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APPELLATE PRACTICE IN D.C. ABUSE AND NEGLECT CASES

INTRODUCTION

Children's Law Center has revised its Appellate Practice in D.C. Abuse and Neglect Cases Practice Kit, which Children's Law Center first published in September 2009. The Kit covers general appellate principles, including appellate jurisdiction, scope and standard of review, and procedural matters, with a particular focus on neglect, guardianship, termination of parental rights (TPR), and adoption cases. It also includes an appendix with a table containing relevant case law summaries. Finally, we have provided an Additional Resources section, primarily consisting of reference materials created by the courts. Children's Law Center thanks the D.C. Court of Appeals staff for agreeing to have its materials included in this Kit.

This Kit is intended to serve as a starting point for attorneys handling appeals in their practice, who are interested in appellate issues, or who need to anticipate possible appeals while litigating at the trial level. It is meant to supplement — not duplicate or replace — the independent research necessarily conducted by practicing attorneys. It also aims to complement general appellate practice manuals, including the *Appellate Practice Manual for the District of Columbia Court of Appeals* (David Tedhams ed., 2008).

Children's Law Center thanks you for downloading this Practice Kit and hopes that you will find it a useful and informative resource.

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CHAPTER ONE: APPELLATE JURISDICTION

A. Introduction

The authority of the D.C. Court of Appeals is established by Title 11, Chapter 7 and Title 17, Chapter 3 of the D.C. Code. The jurisdiction of the Court of Appeals is addressed in D.C. Code §§ 11-721 through -723. Section 11-721 addresses appellate jurisdiction over cases decided in D.C. Superior Court. Section 11-722 addresses appellate jurisdiction over final decisions issued by administrative agencies in contested cases. Section 11-723 provides a procedure for trial judges to certify important questions of law to the Court of Appeals before a case is concluded. This Kit focuses on appeals brought pursuant to § 11-721, the jurisdictional provision most relevant to neglect practice.

> ***Practice Tip*: Magistrate judge orders.** Orders and judgments issued by a magistrate judge may not be appealed directly to the Court of Appeals but must first be reviewed by an associate judge. For further discussion, see Chapter 4.

B. Final Orders and Judgments

D.C. Code § 11-721 (a)(1) provides for appeals as of right from "all final orders and judgments of the Superior Court." The requirement that the trial court proceeding be concluded in its entirety before an appeal may be taken is intended to avoid piecemeal litigation and resulting delay, assuring that all issues will be heard at one time. *Galloway v. Clay*, 861 A.2d 30, 32 (D.C. 2004).

A final order is generally defined as one that fully disposes of the case on the merits, leaving nothing for the trial court to do but execute the judgment already rendered. *In re Chuong*, 623 A.2d 1154, 1157 (D.C. 1993) (en banc). Despite this definition, final orders for purposes of

appeal are not necessarily limited to the last order issued in a case. *See Kleiboemer v. District of Columbia*, 458 A.2d 731, 736 n.8 (D.C. 1983). "[T]he general rule is that the order stating the sanction, quantum of relief, or the like is the one with requisite finality." *Trilon Plaza Co. v. Allstate Leasing Corp.*, 399 A.2d 34, 36 (D.C. 1979). "In neglect cases, the disposition is the final order." *In re Na.H.*, 65 A.3d 111, 114 (D.C. 2013). For further discussion of the final order rule in the context of a neglect appeal, see *In re D.M.*, 771 A.2d 360, 364 (D.C. 2001).

C. Interlocutory Appeals of Orders Granting or Denying Injunctions

D.C. Code § 11-721 (a)(2) provides for appeals as of right from three classes of non-final orders: (1) orders that grant, continue, modify, refuse, or dissolve an injunction, or that refuse to dissolve or modify an injunction, (2) orders that appoint receivers, guardians, or conservators, or that refuse to wind up receiverships, guardianships, or the administration of conservators or take steps to accomplish their purpose, and (3) orders that change or affect the possession of property.

Orders in the nature of or related to injunctive relief, and thus subject to interlocutory appeal under D.C. Code § 11-721 (a)(2)(A), are most relevant to neglect practice.[1] This category includes any order, regardless of title, that (1) has the practical effect of an injunction, and (2) might have "serious, perhaps irreparable consequence[s]" that can effectively be challenged only by immediate appeal. *McQueen*, 547 A.2d at 176 (citation omitted); *see also In re S.C.M.*, 653

[1] An injunction may be defined as "an equitable remedy, consisting of a command by the court, through an order or writ, that the party to whom it is directed do, or refrain from doing, some specified act." *McQueen v. Lustine Realty Co.*, 547 A.2d 172, 176 (D.C. 1988) (en banc) (citing *United Bonding Ins. Co. v. Stein*, 410 F.2d 483, 486 (3d Cir. 1969)). Not all orders containing directive language are injunctions, however. *See, e.g.*, *Crane v. Crane*, 614 A.2d 935, 940 (D.C. 1992) (pre-trial discovery order not an injunction subject to interlocutory appeal).

A.2d 398, 403 (D.C. 1995) (order placing child in physical custody of mother as a step towards protective supervision was preliminary injunction by nature). Orders meeting these requirements are discussed in *McQueen*, 547 A.2d at 180 (protective orders in summary possession actions in landlord-tenant case "categorically appealable as orders with respect to injunctions"), and *Brandon v. Hines*, 439 A.2d 496, 508 (D.C. 1981) (order denying motion to confirm arbitration award appealable as order dissolving an injunction). For examples of cases involving orders that have not met these requirements, see *Landise v. Mauro*, 927 A.2d 1026, 1031 (D.C. 2007) (order increasing amount of security bond in landlord-tenant action does not have requisite injunctive effect to fall within statutory provision for interlocutory appeals), *Hercules & Co. v. Shama Rest. Corp.*, 566 A.2d 31, 37 (D.C. 1989) (orders staying arbitration or litigation pending outcome of related agency case do not have injunctive impact necessary to meet requirements of statute for interlocutory appeals), and *Crane*, 614 A.2d at 940 (pre-trial discovery orders, while containing directive language, do not have injunctive effect required for interlocutory appeal under statute).

> ***Practice Tip*: Administrative orders and decisions.** D.C. Code § 11-722 gives the Court of Appeals jurisdiction over appeals from orders and decisions of the Mayor, D.C. Council and administrative agencies in contested case proceedings. This may include administrative rulings issued after a fair hearing brought to challenge actions or decisions of the D.C. Child and Family Services Agency. For further discussion, see Additional Resources, *From the Ground Up: The Fundamentals of Practice in the D.C. Court of Appeals*, at 1.

D. Exceptions to the Final Order Rule: Collateral Order Doctrine and Doctrine of Practical Finality

The collateral order doctrine, first articulated by the U.S. Supreme Court in *Cohen v. Beneficial Industry Loan Corp.*, 337 U.S. 541 (1949), provides a narrow exception to the rule that only final orders may be appealed. The exception allows for immediate appeal of collateral orders that "have a final and irreparable effect on important rights of the parties." *Bible Way Church of Our Lord Jesus Christ of the Apostolic Faith v. Beards*, 680 A.2d 419, 425 (D.C. 1996) (quoting *United Methodist Church v. White*, 571 A.2d 790, 791-92 (D.C. 1990)). A collateral order subject to immediate appeal (1) must "conclusively determine" a disputed question, (2) must "resolve an important issue completely separate from the merits of the action," and (3) must be "effectively unreviewable on appeal from a final judgment." *Bible Way Church of Our Lord Jesus Christ of the Apostolic Faith*, 680 A.2d at 425-26 (quoting *Stein v. United States*, 532 A.2d 641, 643 (D.C. 1987)). In general, the doctrine is strictly applied. *See In re Chuong*, 623 A.2d at 1157-58; *Landise*, 927 A.2d at 1030. For examples of cases discussing and applying the collateral order doctrine, see Additional Resources, *From the Ground Up: The Fundamentals of Practice in the D.C. Court of Appeals*, at 10.

The Court of Appeals has explicitly or implicitly relied upon the collateral order doctrine to permit appeals of non-final orders in a number of neglect cases. The court explicitly relied on the doctrine in *In re Ti.B.*, 762 A.2d 20, 26 (D.C. 2000), which held that an order excluding the father's criminal attorney from the neglect proceedings was immediately appealable under the collateral order doctrine. The court also appears to have implicitly relied upon the doctrine in cases allowing immediate appeals from orders prohibiting parental visitation in the post-disposition stages of a neglect case. *In re D.M.*, 771 A.2d at 365 (order prohibiting mother's

visitation in post-disposition stage of neglect case immediately appealable because order could terminate her fundamental right to visitation indefinitely without any opportunity for appeal); *see also In re D.B.*, 947 A.2d 443 (D.C. 2008); *In re T.L.*, 859 A.2d 1087 (D.C. 2004).

The practical finality exception to the final order rule is closely related to the collateral order doctrine and is also occasionally relied upon to allow for immediate appeal of a non-final order. The doctrine may be invoked to review orders that are practically, rather than technically, final when the "danger of denying justice by delay" outweighs the "inconvenience and costs of piecemeal review." *Dickinson v. Petroleum Conversion Corp.*, 338 U.S. 507, 511 (1950). The Court of Appeals has not expressly recognized the "practical finality" exception as a separate doctrine. *See Appellate Practice Manual for the District of Columbia Court of Appeals*, at 36. Nevertheless, the court appears to have relied on the doctrine in *In re R.M.G.*, 454 A.2d 776, 782 n.5 (D.C. 1982) (lead opinion, the disposition of which was joined by one other judge, noted "we conclude the [interlocutory adoption] order was appealable as a final order… under the doctrine of practical finality.").

> ***Practice Tip*: Certified questions of law.** D.C. Code § 11-721 (d) gives the Court of Appeals jurisdiction to decide questions of law certified by a trial judge before a case is concluded, but expressly *excludes* neglect and juvenile cases. The provision is discussed in *In re J.A.P.*, 749 A.2d 715 (D.C. 2000), an adoption case addressing whether a parent was entitled to court-appointed counsel.

E. Application of Jurisdictional Principles in Neglect, Guardianship, TPR, and Adoption Cases

The Court of Appeals has issued a number of significant decisions involving appellate jurisdiction in neglect, guardianship, TPR, and adoption cases:

1. Neglect appeals. The order of disposition, not the neglect adjudication, is the final order for purposes of appeal. *In re Na.H.*, 65 A.3d at 114.

2. Orders terminating parental rights. Orders terminating parental rights are final for purposes of appeal. *In re C.I.T.*, 369 A.2d 171, 173 (D.C. 1977). The Court of Appeals has also heard appeals from orders denying motions to terminate parental rights. *In re L.L.*, 653 A.2d 873, 880 (D.C. 1995).

3. Guardianship. Orders involving guardianship of a neglected child are final for purposes of appeal. *See, e.g.*, *In re A.G.*, 900 A.2d 677, 678 (D.C. 2006); *In re D.B.*, 879 A.2d 682, 684-85 (D.C. 2005).

4. Waiver of parental consent in contested adoption cases. Orders waiving parental consent are not final for purposes of appeal; the appeal is taken from entry of the adoption decree. *In re S.J.*, 772 A.2d 247, 249 (D.C. 2001) (per curiam) (order waiving consent is not final and is not an injunction subject to interlocutory appeal by statute).

5. Permanency orders. *In re Ta.L.* overruled *In re K.M.T.*, 795 A.2d 688, 690-91 (D.C. 2002), which had held that permanency goal changes are not appealable. *In re Ta.L.*, 149 A.3d 1060, 1075-77 (D.C. 2016) (en banc). *In re Ta.L.* then affirmatively ruled that a new procedure is required at a hearing where a judge is going to change the goal from reunification to adoption, and that the order changing the goal from reunification to adoption is immediately appealable. *See id.* at 1075-81. Thereafter, the Superior Court issued a Directive on procedures for hearings where the trial court may remove reunification as a permanency goal and for appeals of such orders. (A copy of the Directive appears in the Additional Resources section of this Practice Kit.)

6. Visitation. The Court of Appeals has held that orders prohibiting visitation during the post-disposition stage of a neglect case may be immediately appealed, at least when no TPR or adoption is pending that would otherwise provide an avenue for appeal. *In re D.M.*, 771 A.2d at 365 ("To hold that the mother's right to appeal must await the completion of hypothetical TPR or adoption proceedings . . . would permit her fundamental rights as a parent to be denied or impaired indefinitely, and perhaps forever, without appellate review."); *In re T.L.*, 859 A.2d at 1090 (order denying visitation rights "does not finally conclude the litigation, [but] we have held that such an order is appealable"); *see also In re D.B.*, 947 A.2d at 446; *In re Ko.W.*, 774 A.2d 296, 303 (D.C. 2001).

7. Interlocutory adoption decrees. Some interlocutory adoption decrees may be immediately appealed, while others may not. The issue appears to turn on how the appeal will affect the best interests of the child. *In re J.A.P.*, 749 A.2d at 718-19 (dismissing father's appeal from interlocutory adoption decree granted to the foster parents; immediate appeal would delay proceedings, contrary to child's best interests); *In re R.M.G.*, 454 A.2d at 782 n.5 (lead opinion, the disposition of which was joined by one other judge, explained that under doctrine of practical finality, foster parents, with whom child lived, could immediately appeal interlocutory adoption decree granted to child's relatives; child and foster parents would suffer "irreparable harm" if required to wait for review until decree became final six months later after child had already been moved).

8. Interlocutory appeals of orders granting or denying injunctions. D.C. Code § 11-721 (a)(2)(A) allows for interlocutory appeals of orders granting or denying injunctions (or granting or denying requests to continue, modify, or dissolve an injunction). The Court of Appeals

has generally not been receptive to using this provision as a basis for jurisdiction over interlocutory appeals in neglect and related cases. *See, e.g.*, *In re T.L.*, 859 A.2d at 1090 (order denying parent's request to change permanency goal back to reunification not an injunction subject to interlocutory appeal); *In re D.M.*, 771 A.2d at 370 (order denying mother's request to investigate foster home not an injunction subject to interlocutory appeal); *In re S.J.*, 772 A.2d at 248 (order waiving parental consent to adoption not an injunction subject to interlocutory appeal). For an example of a case in which the statutory provision was successfully invoked, see *In re S.C.M.*, 653 A.2d at 403 (order returning child to parental custody was an injunction subject to interlocutory appeal).

9. Ineffective assistance of counsel. In *In re R.E.S.*, 978 A.2d 182, 189 (D.C. 2009), the Court of Appeals recognized a statutory right to effective assistance of court-appointed counsel in TPR and adoption cases. The decision provides guidelines on the procedures for bringing such claims and states that claims of ineffective assistance of counsel in TPR and adoption cases could and should be raised for the first time on appeal from the trial court decision granting (or denying) the TPR or adoption. *Id*. at 193. *In re R.E.S.* was decided in the context of an appeal from an order granting an adoption without parental consent and does not directly address whether appeals based on ineffective assistance of counsel could be brought at earlier stages.

> ***Practice Tip*: Non-final orders.** The Court of Appeals has dismissed appeals in a wide range of cases after finding the challenged order was not final for purposes of appeal. Examples include pre-trial discovery orders, orders related to requests for continuances or recusal, orders related to contempt prior to imposition of a sanction, and orders that leave any cause of action unresolved against any party. For further discussion and case citations, see Additional Resources, *From the Ground Up: The Fundamentals of Practice in the D.C. Court of Appeals*, at 10.

> ***Practice Tip*: Jurisdictional questions raised *sua sponte*.** The Court of Appeals can and does raise jurisdiction issues *sua sponte* when the parties have not done so. *In re D.M.*, 771 A.2d at 364.

> ***Practice Tip*: Effect of appeal on trial court jurisdiction.** The filing of an appeal ordinarily divests a trial court of jurisdiction while the appeal is pending. However, this rule is not necessarily applicable in the neglect context, where the trial court "must have the broad authority to continue so to act as events unfold and circumstances change, notwithstanding the pendency of an appeal from an interim order." *In re S.C.M.*, 653 A.2d at 403.

For more information on the neglect, guardianship, adoption and TPR cases cited in this chapter, see Appendix, *Case Law*, *Case Summaries, Appellate Jurisdiction and Other Issues*.

10. Mediation. The Court of Appeals recently launched an early intervention appellate mediation program for which certain civil appeals - including probate matters and cases involving divorce, child custody, visitation, and child support - will be eligible if all parties are represented by counsel. Appellants are now required to file a Mediation Screening Statement with their Notice of Appeal or Petition for Review that will help the Court determine which cases to select for mediation. Parties or attorneys whose cases have not been selected for mediation but who would like to participate in mediation may do so by contacting Scottie Reid at (202) 879-9936 or areid@dcappeals.gov. For more information and for a copy of the Mediation Screening Statement, go to https://www.dccourts.gov/court-of-appeals/appellate-mediation.

CHAPTER TWO: OTHER APPELLATE PRINCIPLES

A. Standing

1. Generally. Under D.C. Code § 11-721 (b), "a party aggrieved by an order or judgment specified [in this section] may appeal therefrom as of right to the District of Columbia Court of Appeals." An aggrieved party is one whose legal rights have been infringed or denied by the trial court's order or judgment. *In re C.T.*, 724 A.2d 590, 595 (D.C. 1999) (non-parent did not have standing to appeal TPR); *see also In re T.J.L.*, 998 A.2d 853, 858 (D.C. 2010) (mother did not have standing to appeal adoption on the basis of deficient service of the notice and order to show cause on the putative father); *In re G.H.*, 797 A.2d 679, 683 (D.C. 2002) (mother's boyfriend, who was found to have abused the child, could appeal neglect adjudication but not disposition); *In re Phy.W.*, 722 A.2d 1263, 1264 (D.C. 1998) (foster mother with party status had standing to appeal reunification order).

2. Appeals brought on behalf of the child. As a party to or the subject of a neglect, guardianship, TPR, or adoption proceeding, the child may be aggrieved by an order or judgment issued in the case. Thus, guardians *ad litem* (GALs) may pursue appeals from orders or judgments on the child's behalf. *See*, *e.g.*, *In re S.C.M.*, 653 A.2d at 401-02 (GAL appealed order returning child to parent's custody); *In re D.R.*, 718 A.2d 149, 151-52 (D.C. 1988) (GAL appealed order placing child in residential facility). For further discussion of the role of the GAL in appeals, see Chapter 5.

B. Mootness

"[I]t is well-settled that, while an appeal is pending, an event that renders relief impossible or unnecessary also renders that appeal moot." *Thorn v. Walker*, 912 A.2d 1192, 1195

(D.C. 2006) (citation omitted). The Court of Appeals ordinarily will not decide moot cases, reserving judicial authority for live controversies and actual disputes between the parties. *Cropp v. Williams*, 841 A.2d 328, 330 (D.C. 2004).

The Court of Appeals recognizes an exception to the mootness doctrine when the issue raised on appeal "is capable of repetition, yet will evade review." *Hardesty v. Draper*, 687 A.2d 1368, 1371 (D.C. 1997). Though the mootness exception is ordinarily applied when the issue is capable of repetition between the same parties, in the District of Columbia it may also be applied "where at least one of the parties to the appeal has a continuing interest in its resolution." *Id*.

The Court of Appeals has addressed mootness issues in the context of neglect and related appeals in a number of cases:

1. Underlying neglect case closed while appeal pending. Appeals from neglect adjudications may proceed even when the underlying neglect case has been closed, because the parent may still face collateral consequences from the adjudication. *See, e.g.*, *In re E.R.*, 649 A.2d 10, 12 (D.C. 1994) (appeal from neglect adjudication not moot even though child moved with relatives out of the country; adjudication could affect mother, who had three other children, in future); *accord, In re A.B.*, 999 A.2d 36, 44 n.5 (D.C. 2010); *In re Ak.V.*, 747 A.2d 570, 573 n.4 (D.C. 2000).

2. Child turns twenty-one while appeal pending. The Court of Appeals has suggested in dicta that an appeal involving a child's placement may become moot when the child turns twenty-one. *In re K.S.*, 966 A.2d 871, 873 n.1 (D.C. 2009) (dispute over foster care placement would presumably become moot when respondent turned twenty-one); *see also In re T.R.J.*, 661 A.2d 1086, 1087-88 (D.C. 1995) (former neglect ward's appeal of termination of his commitment

status was mooted when he turned twenty-one while appeal was pending, but issue presented was capable of repetition yet evading review).

3. Parent no longer involved or in contact with attorney during appellate stage. In *In re J.W.*, 806 A.2d 1232, 1233 (D.C. 2002), a putative father appealed an order denying him immediate custody and visitation. At oral argument, counsel for the father conceded she had lost contact with her client. The Court of Appeals expressed "considerable doubt" as to "whether [the father] is still interested in seeing or gaining custody[,]" but "we are not prepared to say that the appeal is moot[.]" *Id.* at 1234.

4. Granting of TPR or adoption. The Court of Appeals has dismissed appeals from orders issued during neglect proceedings when a TPR or adoption has been granted while the appeal is pending. *In re Dom.L.S.*, 722 A.2d 343, 344 (D.C. 1998) (appeal from denial of visitation rendered moot by grant of valid TPR).

C. Preservation of Issues for Appeal

The Court of Appeals has frequently stated that issues not raised below will not be heard for the first time on appeal, except when the alleged error is "so clearly prejudicial to substantial rights as to jeopardize the very fairness and integrity of the trial." *Watts v. United States*, 362 A.2d 706, 709 (D.C. 1976). Issues heard for the first time on appeal are subject to a stringent standard of review known as the plain error rule. For reversal under the plain error test, an appellant must show: (1) error, that (2) is plain, (3) affected appellant's substantial rights, and (4) seriously affects the fairness, integrity, or public reputation of judicial proceedings. *In re D.B.*, 947 A.2d at 450; *see United States v. Olano*, 507 U.S. 725, 732-736 (1993). For further discussion

of these principles in the context of a neglect case, see *In re S.S.*, 821 A.2d 353, 358 (D.C. 2003), and *In re A.R.*, 679 A.2d 470, 478 (D.C. 1996).

As in all areas of the law, appellants in neglect, guardianship, adoption, and TPR cases still occasionally raise issues for the first time at the appellate level. These issues often involve constitutional or statutory claims that counsel did not raise with the trial court. While the Court of Appeals has sometimes been willing to consider these issues, it has generally applied the plain error rule and ultimately affirmed the lower court decision. *See, e.g.*, *In re N.D.*, 909 A.2d 165, 172 (D.C. 2006) (revocation of protective supervision); *In re D.B.*, 947 A.2d at 446 (order prohibiting visitation); *In re S.S.*, 821 A.2d at 360 (neglect adjudication); *In re J.W.*, 837 A.2d 40, 47-48 (D.C. 2003) (neglect adjudication). On occasion, the Court of Appeals has been more lenient and decided the substantive issue raised for the first time on appeal without applying the stringent plain error standard. *See, e.g.*, *In re A.R.*, 679 A.2d at 475 (given the "historic concern of the courts with the welfare of minors," the Court of Appeals was "not prepared to reject [the father's] substantive contentions [in appeal from TPR] on the basis of their imprecise articulation" and would "assume for purposes of the present appeal that [the issues] have been preserved"); *see also In re T.L.*, 859 A.2d at 1090 n.6 (Court of Appeals applied abuse of discretion standard to review issue raised by mother for first time on appeal from order prohibiting visitation; government had not suggested that issue could be reviewed only for plain error and court was "reluctant . . . to dispose of the appeal on [a] technical ground[] not related to the merits" when the "fundamental rights of the children and the mother" were at stake).[2]

[2] In *In re A.R.*, the Court of Appeals ultimately rejected the parent's claim and affirmed the lower court order. In *In re T.L.*, however, the Court of Appeals reversed the lower court order prohibiting visitation using the abuse of discretion standard.

***Practice Tip*: How to preserve issues for appeal.** It is extremely important to properly preserve issues at the trial level. In addition to practice manuals published specifically for D.C. practitioners on this topic, there are several general texts available in the D.C. Superior Court library that practitioners may find helpful. *See* John W. Cooley, *Callaghan's Appellate Advocacy Manual* ch. 3 (1995). Cooley's practice points include (1) raising objections in a timely manner and obtaining a ruling on the objection, (2) recognizing that raising an objection on one ground will not preserve a challenge on another, (3) making proffers if an objection is sustained, and (4) raising challenges through written motions when appropriate. Another resource on this issue is Herbert Monte Levy, *How to Handle an Appeal* (4th ed. 1999).

***Practice Tip*: Hearsay objection does not ordinarily preserve other challenges.** When objecting to admission of evidence at trial, counsel should ordinarily raise all potential grounds for challenging admissibility. Counsel should not rely on a hearsay objection to preserve other challenges for appeal. The Court of Appeals has repeatedly held that a hearsay objection usually does not preserve other challenges to admission of evidence that are introduced over appellant's objection. Neglect cases addressing this issue include *In re D.B.*, 947 A.2d at 443, and *In re Ty.B.*, 878 A.2d 1255 (D.C. 2005).

For more information on the neglect, guardianship, adoption and TPR cases cited in this chapter, see Appendix, *Case Law*, *Case Summaries, Appellate Jurisdiction and Other Issues*.

CHAPTER THREE: SCOPE AND STANDARD OF REVIEW

A. Scope of Review

D.C. Code § 17-305 (a) establishes the scope of appellate review:

> In considering an order or judgment of a lower court (or any of its divisions or branches) brought before it for review, the District of Columbia Court of Appeals shall review the record on appeal. When the issues of fact were tried by jury, the court shall review the case only as to matters of law. When the case was tried without a jury, the court may review both as to the facts and the law, but the judgment may not be set aside except for errors of law unless it appears that the judgment is plainly wrong or without evidence to support it.

Upon review, the court may "affirm, modify, vacate, set aside or reverse any order or judgment of a court . . . lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate order, judgment, or decision, or require such further proceedings to be had, as is just in the circumstances." D.C. Code § 17-306.

> ***Practice Tip*: Precedential cases in the District of Columbia.** The "case law of the District of Columbia" is comprised of the decisions of the Court of Appeals as well as the decisions of the D.C. Circuit rendered prior to February 1, 1971 (the effective date of the District of Columbia Court Reorganization Act of 1970, Pub. L. No. 91-358). *M.A.P. v. Ryan*, 285 A.2d 310, 312 (D.C. 1971). In *M.A.P.*, the Court of Appeals also adopted the rule that "no division of this court will overrule a prior decision of this court or refuse to follow a decision of the United States Court of Appeals [for the District of Columbia Circuit] rendered prior to February 1, 1971[;] . . . such result can only be accomplished by this court en banc." *Id*. (footnote omitted).

B. Standard of Review

In an appeal from a bench trial, the court reviews both the facts and the law, but may not set aside the judgment unless it is "plainly wrong or without evidence to support it." D.C. Code § 17-305 (a). The standard of appellate review will depend on the nature of the issue under

consideration. Generally, there are four different standards that may be invoked, reflecting the level of deference given to the trial court's determinations:

1. Questions of law. In general, the Court of Appeals reviews questions of law *de novo*; that is, it decides legal issues using its independent judgment without deference to the trial court's resolution of the questions. *In re K.I.*, 735 A.2d 448, 453 (D.C. 1999). Jurisdictional issues are questions of law that are reviewed *de novo*. *In re J.W.*, 837 A.2d at 44.

2. Questions of fact. The Court of Appeals reviews questions of fact for clear error, accepting the trial court's findings unless they are clearly erroneous and without evidence to support them. The appellate court may reverse only when the evidence is insufficient to support the trial court ruling. This standard of review applies to appeals of neglect adjudications. Under this standard, the appellate court must "consider the evidence in the light most favorable to the [prevailing party], giving full play to the right of the [trial] judge, as the trier of fact, to determine credibility, weigh the evidence, and draw reasonable inferences." *In re T.M.*, 577 A.2d 1149, 1151 (D.C. 1990), *abrogated on other grounds by Rivas v. United States*, 783 A.2d 125 (D.C. 2001) (en banc); *see also In re N.D.*, 909 A.2d at 170 n.6; *In re A.S.*, 643 A.2d 345, 347 (D.C. 1994); *In re S.G.*, 581 A.2d 771, 774 (D.C. 1990).

3. Abuse of discretion. The Court of Appeals reviews matters committed to the discretion of the trial court only for abuse of that discretion:

> In reviewing for an abuse of discretion, [the appellate court's] task is to ensure "that the trial court has exercised its discretion within the range of permissible alternatives, based on all relevant factors and no improper factor . . ." and then "[to] evaluate whether the decision is supported by 'substantial reasoning' . . . 'drawn from a firm factual foundation' in the record."

In re D.R.M., 570 A.2d 796, 803-04 (D.C. 1990) (alterations in original) (citations omitted).

Decisions related to a child's best interests – including neglect dispositions, orders resolving TPR motions, and orders resolving contested adoptions – are reviewed for abuse of discretion. *See, e.g.*, *In re B.J.*, 917 A.2d 86, 88 (D.C. 2007) (TPR); *In re D.B.*, 879 A.2d at 690-91 (appeal from restrictions on visitation contained in permanent guardianship order reviewed for abuse of discretion); *In re An.C.*, 722 A.2d 36, 39 (D.C. 1998) (TPR); *In re D.R.*, 718 A.2d at 151-52 (child placed in residential facility at neglect disposition; trial court's decision reviewed only for abuse of discretion); *In re D.R.M.*, 570 A.2d at 803-04 (adoption).

The standard also applies to review of most motions decided by trial courts (in both the civil and criminal context) including, for example, orders denying requests for continuances, recusal, reconsideration, relief from an order, orders authorizing notice by posting, evidentiary rulings, and orders involving injunctive relief. *See, e.g.*, *In re D.A.*, 990 A.2d 530, 533 (D.C. 2010) (reconsideration); *In re N.N.N.*, 985 A.2d 1113, 1118 (D.C. 2009) (orders authorizing notice by posting); *Robinson v. Samuel C. Boyd & Son, Inc.*, 822 A.2d 1093, 1105-06 (D.C. 2003) (recusal); *District of Columbia v. Group Ins. Admin*., 633 A.2d 2, 21 (D.C. 1993) (preliminary injunction); *Johnson v. United States*, 398 A.2d 354, 362 (D.C. 1979) (evidentiary rulings). For discussion of this issue in the context of an adoption case, see *In re R.E.S.*, 978 A.2d at 188 (trial court did not abuse its discretion in denying request by birth father's counsel for a continuance in an adoption trial).

4. Plain error. The plain error standard applies to errors or defects in the proceedings that were not brought to the attention of the trial court. *In re N.D.*, 909 A.2d at 172 (plain error standard applied when appellant had not objected to government's motion to revoke protective supervision being made orally). The appellant must demonstrate that the trial court's decision

was "plainly" or "obviously" wrong and that the error was so serious that "failure to correct it will result in a miscarriage of justice." *Id.* (quoting *In re S.S.*, 821 A.2d at 358). To prevail under the plain error standard, the appellant must specifically show: (1) error, (2) that is plain, (3) that affected appellant's substantial rights, and (4) that seriously affects the fairness, integrity, or public reputation of judicial proceedings. *In re D.B.*, 947 A.2d at 449 (appellant's hearsay objection was insufficient to preserve constitutional due process claim for appeal, thus the court would review only for plain error and none was found). "'Plain' is synonymous with 'clear' or, equivalently, 'obvious.'" *District of Columbia v. Banks*, 646 A.2d 972, 984 (D.C. 1994) (Farrell, J., concurring) (quoting *Olano*, 507 U.S. at 734).

C. Harmless Error

When an appellant raises a claim of error based on court action that he or she objected to below, the appellate court will review for harmless error. Under the harmless error rule, even when the appellate court decides that the trial court erred, the trial court's judgment will not be disturbed if the error is harmless. In other words, the appellate court "must look at the totality of the circumstances and decide whether [it can be said] with fair assurance, after pondering all that happened without stripping the erroneous action from the whole, that the judgment was not substantially swayed by the error." *In re L.L.*, 974 A.2d 859, 865 (D.C. 2009) (citation omitted) (trial court's admission of hearsay statements of child victim in neglect case was not harmless error); *see also N.D. McN. v. R.J.H., Sr.*, 979 A.2d 1195, 1204 (D.C. 2009) (trial court's unrecorded *in camera* interview of two children deemed harmless error where court shared detailed narrative of interview with parties); *In re J.T.B.*, 968 A.2d 106, 116 (D.C. 2009) (magistrate judge's failure to issue written findings before entering final adoption decree deemed harmless error;

adoption affirmed); *In re Ty.B.*, 878 A.2d at 1267 (admission of hearsay testimony was central to finding of neglect and was not harmless error; adjudication reversed).

***Practice Tip*: Standard of review in bifurcated adoption proceedings.** Trial judges sometimes "bifurcate" contested adoption cases. In bifurcated proceedings, the trial court first determines whether parental consent should be waived (the "show cause" hearing), and subsequently determines whether the particular adoption is in the child's best interests. The show cause hearing focuses primarily on parental fitness, and the parent's access to information about and examination of the adoption petitioners may be limited. Counsel for parents have challenged this approach in several cases but, in each instance, the Court of Appeals has found that bifurcation was not an abuse of discretion under the particular circumstances of the case. *In re J.T.B.*, 968 A.2d at 117-18 (under the circumstances, bifurcation was proper under Super. Ct. Adopt. R. 42 and not an abuse of discretion); *see also In re A.W.K.*, 778 A.2d 314, 326 (D.C. 2001); *In re P.S.*, 797 A.2d 1219, 1226 (D.C. 2001).

CHAPTER FOUR: REVIEW OF MAGISTRATE JUDGE ORDERS

A. Review of Magistrate Judge Orders and Judgments – Basic Principles

An associate judge must first review a magistrate judge's final order or judgment before a party can appeal to the Court of Appeals. D.C. Code §§ 11-1732 (k) and 1732A (d); D.C. App. R. 3 (a)(3); D.C. Fam. Ct. R. D.[3] This requirement is jurisdictional and cannot be waived by the parties or ignored by the courts. *Bratcher v. United States*, 604 A.2d 858, 861 (D.C. 1992); *L.A.W. v. M.E.*, 606 A.2d 160, 161 (D.C. 1992); *Arlt v. United States*, 562 A.2d 633, 635 (D.C. 1989); *Speight v. United States*, 558 A.2d 357, 359 (D.C. 1989); *District of Columbia v. Eck*, 476 A.2d 687, 689 (D.C. 1984).

When reviewing a magistrate judge's final decision, the associate judge must "review those portions of the magistrate judge's order or judgment to which objection is made together with relevant portions of the record, and may affirm, reverse, modify, or remand, in whole or in part, the magistrate judge's order or judgment and enter an appropriate order of judgment." D.C. Fam. Ct. R. D (e)(1)(B). If a party then appeals to the Court of Appeals, that challenge is to the associate judge's order or judgment. *Bratcher*, 604 A.2d at 861; *Arlt*, 562 A.2d at 635.

> ***Practice Tip*: Rule D and case law.** Magistrate judges also preside over cases in the criminal and civil divisions of Superior Court. The court rules governing these proceedings are similar but not identical to Family Rule D. *See* Super. Ct. Civ. R. 73 (b); Super. Ct. Crim. Pro. R. 117. Practitioners researching Rule D issues will want to review the case law decided under these rules. It appears that associate judges in Family Court are applying the case law decided in these other contexts when reviewing neglect, guardianship, TPR, and adoption decisions.

[3] "The term 'final order or judgment' as used in this rule embraces the final decision concepts of D.C. Code § 11-721 (a) and permits review of a magistrate judge's decision by an associate judge only in those situations in which an appeal from an associate judge to the Court of Appeals would lie." D.C. Fam. Ct. R. D cmt.

B. Motions for Review of Orders or Judgments of Magistrate Judge

1. Time for filing motion and opposition; stays; hearings. Superior Court General Family Rule D governs review of magistrate judge decisions in Family Court. An associate judge may review a magistrate judge's final order or judgment *sua sponte*, and must review a magistrate judge's final decision upon motion of a party. D.C. Fam. Ct. R. D (e)(1)-(2). Parties file motions for review with the Presiding Judge of Family Court, who assigns the case to an associate judge.

Motions for review in neglect, guardianship, adoption, and TPR cases "shall be filed and served on all parties not later than . . . 10 days after the entry of the order or judgment . . . for which review is being sought[.]" D.C. Fam. Ct. R. D (e)(1)(B). Extensions may only be granted upon a showing of excusable neglect, in which case the reviewing judge, "with or without motion, [may] extend the time for filing and serving a motion for review of a magistrate judge's final order or judgment for a period not to exceed 20 days from the expiration of the time otherwise prescribed[.]" D.C. Fam. Ct. R. D (e)(4). Parties may file oppositions within ten days after being served with the motion for review. D.C. Fam. Ct. R. D (e)(1)(B). Practitioners will want to review *In re Na.H.*, 65 A.3d at 113, which explains that the relevant date for determining the timeliness of a motion for review in a neglect case is when the disposition hearing order was entered on the docket, and *In re D.B.*, 879 A.2d at 688-89, which addresses the timing requirements of Rule D in the context of a guardianship case.

> ***Practice Tip*: Motion for Stay.** Rule D motions do not automatically stay the order or judgment of the magistrate judge. A party wishing to preserve the status quo should request a stay, first to the magistrate judge and, if denied, may file a motion for a stay with the associate judge. D.C. Fam. Ct. R. D (e)(3).

2. Content of pleadings. Motions for review "shall designate the order, judgment, or part thereof, for which review is being sought, shall specify the grounds for the objection to the magistrate judge's order, judgment, or part thereof, and shall include a written summary of any evidence presented before the magistrate judge relating to the grounds for the objection." D.C. Fam. Ct. R. D (e)(1)(B). Oppositions "shall describe any proceedings before the magistrate judge which conflict with or expand upon the summary filed by the moving party." *Id.* In addition, because Rule D does not provide for or require a hearing on a motion for review, practitioners desiring a hearing should include an appropriate request in their pleadings.

> ***Practice Tip*: Preserving issues for appeal.** Attorneys seeking review of a magistrate judge decision should include all objections and claims of error in the initial motion for review; in the event of an appeal, this may avoid claims of failure to preserve issues for appeal. *See Dorm v. United States*, 559 A.2d 1317, 1318 (D.C. 1989) (defendant who did not raise hearsay issue before associate judge forfeited this issue on appeal; conviction affirmed).

3. The record on review. On its face, Rule D does not require the moving party to submit transcripts or any other record beyond the initial motion for review and a copy of the order or judgment being challenged. However, the Court of Appeals has held in the context of a criminal proceeding that review by an associate judge (of a magistrate judge's decision) must be based on an adequate record sufficient to show the reviewing judge gave meaningful consideration to the specific issues raised. *Kwakye v. District of Columbia*, 494 A.2d 643, 646

(D.C. 1985) (reversing and remanding a criminal conviction based on inadequate review). The nature of the record necessary for adequate review will depend on the particular case and issues presented. In some cases, the verbatim transcripts may be necessary; in others, they may not. *Id*. at 645 n.3; *see also Speight*, 558 A.2d at 359. Practitioners who believe that a record beyond the initial proceedings is required for adequate review will want to include an appropriate request in their initial pleadings.

> ***Practice Tip*: Tapes.** Transcripts are rarely, if ever, used at the Rule D phase. (For more information on ordering transcripts, see Chapter 7, Section C.) Instead, some associate judges do listen to the tapes of a proceeding whether or not they are asked to do so by a party.

4. Standard of review. The Comment to Rule D states:

> The standard of review of a magistrate judge's decision . . . is the same as applied by the Court of Appeals on appeal of a judgment or order of the Superior Court. In accordance with that standard, a magistrate judge's judgment or order may not be set aside except for errors of law unless it appears that the judgment or order is plainly wrong, without evidence to support it, or an abuse of discretion.

D.C. Fam. Ct. R. D cmt.; *see also Weiner v. Weiner*, 605 A.2d 18, 20 (D.C. 1992) (drafters of Rule D intended that trial court review child support orders issued by hearing commissioners [former title for magistrate judge] only for abuse of discretion or a clear lack of evidentiary support). This means that associate judges review questions of law *de novo*, questions of fact for clear error, and discretionary matters (including issues related to the child's best interests and involving resolution of most motions) for abuse of discretion.

5. Time frames for decisions by reviewing judge. Rule D does not mandate that the associate judge act within any specific period of time in rendering a decision. Superior Court Administrative Order 10-04 ("Timeline for Resolution of Motions to Review Magistrate Judges'

Decisions in Neglect, Guardianship, Adoption and Termination of Parental Rights Matters"), however, sets forth a timeline for reviewing judges to follow. When necessary, counsel may want to reference additional sources of authority when attempting to obtain a decision on a Rule D motion. *See, e.g.*, Super. Ct. Neg. R. 43 (e) (if decision has not been made within thirty days of the date that the motion was taken under advisement, request Clerk to send mandatory notice to judicial officer every thirty days until decision is rendered; if no decision within sixty days, Clerk is to advise judicial officer and Chief Judge, who may take action to ensure prompt decision).

> ***Practice Tip*: Timelines.** When a case is before the Court of Appeals, special time frames may apply by statute or rule. For example, D.C. Code § 16-2328 provides for emergency action on appeals brought by the GAL challenging shelter care orders; D.C. App. R. 4 requires the Court of Appeals to automatically expedite TPR and adoption cases. Rule D does not expressly incorporate or refer to these special time frames for associate judge review of orders or judgments issued by a magistrate judge. Practitioners should carefully consider the arguments that can be developed to support a request that these special timelines be applied at the review stage (or, conversely, to challenge such a request).

CHAPTER FIVE: THE ROLE OF THE GUARDIAN *AD LITEM*

A. Parties Appealing

Parents very often pursue appeals in the neglect context, challenging neglect adjudications, guardianship orders, orders terminating parental rights, or adoptions granted without parental consent. The government, however, also pursues appeals, as do third parties such as adoption petitioners who do not prevail on their petitions. GALs can of course also initiate an appeal, and the Office of Counsel for Child Abuse and Neglect (CCAN) has made clear that GALs have an affirmative obligation to take a position and actively participate in appellate cases.

There are typically three options available to the GAL after the trial court renders its decision:

1. GAL initiates an appeal. The GAL must assess whether to pursue an appeal on behalf of the child, regardless of whether any other party has or will be doing so. When the child is aggrieved by the order or judgment, the GAL has standing to initiate the appeal and must make an independent decision whether to do so. This is especially important when the GAL does not support the decision below but all the other parties do. *See*, *e.g.*, *In re S.C.M.*, 653 A.2d at 400 (appeal by GAL challenging order returning child to parental custody). GALs who initiate appeals must carry out all of the requirements imposed by rule on the appellant (*e.g.*, ordering transcripts, perfecting the record, filing the brief, and presenting oral argument).

2. GAL joins as an appellant in an appeal initiated by another party. In some cases, another party will file the appeal but the GAL will want to support it. In these cases, the GAL

must file a separate notice of appeal in order to be designated an appellant in the case.[4] D.C. App. R. 3. GALs who do not do so will be considered appellees and will not be permitted to challenge the lower court order. *In re T.W.M.*, 964 A.2d 595, 601 n.5 (D.C. 2009). Even when another party is the lead appellant, the GAL as an appellant is entitled to file a separate appellant's brief (rather than simply a statement in lieu of brief adopting or joining the arguments of other counsel), and the CCAN office encourages practitioners to do so. Any party who files a brief may participate in oral argument if there is one, and GALs will want to consider whether it is in their client's interests to do so.

3. GAL is an appellee on appeal. When an appeal is filed, the other parties to the proceeding are automatically designated as appellees. GALs who support the lower court decision – and who thus do not file notices of appeal – will be permitted to participate in the appellate proceedings as an appellee. While there will be other parties who are appellees, the GAL must independently evaluate the role that she or he will play in advocating on behalf of the client's best interests. At a minimum, GALs will want to be on record as supporting the decision below by filing a statement in lieu of brief. In most situations, however, it is expected that the GAL will file a brief on the child's behalf and, when strategically advisable, participate in oral argument.

[4] The Court of Appeals rules permit parties to file a joint notice of appeal as well, although this does not appear to be a common practice, perhaps for logistical reasons. D.C. App. R. 3 (b).

CHAPTER SIX: SHELTER CARE APPEALS

A. Jurisdiction

Pursuant to D.C. Code § 16-2328, the child – and only the child – has the right to file an emergency interlocutory appeal of a shelter care order. The procedure and time frame set forth in the statute provide the child with the "advantage of a speedier appellate review" than a non-emergency appeal, as discussed further below. *In re M.L. DeJ.*, 310 A.2d 834, 835 (D.C. 1973).

Whether there is an alternative jurisdictional basis for either a child or a parent to appeal a shelter care order is unclear. *See In re S.J.*, 632 A.2d 112, 112 (D.C. 1993) (per curiam) (Court of Appeals lacked jurisdiction to hear a shelter care appeal brought by a birth mother). *But see In re M.L. DeJ.*, 310 A.2d at 835 (juvenile detention order issued pursuant to D.C. Code § 16-2312 – also the statutory basis for shelter care orders – was a final order for purposes of appellate review; emergency appeal process set forth in § 16-2328 is not exclusive and it is permissible for child to pursue either option).[5]

In most cases, the GAL will be appealing a shelter care order pursuant to the expedited process set forth in D.C. Code § 16-2328. Thus, the remainder of this chapter will focus on this unique process.

B. The Initial Hearing: Setting the Stage for a Shelter Care Appeal

Counsel who oppose shelter care should start preparing for a potential shelter care appeal *before* the initial hearing to ensure that issues are properly preserved for appeal. A thorough

[5] The disadvantage of pursuing this alternative, however, is that the child would lose the benefit of the accelerated timeline for emergency appellate review. Depending on the circumstances, an appellant might try to accelerate the appeal by filing a motion for summary reversal or a motion to expedite.

review of the relevant legal standard for shelter care (D.C. Code §§ 16-2310 through -2312 and Super. Ct. Neg. R. 13) is a critical first step. Counsel should focus the court on this standard during the initial hearing, drawing attention to the specific facts that support a finding that shelter care is unnecessary (or the absence of facts with which the government could meet its burden). If the court orders shelter care, counsel should state their objections on the record and clearly articulate the bases for the objections. If the court does not allow counsel to present facts that would have supported the argument against shelter care, a proffer of the facts that would have been presented may be important. Because of the expedited time frame of a D.C. Code § 16-2328 shelter care appeal, counsel should be sure to take thorough notes during the hearing in order to have a clear recollection of what transpired.

C. Part One: Review of Magistrate Judge's Shelter Care Order

If the shelter care order was issued by a magistrate judge — which is typically the case under current Superior Court practice — the GAL must first seek review of the magistrate judge's order by an associate judge of the Superior Court before appealing to the Court of Appeals. *See generally* D.C. Code § 11-1732 (k); D.C. Fam. Ct. R. D (e); *cf.* Super. Ct. Civ. R. 73 (b). For further discussion, see Chapter 4. If an associate judge issued the original shelter care order, then counsel may appeal directly to the Court of Appeals. For further discussion, see Chapter 6, Section C.

D.C. Code § 16-2328 does not explicitly address situations in which a magistrate judge, as opposed to an associate judge, issues a shelter care order. The primary significance of this is the question of the applicability of the timeline set forth in D.C. Code § 16-2328, which requires a decision by the Court of Appeals within a set time frame (approximately one week after the

issuance of the original shelter care order). The most literal interpretation of D.C. Code § 16-2328 might suggest that the entire appellate process for shelter care orders (review by an associate judge and by the Court of Appeals) be conducted within the time frame set forth in D.C. Code § 16-2328. To date, the Court of Appeals has not decided any cases involving the effect of the statutory timelines of § 16-2328 when a shelter care order is initially issued by a magistrate judge. *But see Minor v. Robinson*, 117 Daily Wash. L. Rptr. 1749 (D.C. Super. Ct. July 14, 1989). Current practice, however, appears to be that each step in the process (magistrate judge to associate judge, associate judge to Court of Appeals) must be in compliance with the timeline set forth in D.C. Code § 16-2328, which effectively doubles the time if counsel wants to appeal to the Court of Appeals.

If the GAL expects the Presiding Judge and associate judge to comply with the timeline set forth in D.C. Code § 16-2328, then she or he should comply with that timeline as well. Thus, when the statute speaks of filing a "notice of interlocutory appeal" within two days of the shelter care order, counsel should consider filing the motion for review within that same time period (because no notice of appeal procedure applies in the magistrate judge/associate judge review context). Counsel may want to request that the Presiding Judge or associate judge comply with D.C. Code § 16-2328 and schedule argument within three days of the filing of the motion for review, excluding Sundays.[6] If the Presiding Judge or associate judge follows the statutory

[6] If the Presiding Judge or associate judge fails to follow the requirements of the statute, counsel can consider filing an emergency motion with the Presiding Judge/associate judge, or a petition for a writ of mandamus in the Court of Appeals, which may be filed in cases "where a trial court has refused to exercise . . . its jurisdiction." *Banov v. Kennedy*, 694 A.2d 850, 857 (D.C. 1997); *see also* D.C. App. R. 21. Mandamus review would effectively ask the Court of Appeals to direct the Superior Court to hear argument and/or rule on the motion for review.

timeline, the ruling must be issued on or before the next day following the argument. For further discussion, see Chapter 4.

D. Part Two: Court of Appeals

The Court of Appeals rules set forth detailed procedures for emergency shelter care appeals and the Court typically adheres strictly to these requirements. D.C. App. R. 4 (c)(2).

First, the GAL must file a notice of appeal in the Superior Court within two days of the entry of the associate judge's order. D.C. Code § 16-2328; D.C. App. R. 4 (c)(2).

> ***Practice Tip*: Notice of Appeal.** A form for the notice of appeal may be found at the D.C. Court of Appeals website. Notices of appeal are filed in Superior Court, not in the Court of Appeals. *See Patterson v. District of Columbia*, 995 A.2d 167, 173 (D.C. 2010) (appeal dismissed for lack of jurisdiction due to noncompliance with requirements for information to be specified in notice of appeal).

Counsel must also notify the Clerk of the Court of Appeals in person or by telephone of the existence of the appeal, and provide the following information: the filing of the notice of appeal, the nature of the emergency appeal, the names and phone numbers of all other parties or their attorneys, and any transcript needed for the appeal. D.C. App. R. 4 (c)(2).

> ***Practice Tip*: Contacting the Court of Appeals.** The Chief Deputy Clerk may be reached at (202) 879-2725. Staff Counsel may be reached at (202) 879-2718. They are very helpful concerning inquiries about procedure. *See also* Additional Resources, *D.C. Court of Appeals - Key Staff Contacts*.

Counsel must immediately order the necessary transcript(s), with overnight preparation, which in turn may require having the necessary payment vouchers prepared and submitted to the magistrate judge or associate judge for approval. D.C. App. R. 4 (c)(2). Transcripts of both

the initial hearing before the magistrate judge and any proceedings before the associate judge should be ordered.

> ***Practice Tip*: Transcripts.** Generally speaking, when reviewing magistrate judge orders, associate judges listen to the taped recordings of the shelter care hearing, as opposed to requiring a written transcript (counsel are not currently allowed access to these recordings). The Court of Appeals, however, expects and requires that transcripts be provided for emergency appeals.

> ***Practice Tip*: Appendix.** It's worth noting that in standard (non-emergency) neglect appeals or where the trial court has appointed counsel, a full appendix is not required. D.C. App. R. 30 (f). There is, however, an abbreviated appendix requirement for such cases. *Id*. Specifically, the appellant must file with their brief four copies of any opinion, findings of fact, and conclusions of law that relate to the issues on appeal. *Id*. Appellant may also include any other portions of the record to be called to the court's attention. *Id*. Appellee may then file with the brief four copies of any additional portions of the record to be called to the court's attention. *Id*. Of course, the court may rely on parts of the record that neither party included in an appendix. D.C. App. R. 30 (a)(2).

Counsel must file a motion for summary reversal with the Court of Appeals by 4:00 p.m. on the calendar day after the filing of the notice of appeal.[7] D.C. App. R. 4 (c)(2)(E). This motion should be accompanied by a copy of the order being appealed from and any other relevant documents. D.C. App. R. 4 (c)(2)(B)(iv). Any opposition must be filed with the Clerk of the Court of Appeals by noon on the following calendar day. D.C. App. R. 4 (c)(2)(E). Parties must personally serve all other parties within these same prescribed timelines, unless the parties waive personal

[7] D.C. Code § 16-2328 (b) states that the Court of Appeals may "dispense" with "written briefs." However, the Court of Appeals prefers to handle these cases by the parties submitting cross motions for summary disposition, and D.C. App. R. 4 (c)(2)(B)(iv) and (c)(2)(C) require written pleadings.

service and accept service by fax or e-mail. D.C. App. R. 4 (c)(2)(C). The Court of Appeals must hear argument on or before the third day (excluding Sundays) after the filing of notice of appeal. D.C. Code § 16-2328 (b).

The Court of Appeals must render its decision on or before the next day following argument on appeal, and may in rendering its decision dispense with the issuance of a written opinion. D.C. Code § 16-2328 (b). The decision of the Court of Appeals shall be considered final. D.C. Code § 16-2328 (d).

> ***Practice Tip*: Mooting your oral argument.** Call on colleagues to help you moot an oral argument.

A list of the Court of Appeals judges is available on the court's website.

CHAPTER SEVEN: LOGISTICS OF APPEALS PROCESS

A. Timing for Filing Appeal

A notice of appeal must be filed within thirty days of entry of the order or judgment from which the appeal is taken, unless otherwise specified by statute. *See* D.C. App. R. 4 (a)(1). The notice of appeal is filed in Superior Court, not in the Court of Appeals. Certain motions filed with the trial court after a judgment is issued may toll this period. For further discussion, see Additional Resources, *D.C. Court of Appeals Practice*, at 1.

B. Electronic Filing

The Court of Appeals now allows parties to electronically file documents through the Appellate E-Filing System. Parties to a case are also able to see the docket through this online program. Go to https://www.dccourts.gov/court-of-appeals/e-filing-search-cases-online for the instruction manual on e-filing, to view a short tutorial video, and to review the administrative procedures regarding e-filing. Note that if a party electronically files a document, they are required to deliver two file-stamped hard copies of that document to the Court of Appeals within two business days of e-filing. Although the Court of Appeals allows for electronic filing of documents, the Court does not recognize electronic service – either through email or the Appellate E-Filing System – as proper service. Therefore, you must always mail hard copies of the document(s) you are filing to all of the other parties.

C. Transcripts

1. Appellant. It is appellant's duty to obtain the necessary transcripts that are included in the record, and appellant must order them within 10 days after filing the notice of appeal. (D.C. App. R. 10.) Appellant must file a motion to unseal transcripts in adoption

proceedings. If you are the appellant and are therefore the first party to order a transcript, the process for ordering a transcript is as follows:

- Call the court reporting office and ask for a page estimate and who the court reporter was or if the hearing was taped.
- Fill out the transcript order form found on the court's website. The form asks for things like the judge presiding over the hearing, the courtroom number, and your name and address. The transcript order form will also help you calculate how much the transcript will cost.
- You must pay half of the estimated cost when you submit the transcript order form.
- If there was a court reporter at the hearing, you can pay them with cash, money order, or check. The money order or check must be made payable to the specific court reporter. If the transcript is on tape, you can pay with cash, money order, or check. Money orders and checks must be made payable to Clerk of the Court, and checks must list your DC bar number.
- Submit the transcript order form and payment to the court reporting office on the fifth floor of the courthouse.
- For an appeal, the court reporting office has 60 days to complete the transcript.
- Once the transcript is completed, the court reporting office will send you an email saying the transcript is complete, how much you already paid, and how much you now owe.
- Pay the balance when you pick up the transcript.

Where counsel has been appointed, counsel must secure vouchers for the preparation of transcripts from the Finance Office and submit them to the trial judge for approval. The vouchers are available online or in the Court Reporting office. Once you fill out the voucher, the Court Reporting office will submit it to a case manager who will then submit it to the trial judge for approval.

2. Appellee. Once a transcript has been completed, other parties, such as appellee, can order copies of the transcript at the lower copy rate. That process is as follows:

- Call the court reporting office and ask how many pages a transcript is who the court reporter was or if the hearing was taped.
- Fill out the transcript order form found on the court's website. You must pay the full cost when you submit the transcript order form.

- You can pay a court reporter with cash, money order, or check; the money order or check must be made payable to the specific court reporter. Likewise, you can pay with cash, money order, or check if the transcript was taped. Money orders and checks must be made payable to Clerk of the Court, and checks must list your DC bar number.
- Submit the transcript order form and payment to the court reporting office.
- It takes about one week to complete a copy of a transcript.
- Once the transcript copy is completed, the court reporting office will send you an email saying the transcript is complete and that you can come pick it up.

D. Revised Rules

The Court of Appeals revised its Rules in November 2016. The most notable revision is that the font size of the text in briefs must now be 14. The Court of Appeals also requires that any document that gets filed with the Court of Appeals comply with its Citation and Style Guide.