file. A written decision, or opinion, indicating the appellate court's ruling will then be sent to the pro se parent and all the attorneys.

Q. Motions for Rehearing, Clarification, Certification, and Rehearing En Banc.

After the appellate court issues its decision, a post-decision motion, such as a motion for rehearing, clarification, or certification, may be filed with the appellate court within 15 days. These motions are unusual in that they are only filed if a legitimate argument for relief can be made. They are rarely granted. Florida Rule of Appellate Procedure 9.330 provides that a "motion for rehearing shall state with particularity the points of law or fact that in the opinion of the movant the court has overlooked or misapprehended in its decision." The motion should not be used to raise issues that were not previously argued in the briefs. "A motion for clarification shall state with particularity the points of law or fact in the court's decision that in the opinion of the movant are in need of clarification." Many times the appellate court will issue a decision without opinion, which is commonly called a "per curiam affirmance" or "PCA." If that occurs and the pro se party believes "a written opinion would provide a legitimate basis for supreme court review," that party may file a motion to request that the court issue a written opinion.

A motion for rehearing en banc requests review of the decision by all of the active judges on the appellate court. A pro se appellant should only file a motion for rehearing en banc when there are grounds that the case is of exceptional importance or that such consideration is necessary to maintain uniformity in the court's decisions. A motion based on any other ground will be stricken. Fla. R. App. P. 9.331(d). Post-decision motions are addressed in more detail in Chapter 19 on Post-Decision Motions.

R. Mandate.

The appellate court will usually issue its mandate 15 days after it issues its decision or 15 days after it rules on any post-decision motions that are filed. The mandate is the appellate court's last official act in the case, the appellate final judgment, and signals the end of the appeal. A mandate may be recalled at the discretion of the appellate court, but not more than 120 days after it issues (this is very rare).

S. Belated Appeals: What Happens if Your Attorney Fails to Timely File a Notice of Appeal?

Florida has established a strong public policy in favor of protecting the relationship between parents and their children. Thus, an attorney's mistake in failing to timely file a notice of appeal within 30 days usually will not be held against the parent. Rather, when a parent timely asks the attorney to file an appeal, but the attorney fails to do so, the parent will usually be entitled to belated appeal. The proper method for obtaining a belated appeal is to file a petition for writ of habeas corpus in the trial court. This procedure permits the trial court to resolve any factual issues and any defenses to allowing a belated appeal (such as undue delay).

T. What Can Be Done If Your Attorney Did Not Do a Good Job?

In J.B. v. Dep't of Children & Families, 170 So. 3d 780 (Fla. 2015), the Florida Supreme Court held that indigent parents who are represented by a court-appointed attorney have a right to effective assistance of counsel (i.e., competent representation). The decision sets forth a temporary procedure for raising this issue. The temporary procedure will remain in place until a final rule replaces it. A permanent rule of procedure will be developed, so parents should check to see which procedure applies at the time of their case. This is a good reminder that, as discussed throughout this Handbook, the laws and rules of procedure change frequently. Thus, a pro se litigant should always consult the most recent rules of procedure, statutes, and case law.