SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
DIRECTIVE 1-2017
Procedures for hearings where the Court may remove reunification as a permanency goal and for appeals of such orders

In *In re Ta.L.*, 149 A.3d 1060 (D.C. 2016) (en banc), the Court of Appeals determined that the current standards for changing a child's permanency goal from reunification to adoption are not constitutionally sufficient to protect parents' due process rights. It reached this conclusion based on (1) the lack of a provision for an evidentiary hearing allowing parents to contest the requested change, and (2) the fact that any such goal change order was not appealable under *In re K.M.T.*, 795 A.2d 688 (D.C. 2002). Therefore, the Court of Appeals overruled its earlier opinion in *In re K.M.T.*, set forth detailed requirements to be implemented at hearings to change the permanency goal from reunification to adoption, and announced that those types of goal change orders are appealable.

To implement the requirements set forth in *In re Ta.L.* and provide additional protections for parents' constitutional right to due process, the Family Court has developed procedures for any permanency hearing where a party is requesting that the Court change a child's permanency goal from reunification to adoption.[1] These explicit protections for parents include an evidentiary hearing as a matter of right at the time a party requests a goal change from reunification to adoption and the right to immediately appeal the goal change from reunification to adoption after the evidentiary hearing.

These procedures will help ensure that parents receive hearings that are conducted in a clear, consistent, and efficient manner prior to removing reunification as a permanency goal for the child when the goal is changed from reunification to adoption.

Accordingly, as of April 14, 2017, it is directed that the following procedures are immediately applicable to all hearings in the Family Court in which there is a request to change a child's permanency goal from reunification to adoption. Changing the goal "from reunification" refers only to the removal of reunification as a permanency goal, and does not refer to the addition of a concurrent permanency goal when reunification will remain as a goal.

I. NOTICE AND PRETRIAL PROCEDURES

At later permanency hearings following any adjudication of neglect, the Court shall set (1) the permanency hearing as required under D.C. law (*see* D.C. Code § 16-2323); and should set (2) a status hearing for thirty (30) days prior to that permanency hearing.[2]

If at any time before the scheduled permanency hearing, but no later than forty-five (45) days prior to that hearing, any party seeks a change in the child's goal from reunification or to otherwise remove reunification as a goal and change the goal to adoption, that party shall submit notice to all parties via praecipe.[3]

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[1] Permanency hearings may also include disposition hearings and review of disposition hearings.

[2] If the goal has not changed from reunification, the Court should schedule the upcoming permanency hearing for sufficient time to allow presentation of evidence as described herein. If the goal has already changed from reunification, such status hearings are not required.

[3] If no notice is served seeking to change the goal from reunification or to otherwise remove reunification as a goal, the Court shall vacate the status hearing and may adjust the time allotted for the upcoming permanency hearing accordingly.

If such notice is served, parties should be prepared for an evidentiary hearing on the goal change request at the upcoming permanency hearing.

If such notice is served, parties should also be prepared to engage in a pretrial hearing at the status hearing set for thirty (30) days before the permanency hearing.

Five (5) days prior to the status hearing, parties shall submit a joint pre-trial statement to include: (1) a list of anticipated witnesses and brief proffer of their expected testimony; (2) exhibits; (3) stipulated facts; and (4) each party's position on the contested facts.[4]

Pursuant to D.C. Code § 16-2323 (d) and Super. Ct. Neg. R. 32 and 33, the social worker shall file and serve upon all parties' counsel the permanency hearing report no later than ten (10) days prior to the evidentiary hearing. This report shall include a copy of the case plan.[5]

II. WAIVER OF HEARING

A parent may waive his/her right to an evidentiary hearing on the request to change the goal from reunification to adoption, but does not forfeit this right merely by failing to attend the hearing. If a parent fails to appear at the evidentiary hearing, all parties should be prepared to proceed with the evidentiary hearing as described herein, unless the attorney has representation from the client to the contrary and follows the waiver procedures.

If a parent decides to affirmatively waive his/her right to an evidentiary hearing, he/she must sign a written waiver explicitly stating that he/she waives the opportunity to challenge (1) the reasonable efforts made toward reunification, and (2) the removal of reunification as a goal. If the parent appears in court, the Court must then voir dire the parent to ensure that the waiver is made knowingly and voluntarily.[6] However, if the parent does not appear in court, the waiver must be signed and notarized, in consultation with the parent's attorney.

Counsel for a parent who wishes to waive his/her right to an evidentiary hearing should notify all parties as soon as possible prior to the status hearing. The scheduled status hearing should be used to voir dire the parent prior to accepting the waiver.

If a parent's counsel cannot inform other parties and the Court by the status hearing of intent to waive, the parent's counsel should still inform the Court and parties by praecipe of intent to waive prior to the upcoming permanency hearing whenever possible.

III. EVIDENTIARY HEARING

The evidentiary hearing will be held at the time scheduled for a permanency hearing. The Court should view any motion for a continuance with disfavor and should only grant that motion for extraordinary cause shown, e.g. an essential witness who has been subpoenaed fails to appear.

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[4] Judges may waive the status hearing and instead, accept a pre-trial statement.

[5] Attached is a memorandum from Ms. Despina Belle-Isle, Attorney Advisor, on the requirements for the case plan.

[6] Attached is a sample waiver.

At the start of the evidentiary hearing, all parties will state their respective positions on the proposed goal change from reunification to adoption. Parties may call and examine witnesses, cross-examine opposing parties' witnesses, and call rebuttal witnesses. Parties will then orally summarize their arguments on whether reunification should no longer be a goal.

In order to prevail, the party requesting the goal change from reunification to adoption must prove by a preponderance of the evidence that:

(1) the government provided the parents with a reasonable plan for achieving reunification;
(2) the government expended reasonable efforts to help the parents ameliorate the conditions that led to the child being adjudicated neglected; and
(3) the parent(s) failed to make adequate progress towards satisfying the plan's requirements.

When ruling on the goal change request, the Court must make detailed findings as to whether:

(1) the government expended reasonable efforts to reunify the family as it is statutorily obligated to do;
(2) the goals set for the parents were appropriate and reasonable; and
(3) other vehicles for avoiding the pursuit of termination, e.g., kinship placements, have been adequately explored.

At the conclusion of all testimony and argument, the Court will orally rule on the goal change, proceed with the remainder of the hearing, and enter a permanency hearing order. Once that order is entered on the docket, it shall constitute the appealable order for motion for review purposes.

Within ten (10) business days of the hearing, the Court shall enter written Findings of Fact and Conclusions of Law and provide them to the parties.

IV. MOTIONS FOR REVIEW

As with all motions for review, parties will follow Super. Ct. Gen. Fam. R. D (e). In this particular context though, the Court will strongly disfavor requests for extensions under Super. Ct. Gen. Fam. R. D (e)(4) for either the submission of motions for review or responses to them.

The Presiding Judge of the Family Court will designate an associate judge to review the matter by the end of the business day following the deadline for responses to a motion for review or when the responses were filed, whichever is earlier.

The associate judge must enter his/her judgment within fifteen (15) calendar days of the date by which any responses to the motion for review were due or were filed, whichever is earlier. The associate judge shall serve all parties with the order electronically immediately following its docketing.

During the pendency of any motion for review or appeal taken from an order changing the permanency goal from reunification, the magistrate judge has and should exercise concurrent jurisdiction over the case.

Appeals to the Court of Appeals should be considered as noted in *Ta.L*, requesting an expedited appeal pursuant to Court of Appeals Rule 4(c).

This directive shall take effect on April 14, 2017.

Carol Ann Dalton
Presiding Judge of the Family Court

Date: April 14, 2017

Copies to:
Judicial Officers
Clerk of the Court
Library
Executive Officer
Division Directors

Case Plan Memo

As a result of In re TA.L, case plans developed by the Child and Family Services Agency and private agencies have been given renewed importance. The Court of Appeals did not provide any guidance as to their expectations for case plan requirements. Because case plans are filed infrequently and irregularly and because they have been viewed as generally lacking in helpful information, this memorandum is provided to summarize the legal requirements for case plans. According to the CFSA website, the agency does not have one policy, administrative issuance or other guidance that discusses case plans, rather, the planning process is discussed along topics such as planning for guardianship. This memorandum is intended to provide some basic information to assist in holding the agency to its statutory duties in providing timely and meaningful case plans.

Case plan requirements

General requirements

According to ASFA, the state agency is required to file with the Court a case plan for each child who is receiving foster care payments, within 60 days from a child's removal and every 6 months thereafter. 45 CFR § 1356.21(g)(1); D.C. SCR-Neglect Rule 15(b)(6). Case plan development should begin within one week from the child's placement and be completed within 6 weeks. CDCR 29-1619, 1619.1.

The purpose of the case plan is to assure that the child receives safe and proper care and that services are provided to the parents, child, and foster parents to improve the conditions in the parents' home, facilitate return of the child to his own safe home or the appropriate permanent placement and address the needs of the child while in foster care. The case plan should include a discussion of the appropriateness of the services provided to the child under the plan. 42 USCS § 675 (1)(B); D.C. Code § 4-1301.02(3)(B).

The case plan should be prepared with the involvement and participation of the parent. 45 CFR § 1356.21(g)(1); CDCR 29-1619, 1619.3. Parents' counsel should attend the case plan meeting to protect their client's interests. D.C. SCR-Neglect Appx., Rule D-2.

The case plan should be prepared with the involvement and participation of the youth. Youth who are 14 or older should participate in the development of the case plan and are permitted to bring two supportive persons who are not the child's foster parent or caseworker to participate in the process. If the agency feels there is good cause to believe that the person(s) chosen will not act in the child's best interests, then it may reject that person(s). The case plan for youth 14 and older should include a written description of the programs and services which will help the youth prepare for the transition from foster care to a successful adulthood. 42 USCS § 675 (1)(B); D.C. Code § 4-1301.02(3)(B).

Case plans should be reassessed every six months. CDCR 29-4703, 4703.4. Reassessments should document the agency's determination whether or not medical, social, educational, or other services continue to be adequate to meet the goals identified in the case plan. Activities shall include assisting each client in gaining access to different medical, social case plan, educational, or other needed care and services beyond those previously identified and provided. CDCR 29-4703, 4703.2 (e)

Each provider agency is required to develop a case plan for each client designed to promote the consistent coordinated and timely provision of care. CDCR 29-4704, 4704.4 Provider agencies are required to update the case plan every six months and document the updates to the case plan in the client's record. CDCR 29-4704, 4704.5.

Foster parents are required to work with agency staff in the development and implementation of the case plan. Foster parents are required to sign each case plan or amendment to the case plan affecting the foster parent. CDCR 29-6014, 6014.2. Foster parents are expected to work with the foster child's family members as set forth in the foster child's case plan. CDCR 29-6015, 6015.1. Foster parents are to be consulted by the foster child's social worker in planning for visits between the foster child and his or her parents and family members in accordance with the case plan. CDCR 29-6015, 6015.2. Foster parents are required to permit foster children and their family members and friends to communicate by mail and by telephone in accordance with the foster child's case plan. CDCR 29-6015, 6015.3.

For youth who are placed in independent living programs and have an Initial Individual Transitional Independent Living Plan ("Initial ITILP") or Individual Transitional Independent Living Plan ("ITILP"), that plan must be consistent with the youth's case plan. CDCR 29-6341.

Case plan discussion in court hearings

The court's role is to exercise oversight of the permanency plan; review the State agency's reasonable efforts to prevent removal from the home, reunify the child with the family and finalize permanent placements; and to conduct permanency hearings. The State agency is responsible for developing and implementing the case plan. Preamble to the Final Rule (65 FR 4020) (1/25/00); D.C. Code § 16-2323(b)(3).

Reports for hearings should refer to the case plan specifically and some should have the case plan attached.

The case plan should be updated and attached to the disposition report and filed with the Court. D.C. SCR-Neglect Rule 22. The case plan or proposed case plan should include case goals, tasks and timetables for parents and agencies' responsibilities. To the extent that the case plan does not contain a plan to address the reasons for removal and how to remedy those harms, including specific services and providers, alternative services considered and rejected and a description of actions that should be taken by the parent, guardian and custodian to correct the identified problems, those items should be contained in the disposition report. D.C. SCR-Neglect Rule 22. If the parties hold a stipulated disposition, then any aspect of the case plan on which the parties agree should be included in the Court's order. D.C. SCR-Neglect Rule 23.

The Court should review the case plan at the review hearing. The review report must document and report on the compliance of the parents and agency with the case plan and with previous orders and recommendations of the Court. Among the items to be reviewed consistent with the contents of the case plan and contained the report are the parties' participation in developing the plan; the cooperation of the parent, guardian, or custodian with the agency or other entity; contacts between the social worker(s) responsible for services and the parent, guardian or custodian, and the child; services and assistance provided to the family, services and assistance specified in the plan but not provided, and services that the family needs. For services that were not provided, the report should explain the reasons why they were not provided. The Court should review the implementation of the case

plan during the review period, along with the progress made towards meeting both the short-term and long-term goals of the plan, with the source of the information indicated. D.C. SCR-Neglect Rule 29.

The case review system outlined in 42 USCS § 675(5)(B) requires that a child's case be reviewed no less than every six months from the date of entry into foster care and includes a review of the case plan at each hearing.

The permanency hearing report should contain information detailing the agency's reasonable efforts to reunify the family or achieve another other permanency goal ordered at a previous hearing and specify whether the agency has provided services in the case plan deemed necessary to permit a safe return home or toward achievement of the permanency plan. D.C. SCR-Neglect Rule 33.

During the permanency hearing, the court is required to include findings relating to any aspect of the case plan, including modification of the case plan, that should be included in the Court's order. D.C. SCR-Neglect Rule 34.

Contents of the case plan

The case plan should be a written document that conforms to the requirements of 42 USCS §675(a) and contain the following information:

A case plan in which reunification is the goal should describe the type of home or facility in which the child is placed, a discussion of the safety and appropriateness of the placement, whether the placement is the least restrictive (most family-like) setting available, in close proximity to the home of the parent(s), along with a discussion of how the placement is consistent with the best interests and special needs of the child, and a projection of the duration of the child's time in care. 45 CFR § 1356.21(g)(3)and (4); D.C. Code § 4-1301.02(3)(A); D.C. Code § 4-1301.09(d). CDCR 29-1619, 1619.2(b), (c), (d). The case plan should identify who or what agency is responsible for carrying out the steps to accomplish goals with the child, parents, foster parents, adoptive parents, and the court, including documentation of frequency of contacts. Visitation plans between the child, parents, and siblings should also be included, or if visitation is not part of the plan and the reasons it is not. CDCR 29-1619, 1619.2(h). The case plan should make clear what needs to be accomplished before the child can be returned home. CDCR 29-1619, 1619.2(j). The agency must document how it will carry out the plan by which it expects to achieve the stated goal. 45 CFR § 1356.21(g)(4).

The case plan should reflect the child's health and educational information, which must be reviewed and updated periodically. The most recent information available should be included in the case plan filed with the Court. 42 USCS § 675(5)(D); D.C. Code § 4-1301.02(3)(C). Information such as the names and addresses of the child's health and educational providers; the child's grade level performance; the child's school record; a record of the child's immunizations; the child's known medical problems; the child's medications; and any other relevant health and education information concerning the child determined to be appropriate by the agency. 42 USCS § 675(5) (C). In addition, the law requires that foster parents be provided with the foster child's health information and educational record following placement. 42 USCS § 675(5)(D); CDCR 29-1619 1619.2(k),(l), (m), (n), (o), (p).

Federal law requires that children are maintained in the school they attended at the time of removal, unless that school placement does not meet the child's educational needs. The case plan should describe how the agency will ensure educational stability of the child while in foster care. In doing so,

with each placement change, the agency must take into account whether the child's current educational setting is meeting the child's needs and whether the proximity of the placement to the school in which the child is enrolled at the time of placement is appropriate for that child. If continuing to attend the same school is not in the best interests of the child, the agency is required to take all necessary steps to enroll the child is a new school, along with all of the child's educational records. 42 USCS § 75(5)(G); D.C. Code § 4-1301.02(3)(G). CDCR 29-1619, 1619.2(k),(l), (m), (n), (o), (p).

In the event that a child is incapable of attending school on a full time basis due to a medical condition, the case plan should reflect that information. 42 USCS § 671(a)(30)(D). Compliance with legal requirements can be achieved by either attaching educational records to the case plan or by summarizing the information in the case plan.

Where the permanency plan is adoption, guardianship, or another permanent living arrangement, the agency must document the steps it is taking to find an adoptive family or other permanent living arrangement for the child, to place the child with an adoptive family, a fit and willing relative, a legal guardian, or in another planned permanent living arrangement, and to finalize the adoption or legal guardianship. At a minimum, documentation must include child specific recruitment efforts such as the use of State, regional, and national adoption exchanges including electronic exchange systems to facilitate orderly and timely in-State and interstate placements. 42 USCS § 675(E) D.C. Code § 4-1301.02(3)(E). The child's safety and the appropriateness of the current placement should also be discussed.

In reporting on its recommendations concerning the filing of a motion for termination of parental rights, the agency must include in the case plan when steps shall be taken to seek termination of parental rights.[7] [8] CDCR 29-1619, 1619.2(j). The agency can claim an exemption from the termination requirement if it documents in the case plan, and the court determines, that the child is placed with a relative and adoption is not the child's permanency plan; there is a compelling reason why termination of the parent and child relationship would not be in the best interest of the child; or the agency has not offered or provided to the family of the child, consistent with the time period in the case plan**,** the services necessary to permit a safe return of the child to the child's home, if reasonable efforts are required to be made with respect to the child pursuant to D.C. Code § 4-1301.09a. 42 USCS § 675(5)(E); D.C. SCR-Neglect Rule 35.

Where a child's permanency plan is guardianship with a relative and receipt of kinship guardianship assistance payments (42 USCS § 673(d)), the case plan must document:
what steps the agency has taken to determine that return home and adoption are not appropriate for the child; the reasons siblings are not placed together; the reasons why a permanent placement with a fit and willing relative through a kinship guardianship assistance arrangement is in the child's best

[7] 42 USCS § 675(5) (E) in the case of a child who has been in foster care under the responsibility of the State for 15 of the most recent 22 months, or, if a court of competent jurisdiction has determined a child to be an abandoned infant (as defined under State law) or has made a determination that the parent has committed murder of another child of the parent, committed voluntary manslaughter of another child of the parent, aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter, or committed a felony assault that has resulted in serious bodily injury to the child or to another child of the parent, the State shall file a petition to terminate the parental rights of the child's parents (or, if such a petition has been filed by another party, seek to be joined as a party to the petition), and, concurrently, to identify, recruit, process, and approve a qualified family for an adoption…

[8] Under D.C. Code § 4-1301.09a(d)(2), a previous involuntary termination is also grounds to file a termination of parental rights.

interests; whether the child meets the eligibility requirements for a kinship guardianship assistance payment; the efforts the agency has made to discuss adoption by the child's relative foster parent as a more permanent alternative to legal guardianship and, in the case of a relative foster parent who has chosen not to pursue adoption, documentation of the those reasons; and efforts made by the agency to discuss the kinship guardianship assistance arrangement with the child's parent(s), or the reasons why the efforts were not made.
42 USCS § 675(F); D.C. Code § 4-1301.02(3)(F).

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
FAMILY COURT
500 INDIANA AVENUE, N.W.
WASHINGTON, D.C. 20001

Waiver of *Ta.L* Evidentiary Hearing

Respondent Name: Case No. :

I, _____, am the _____of the minor child or children who are respondent(s) in the above referenced case. I understand that the Government seeks to change the permanency goal of the respondent(s) from reunification to adoption. I further understand that before the Government may change the goal from reunification to adoption that I am entitled to a *Ta.L* evidentiary hearing before a judicial officer. During the hearing the Government will seek to prove by a preponderance of the evidence that the Government has made reasonable efforts towards reunification; will remove reunification as a goal; and change the goal to adoption. I further understand that in attempting to demonstrate reasonable efforts that the Government may produce witnesses and other evidence that I, through my legal representative, would have an opportunity to cross-examine such witnesses, and to otherwise challenge the evidence presented by the Government. I further understand that I would also have a right to present evidence, including my own testimony at such a proceeding.

I further understand that a waiver of this proceeding means that there will be no *Ta.L* evidentiary hearing, and the Government will not be required to prove by a preponderance of the evidence that reasonable efforts were made towards reunification, if the judicial officer affirms the change in goal from reunification to adoption.

I am of sound mind and am not under the influence of any substances that would affect my decision-making. I have been represented throughout this matter by _____.

I have discussed the proceedings and this waiver with my legal representative and he/she has answered all my questions to my satisfaction.

I have read this waiver, fully understand the rights I am giving up, and the consequences of this waiver, and have signed the same freely and voluntarily.

Date: _____ _____
Signature of Parent

Date: _____Taken Under Oath By: _____
Judicial Officer

FROM THE GROUND UP: THE FUNDAMENTALS OF PRACTICE IN THE D.C. COURT OF APPEALS

Updated By Rosanna Mason[1]

I. Jurisdiction.

A. The Court has jurisdiction over "all final orders and judgments of the Superior Court," D.C. Code § 11-721 (a)(1) (2012 Repl.), and any final "order or decision of the Mayor or an agency in a contested case." *Id.* § 2-510 (a) (2012 Repl.).

1. Who may appeal?

a. Any person who is "aggrieved" by a final order or judgment of the Superior Court. *In re C.T.*, 724 A.2d 590, 595 (D.C. 1999). A person is "aggrieved," if his legal right or legally protected relationship has been injured or denied by the Superior Court's order, *Valentine v. Elliott* (*In re Estate of Delaney*), 819 A.2d 968, 1003 (D.C. 2003); *In re C.T.*, 724 A.2d at 595.

b. Any person who has suffered a legal wrong or been adversely affected or "aggrieved" by an order or decision of an agency in a contested case. D.C. Code § 2-510 (a) (2012 Repl.). A person is aggrieved "[if the person has] suffered or will sustain some actual or threatened 'injury in fact' from the challenged agency action." *District Intown Props., Ltd. v. District of Columbia Dep't of Consumer & Regulatory Affairs*, 680 A.2d 1373, 1377 (D.C. 1996).

c. Anyone "who voted in the election" may petition the Court for review and ask that it "set aside the results . . . and declare the true results[,]" or that it void the election in whole or part. D.C. Code § 1-1001.11 (b)(1)-(2) (2012 Repl.).

i. But the petition must contain a concise statement of claims and must identify facts showing an entitlement to relief; general allegations of dissatisfaction with the results are not sufficient to involve the Court. *Jackson v. District of Columbia Bd. of Elections & Ethics*, 770

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[1] Staff Counsel, D.C. Court of Appeals. Last updated: October 2, 2017.

A.2d 79 (D.C. 2001); *accord, Scolaro v. District of Columbia Bd. of Elections & Ethics*, 717 A.2d 891, 893 (D.C. 1998).

d. Any qualified voter who challenged a nominating petition, or any person named in the challenged petition as a nominee, may appeal a Board of Elections decision with respect to the challenge. D.C. Code § 1-1001.08 (o)(2) (2012 Repl.).

2. What is a "final" order?

a. An order is final only if it disposes of the whole case on its merits, so that the [trial] court has nothing remaining to do but to execute the judgment or decree already rendered." *In re Estate of Tran Van Chuong*, 623 A.2d 1154, 1157 (D.C. 1993) (en banc) (internal quotation marks omitted) (quoting *McBryde v. Metropolitan Life Ins. Co.*, 221 A.2d 718, 720 (D.C. 1966)). **But see** - the denial of an Anti-SLAPP special motion to dismiss is appealable, *Competitive Enter. Inst. v. Mann*, 150 A.3d 1213 (D.C. 2016). (However, a petition for rehearing or rehearing en banc remains pending).

b. A final order is **NOT**:

i. A pretrial discovery order. *Crane v. Crane*, 657 A.2d 312, 315 (D.C. 1995); *Scott v. Jackson*, 596 A.2d 523, 527 (D.C. 1991); *Horton v. United States*, 591 A.2d 1280, 1282 (D.C. 1991); *United States v. Harrod*, 428 A.2d 30, 31 (D.C. 1981) (en banc). **Unless**, it is directed to a disinterested third party, *Walter E. Lynch & Co. v. Fuisz*, 862 A.2d 929 (D.C. 2004); *accord, Adams v. Franklin*, 924 A.2d 993, 995 n.2 (D.C. 2007); the denial of a motion to quash a subpoena requiring a victim of a crime to provide a saliva swab for DNA purposes to assist in prosecuting the crime against the alleged perpetrator and presenting evidence to the grand jury, *In re G.B.*, 139 A.3d 885 (D.C. 2016) or the denial of a special motion to quash issued as part of Anti-SLAPP litigation, *Doe No. 1 v. Burke*, 91 A.3d 1031 (D.C. 2014).

ii. A contempt order unless sanctions have actually been imposed. *Crane v. Crane*, 614 A.2d 935, 939 (D.C. 1992); *Beckwith v. Beckwith*, 379 A.2d 955, 958 (D.C. 1977).

iii. An order granting attorney fees is not appealable until the amount of fees is determined. *Khawam v. Wolfe*, 84 A.3d 558 (D.C. 2014).

iv. A neglect finding alone; a disposition order must also be entered before the case is final. *In re A.B.*, 486 A.2d 1167 (D.C. 1984); *accord, In re Ak.V.*, 747 A.2d 570 (D.C. 2000).

v. An order that does anything less than completely terminate a parent's rights with respect to his or her children or forecloses all visitation between a parent and child. *In re K.M.T.*, 795 A.2d 688 (D.C. 2002); *In re S.J.*, 772 A.2d 247, 248 (D.C. 2001); *In re S.G.*, 663 A.2d 1215 (D.C. 1995); *In re A.H.*, 590 A.2d 123 (D.C. 1991); ***cf.*** *In re M.F.*, 55 A.3d 373 (D.C. 2012) (stating an order that completely cuts off visitation temporarily is not appealable as a final order due to its temporary nature where visitation could resume upon the meeting of specific conditions).
HOWEVER: *In re Ta.L.*, 149 A.3d 1060 (D.C. 2016) (en banc), the court held that an order that changed a permanency plan in a neglect proceeding to adoption only is immediately appealable. The court also stated that, where appropriate, the court prefers resolution of these appeals on cross-motions for summary disposition and expects most of these appeals to be resolved on cross-motions.

vi. An order that is issued before the prescribed administrative remedy has been exhausted. *District of Columbia v. Group Ins. Admin.*, 633 A.2d 2, 20 (D.C. 1993); *Bender v. District of Columbia Dep't of Emp't Servs.*, 562 A.2d 1205, 1208 (D.C. 1989).

vii. An order that has been issued by a Magistrate Judge. D.C. Code § 11-1732 (k) (2012 Repl.). These orders do not become final for the purposes of appeal until they have been reviewed by an Associate Judge of the Superior Court and it is only the Associate Judge's order that is appealable, *see In re C.L.O.*, 41 A.3d 502 (D.C. 2012). Often neglect, initial detention hearings, and traffic cases are initially heard by a Magistrate Judge. *See id.; see also* Super. Ct. Civ. R. 73 (b)(4)(A)(i) (motions for judicial review are filed within 14 days from the MJ order; however, the time is tolled if a timely tolling motion is filed (b)(6)); D.C. Super. Ct. Crim. R.117 (g)(1) (motion for judicial review to be filed within 10 days of order or judgment); D.C. Fam. Ct. R. D (b)(5) & (e)(1)(B) (motion for judicial review must be filed within 30 days of the order entered in expedited paternity or the establishment or enforcement of child support); D.C. Fam. R. D (e)(1)(B) (motions for judicial review in all other family cases must be filed in 10 days); *Bratcher v. United States*, 604 A.2d 858 (D.C. 1992); *Arlt v. United States*, 562 A.2d 633 (D.C. 1989).

viii. An order that leaves any cause of action unresolved against any party or any claims in a consolidated matter unresolved. *West v. Morris*, 711 A.2d 1269, 1271 (D.C. 1998); *Paden v. Galloway*, 550 A.2d 1128 (D.C. 1988); *Dyhouse v. Baylor*, 455 A.2d 900 (D.C. 1983). However, *see* Super. Ct. Civ. R. 54 (b).

c. The Court has also long held that an order compelling arbitration or staying a case pending arbitration is not final or appealable. *See, e.g., Evans v. Dreyfuss Bros.*, 971 A.2d 179 (D.C. 2009) (citing *Judith v. Graphic Commc'ns Int'l Union*, 727 A.2d 890 (D.C. 1999)); *Umana v. Swidler & Berlin, Cht'd.*, 669 A.2d 717 (D.C. 1995); *Haynes v. Kuder*, 591 A.2d 1286 (D.C. 1991). **However**, D.C. adopted the Revised Uniform Arbitration Act, which makes these orders appealable. D.C. Code § 16-4427 (2012 Repl.) and while there was an initial concern that the change violated the

Home Rule Act, which prohibits the Council from enacting legislation affecting the courts, *see* D.C. Code § 1-206.02 (a)(4) (2012 Repl.), the Court has decided that the change did not violate the Act; thereby permitting appeals from orders granting arbitration, *see, Woodroof v. Cunningham & Assoc.*, 147 A.3d 777 (D.C. 2016). Further, *see Parker v. K & L Gates*, 76 A.3d 859 (D.C. 2013) (in limited cases, where the only issue is whether a contract requires arbitration, an order directing arbitration, where there is nothing further to decide, is appealable) and *Andrew v. American Import Center*, 110 A.3d 626 (D.C. 2015) (holding that an order compelling a consumer to arbitration with a commercial entity pursuant to a contract provision wherein the underlying contract may be a contract of adhesion is appealable as an injunction).

3. What is a "contested case?"

   a. A contested case is a proceeding in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after a hearing. D.C. Code § 2-502 (8) (2012 Repl.); *Richard Milburn Pub. Charter Alt. High School v. Cafritz*, 798 A.2d 531 (D.C. 2002); *Singleton v. District of Columbia Dep't of Corr.*, 596 A.2d 56 (D.C. 1991); *Chevy Chase Citizens Ass'n v. District of Columbia Council*, 327 A.2d 310 (D.C. 1974) (en banc). The hearing must be a "trial-type" adjudicative proceeding that affects the interests of specific parties, not a rule-making proceeding.

   b. A contested case does **NOT** include:

      i. Any matter subject to a subsequent trial *de novo*. D.C. Code § 2-502 (8)(A) (2012 Repl.).

      ii. Any matter involving the selection or tenure of a District officer or employee. *Id.* § 2-502 (8)(B).

      iii. Any proceeding in which decisions rest solely on inspections, tests, or elections. *Id.* § 2-502 (8)(C).

      iv. Any case where the Mayor or an agency acts as an

agent or court for the District. *Id.* § 2-502 (8)(D).

c. The Court has determined that the termination of an individual's housing choice voucher that provides a subsidy for rental housing is an appealable order. The court determined that the administrative proceeding was a contested case although the regulations suggested that any appeal should be filed in Superior Court. *Mathis v. District of Columbia Housing Authority*, 124 A.3d 1089 (D.C. 2015).

d. **NOTE** - Many administrative matters are now appealed to the Office of Administrative Hearings and appeals from these orders are generally taken to the Court of Appeals. However, you must check the statutes since some of these orders must be appealed to other agencies prior to the filing of an appeal with the Court of Appeals; *e.g.*, some housing cases must be appealed first to the Rental Housing Commission and some licensing issues must first be appealed to the various licensing boards.

4. When do I appeal?

a. In civil or criminal proceedings, the appeal must be taken within 30 days from the date the order or judgment is entered on the docket of the Superior Court unless a different time frame is specified by the D.C. Code. See D.C. App. R. 4 (a) (1) & (6), b (1); but see *Hawkins v. Howard Univ. Hosp.*, 151 A.3d 900 (D.C. 2017).

b. In administrative proceedings the petition for review must be filed within 30 days after notice is given in conformance with the agency's rules. D.C. App. R. 15 (a)(2). **Exceptions:**

i. A contractor may appeal a decision of the Contract Appeals Board within 120 days. D.C. Code § 2-360.05 (a) (2012 Repl.).

ii. Public Service Commission orders denying reconsideration may be appealed within 60 days. *Id.* § 34-605 (a).

c. Any challenge to the results of an election must be brought within 7 days after the Board of Elections & Ethics certifies the results. *Id.* § 1-1001.11 (b)(1). Any challenge to the Board's determination with respect to the validity of a nominating petition must be brought within 3 days after announcement of the determination. *Id.* § 1-1001.08 (o)(2).

d. Regardless of the type of proceeding, the time period is mandatory and the Court will not hear an appeal filed after it has expired. *See, e.g.,* D.C. App. R. 15 (a)(2) (agency proceedings); *United States v. Jones*, 423 A.2d 193, 196 (D.C. 1980) (criminal appeals); *In re C.I.T.*, 369 A.2d 171 (D.C. 1977) (civil appeals). The court has recently held that these time periods should be considered as case processing rules.

i. **Exception**: Certain post-trial motions will toll the time for noting an appeal until they have been acted upon. *See* D.C. App. R. 4 (a)(4), (b)(3). Take care, however, the motion itself must be timely filed or it will not toll the appeal time. The Superior Court has recently amended its Civil Procedure Rules to provide 28 days to file tolling motions. *See Wilkins v. Bell*, 917 A.2d 1074 (D.C. 2007); *Vincent v. Anderson*, 621 A.2d 367, 370 (D.C. 1993). *But see Affordable Elegance Travel, Inc. v. Worldspan, L.P.*, 774 A.2d 320, 330-32 (D.C. 2001) (discussing exceptions).

Tolling motions include:

(a.) A motion for judgment notwithstanding the verdict, *a.k.a.* a motion for judgment as a matter of law, under Super. Ct. Civ. R. 50 (b).

(b.) A motion to amend or make additional findings of fact under Super. Ct. Civ. R. 52 (b).

(c.) A motion for "reconsideration," *a.k.a.* a

motion to vacate, alter, or amend the judgment under Super. Ct. Civ. R. 59 (e).

(d.) A motion for new trial under Super. Ct. Civ. R. 59 (b).

(e.) A motion for relief from judgment under Super. Ct. Civ. R. 60 (b) or other basis so long as the motion is filed no later than 10 days after the judgment is entered. This type of motion was not always tolling. *See Nichols v. First Union Nat'l Bank*, 905 A.2d 268 (D.C. 2006).

(f.) A motion for judgment of acquittal under Super. Ct. Crim. R. 29.

(g.) A motion in arrest of judgment under Super. Ct. Crim. R. 34.

(h.). A motion for new trial on grounds other than newly discovered evidence under Super. Ct. Crim. R. 33.

(i.) A motion for new trial based on newly discovered evidence under Super. Ct. Crim. R. 33, if filed within 30 days of the judgment.

B. In two situations the Court's review is discretionary and must be sought by filing an Application for Allowance of Appeal ("AAA"). They are: (1) judgments of the Small Claims Branch (the jurisdictional limit has been recently raised to $10,000 and (2) judgments in criminal cases where the potential penalty is up to 1 year of imprisonment, and/or a fine of up to $1,000, but where the defendant has actually been fined less than $50. D.C. Code §§ 11-721 (c), 17-301 (b) (2012 Repl.); D.C. App. R. 6.

1. Small Claims proceedings are frequently heard by Magistrate Judges; therefore, it is important to remember the decision is not final until it has been reviewed by an Associate Judge. In civil

cases, the time frame for doing this is very short – 14 days, *see* Super. Ct. Civ. R. 73 (b).

2. The time frame for filing an AAA is very short; it must be filed within 3 days of the Superior Court's order. D.C. Code § 17-307 (b) (2012 Repl.); D.C. App. R. 6 (a)(2). Parties have occasionally been misinstructed on this point and told they have 30 days.

3. An AAA will be granted if one judge of the Court believes that it should be; otherwise, it will be denied and the denial acts as an affirmance of the lower court's decision. D.C. Code § 17-301 (b) (2012 Repl.).

4. The Court will not grant an AAA unless the applicant can demonstrate "apparent error or a question of law [that], has not been, but should be decided by th[e] court." *Karath v. Generalis*, 277 A.2d 650, 651 (D.C. 1971); *accord, K.C. Enter. v. Jennings*, 851 A.2d 426 (D.C. 2004); *W.H.H. Trice & Co. v. Faris*, 829 A.2d 189 (D.C. 2003).

C. The Court also has jurisdiction over certain interlocutory matters.

1. **By statute** it may review non-final orders of the Superior Court that:

a. Grant, continue, modify, refuse, or dissolve an injunction, or that refuse to dissolve or modify an injunction. D.C. Code § 11-721 (a)(2)(A) (2012 Repl.). *See also, Andrew v. American Import Center*, 110 A.3d 626 (D.C. 2015); *Doe No. 1 v. Burke*, 91 A.3d 1013 (D.C. 2014).

b. 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. *Id.* § 11-721 (a)(2)(B).

c. Change or affect the possession of property. *Id.* § 11-721 (a)(2)(C).

i. This does not apply to orders that involve the exchange of money. *See Dameron v. Capitol House Assocs., Ltd. P'ship*, 431 A.2d 580, 587 (D.C. 1981); *accord,*

Hagner Mgmt. Corp. v. Lawson, 534 A.2d 343, 345 (D.C. 1987).

ii. The key question is whether the order changes the *status quo* with respect to the property. *See Bowie v. Nicholson*, 705 A.2d 290 (D.C. 1998); *Williams v. Dudley Trust Found.*, 675 A.2d 45, 51 (D.C. 1996).

iii. Appeals from these interlocutory orders (and presumably from any interlocutory order) are not mandatory, and a party adversely affected by such an order may await the final judgment before noting an appeal. *Estate of Patterson v. Sharek*, 924 A.2d 1005 (D.C. 2007). *See, In re Gordon*, 59 A.3d 497 (D.C. 2013) (the denial of a motion to withdraw as counsel is appealable under the collateral order doctrine and any appeal must be filed within 30 days of entry of that order).

d. Detain an individual pending trial in criminal cases. *See* D.C. Code § 23-1324 (2012 Repl.). In addition, the Court has held that, unlike a typical motion to reconsider, an order denying a motion to reconsider a pre-trial detention order is appealable even if no timely appeal was taken from the original detention order itself. *Blackson v. United States*, 897 A.2d 187, 192-93 (D.C. 2006). The Court handles pre-trial detention matters by cross-motions for summary disposition. Motions for release pending appeal are not separate appeals but are filed in the direct appeal. **Motions for release must comply with D.C. App. R. 9.**

e. Detain or place a child in shelter care, or transfer a child for criminal prosecution. D.C. Code §16-2328 (a) (2012 Repl.). **Filings may not be e-filed but must be submitted in paper format and comply with D.C. App. R. 8.**

i. As with AAAs, the time for the juvenile to file an appeal from these juvenile detention or transfer orders is shortened. To trigger the mandatory hearing requirement, the notice must be filed within 2 days of the date of entry. *Id.* If the notice if filed within 2

days, the Court must expedite the case and hear argument within three days of the notice (Sundays excluded). *Id.* § 16-2328 (b). Counsel should immediately notify the Court that an appeal will be filed and order all necessary transcript on an expedited basis.

ii. If the notice is not filed within 2 days, but is filed within 30 days, no hearing is required. However, the Court will expedite resolution of the matter and prefers to address these cases on cross-motions for summary disposition.

f. Direct the United States or the District of Columbia to return seized property, suppress evidence, or otherwise deny the prosecutor the use of evidence at trial. *Id.* § 23-104.

g. Direct that someone be extradited. *Id.* § 23-704 (e).

i. Again, the time frame is shortened. This order must be appealed within 24 hours. *Id.* (Move for an immediate stay of the extradition or the appeal will become moot).

h. Dismiss an indictment or information, or otherwise terminate prosecution in favor of the defendant (short of acquittal). *Id.* §§ 23-104 (c), 11-721 (a)(3).

i. Determine that a person is not subject to penalty enhancements. *Id.* §§ 23-111 (d)(2), 11-721 (a)(3).

j. Determine any appeal or decision of the Public Service Commission. *Id.* § 34-605 (a).

i. Here, as noted, the time for taking an appeal is expanded to 60 days.

k. The trial court has certified an order as presenting a controlling question of law as to which there is a substantial ground for a difference of opinion, and for which an immediate appeal may materially advance the ultimate

termination of the litigation or case. *Id.* § 11-721 (d) (2012 Repl.). *See* D.C. App. R. 5.

i. Review under this section is reserved for exceptional cases and the statute is not "intended merely to provide (interlocutory) review of difficult rulings in hard cases." *Plunkett v. Gill*, 287 A.2d 543, 545 (D.C. 1972) (quoting *United States Rubber Co. v. Wright*, 359 F.2d 784, 785 (9th Cir. 1996)); *accord*, *Medlantic Health Care Grp., Inc. v. Cunningham*, 755 A.2d 1032 (D.C. 2000).

ii. The trial court's certification does not guarantee review and the Court will deny the application – an AAA is the means for seeking review – if it concludes the case was improvidently certified. *In re J.A.P.*, 749 A.2d 715, 716 (D.C. 2000).

iii. The Court has never specifically required the trial court to articulate detailed reasons for certifying an order under this section, but it has intimated that something more than a bare quotation of the statutory language is required. *Id.* at 717.

iv. The time for filing an application for permission to appeal is shortened to 10 days after the issuance or entry of the ruling or order that contains the certification.

2. The only **non-statutory exception** to the finality rule "unequivocally recognized" by the Court is the **collateral order doctrine**. *Meyers v. United States*, 730 A.2d 155, 156 (D.C. 1999). This very narrow exception applies to interlocutory orders that have a final and irreparable effect on an important right of the parties. *Bible Way Church v. Beards*, 680 A.2d 419, 425 (D.C. 1996).

a. To be collaterally appealable, an order must (1) conclusively resolve an important and disputed question, (2) that is completely separate from the merits of the action, and (3) is effectively unreviewable on appeal from a final judgment. *Id.* at 425-26. **All parts** of this test must be met, before the Court

will take jurisdiction.

b. Orders that have been deemed appealable under the collateral order doctrine are: (1) orders denying motion to dismiss claiming complete immunity, *see District of Columbia v. Pizzulli*, 917 A.2d 620, 623-34 (D.C. 2007); *Bible Way, supra*; *United Methodist Church v. White*, 571 A.2d 790 (D.C. 1990); (2) denials of motions to dismiss an indictment based on double jeopardy grounds, *Young v. United States*, 745 A.2d 943, 945 (D.C. 2000); (3) denials of motions to intervene as of right, *Calvin-Humphrey v. District of Columbia*, 340 A.2d 795, 798 (D.C. 1975); (4) denials of counsel's motion to withdraw, *In re Gordon*, 59 A.3d 497 (D.C. 2013) (dismissing an appeal from the denial of counsel's motion to withdraw finding that appellant must appeal after the denial of the motion, not after the entry of final judgment); (5) denials of motions to compel or deny arbitration, *Woodroof v. Cunningham & Assoc.*, 147 A. 3d 777 (D.C. 2016); *Bank of Am., N.A. v. District of Columbia*, 80 A.3d 650 (D.C. 2013); (6) in the context of tax sale litigation, an order that determines that the subject property has been redeemed, *AEON Fin., LLC v. District of Columbia*, 84 A.3d 522 (D.C. 2014); (7) orders removing or refusing to remove a personal representative in a probate matter, *In re Estate of Nelson*, 85 A.3d 845 (D.C. 2014); (8) the denial of a special motion to quash a subpoena pursuant to District of Columbia's Strategic Lawsuits Against Public Participation (SLAPP) Act, D.C. Code § 16-5501, *et seq.*, *Doe No. 1 v. Burke*, 91 A.3d 1031 (D.C. 2014); (9) the denial of a motion to quash a search warrant seeking a salvia swab from a victim to assist in the prosecution of the alleged perpetrator and presentment to the grand jury, *In re G.B.*, 139 A.3d 885 (D.C. 2016); (10) Change of permanency plan in a neglect case resulting in a goal of only adoption, *In re Ta.L.*, 149 A.3d 1060 (D.C. 2016) (en banc);

c. Denials of motions to dismiss based on *forum non conveniens* were once included in this category, *see Frost v. Peoples Drug Store*, 327 A.2d 810, 812 (D.C. 1974), but the Court has since overruled *Frost*, *see Rolinski v. Lewis*, 828 A.2d 739 (D.C. 2003) (en banc).

d. It also appears that an order which completely denies a parent's right to visitation is interlocutorily appealable; however, the Court has not directly held that the collateral order doctrine applies. *See, e.g., In re D.M.*, 771 A.2d 360 (D.C. 2001).

D. Extraordinary writs (mandamus or prohibition)

1. A petition for writ of mandamus may be filed in cases "where a trial court has refused to exercise or has exceeded its jurisdiction," or similarly, when a government official has refused to exercise or has exceeded his or her authority. *See Banov v. Kennedy*, 694 A.2d 850, 857 (D.C. 1997); *United States v. Harrod*, 428 A.2d 30 (D.C. 1981) (en banc); *United States v. Braman*, 327 A.2d 530 (D.C. 1974).

   a. It is questionable whether the Court may issue the writ to a federal official. *Compare M'Clung v. Silliman*, 19 U.S. (6 Wheat.) 598 (1821), *with Kendall v. United States*, 37 U.S. (12 Pet.) 524 (1838).

2. Mandamus is NOT a substitute for appeal. *Banov*, 694 A.2d at 857.

3. The petitioner must show that its right to the writ is clear and indisputable, and that it has no other adequate means of obtaining relief. *Id.*

4. If the Court is of the opinion that the writ should not be granted, it will deny the petition; otherwise, it will hold the petition in abeyance and order the respondent(s) to file an answer. D.C. App. R. 21 (b)(1). However, the Court is typically reluctant to issue the writ and if the respondent's answer is unsatisfactory, it usually issues an opinion or memorandum order (with a certified copy to the offending official or entity) explaining why mandamus is appropriate and expressing its confidence that the correct action will be taken. *See Anderson v. Sorrell*, 481 A.2d 766 (D.C. 1984); *Bowman v. United States*, 412 A.2d 10 (D.C. 1980).

5. A petition for writ of mandamus shall not exceed 30 pages.

II. Stays, Emergencies, and Expedited Matters

A. Stays - (if these motions are e-filed you must immediately file paper copies in the Clerk's Office)

1. Noting an appeal does not stay the order or stop the action permitted by the order you are appealing, such as evictions, the sale of real property, or the collection of a money judgment. You must file a motion for stay if you want to preserve the *status quo* pending appeal. If the notice of appeal has been recently filed a copy of the appeal noting the date filed should be included with the motion for stay.

    a. Juvenile interlocutory appeals of orders transferring a juvenile for adult prosecution under D.C. Code §16-2328 (2012 Repl.) are the single exception to this rule and a notice filed under this rule will automatically stay criminal proceedings so that the child is not transferred. *Id.* § 16-2328 (c).

2. A stay must first be sought from the trial court or agency or the party asking for a stay must show that seeking it from that entity is impracticable. D.C. App. R. 8 (a), 18 (a). This rule is strictly construed. *See Horton v. United States*, 591 A.2d 1280 (D.C. 1991).

3. If the record has not been filed with the Court you must attach a copy of the order you want stayed and any relevant record material. D.C. App. R. 8 (a)(2)(B).

4. To obtain a stay pending appeal the movant must show: (1) a likelihood of success on the merits, (2) that irreparable harm will result if a stay is not entered, (3) that the nonmoving party will not be harmed (or will suffer less harm), and (4) that the public interest favors granting the stay. *See Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). When the last three factors have been met, only a "substantial" showing of likelihood of success on the merits is necessary for the Court to grant a stay. *Id.* The required degree of possible or likely success will vary according to the Court's assessment of the other stay factors, and an order maintaining the *status quo* may be appropriate where a serious legal

question is presented, the movant will otherwise suffer irreparable injury, and there is little risk of harm to the other parties or to the public interest. *See Walter E. Lynch & Co. v. Fuisz*, 862 A.2d 929 (D.C. 2004).

5. A stay granted either by the Superior Court or this court may be conditioned on the posting of a bond. D.C. App. R. 8 (b), 18 (b).

6. **Tips:**

   a. File sooner rather than later. Do not wait until the Marshals are on their way to evict your client, the foreclosure sale is about to occur, or it is the day the action that you want stopped is to occur.

   b. Contact the Clerk's office and ask to speak with Staff Counsel or an attorney on the legal staff to alert the Court of the pending emergency or expedited request to stay. You should also identify the order and action that you are requesting to be stayed, the date the action you are seeking to stay will occur, and whether a transcript is needed and the date the transcript was ordered.

   c. Your motion for stay should specifically address the legal standard. Broad complaints about the grievous injustice done to your client by the trial judge or the other side are not persuasive. These motions are generally decided without argument and are decided solely on the motion and any response.

   d. Economic loss is not irreparable harm unless it threatens the very existence of the movant's business, *see District of Columbia v. Group Ins. Admin.*, 633 A.2d 2, 23 (D.C. 1993), nor are the ordinary incidents of litigation, *i.e.*, time and money, *see Hercules & Co. v. Shama Rest. Corp.*, 566 A.2d 31, 37-38 (D.C. 1989). Moreover, the possibility that compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm. *Zirkle v. District of Columbia*, 830 A.2d 1250, 1257 (D.C. 2003).

e. If you want the Court to expedite consideration of your motion, you must **serve your opponent personally, no later than the same day you file your motion with the Court**. D.C. App. R. 8 (a)(2)(C).

B. Release in criminal cases.

1. A person who has been detained pending trial or sentencing may take an immediate appeal from the detention order, D.C. Code §§ 23-1324, -1325 (b) & (d) (2012 Repl.), and the Court will generally resolve the appeal by cross-motions for summary disposition, *see Martin v. United States*, 614 A.2d 51, 53 (D.C. 1992); D.C. App. R. 9 (a). As noted above, the Court has also recently held that denials of motions to reconsider pretrial detention orders, unlike denials of most other motions to reconsider, are interlocutorily appealable.

2. Persons who are detained pending appeal may also seek review of the detention order, D.C. Code §§ 23-1324, -1325 (c)-(d) (2012 Repl.), but should do so by motion in their existing appeal rather than by filing a separate appeal, D.C. App. R. 9 (b). Moreover, the request should first be made in the Superior Court.

3. Detention matters are expedited. D.C. Code § 23-1324 (b) (2012 Repl.); D.C. App. R. 4 (c), D.C. App. R. 9.

4. The detention order or order denying release must be attached to the motion as well as an affidavit addressing all of the points enumerated in Form 6 of the Court's rules. D.C. App. R. 9. If the appeal is a pre-trial detention appeal, your motion should identify whether the 100-day rule applies and, if so, specify the 100th day of detention. D.C. Code § 23-1322 (h).

5. Have the transcript prepared and transmitted ASAP (especially if there's no written order). This means either ordering the transcript on an expedited basis or requesting that the voucher authorize expedited preparation in Criminal Justice Act ("CJA") cases. Additionally, notify the legal staff of the court of the transcript needed and the date ordered so a call can be made to the Court

Reporter's Office to verify the need for an expedited transcript.

6. Tips:

a. There are several standards that need to be specifically and concisely addressed.

i. A motion for summary disposition must show that the facts are uncomplicated and undisputed, and that the lower court's ruling rests on a narrow and clear-cut issue of law. *See Watson v. United States*, 73 A.3d 130 (D.C. 2013). The one seeking release has the heavy burden of demonstrating both that his remedy is proper and that the merits of his claim so clearly warrant relief as to justify expedited action.

ii. In the pre-trial detention context, liberty is the norm unless the trial judge finds probable cause to believe that a person has committed a crime of violence or a dangerous crime, and finds by clear and convincing evidence that no condition or combination of conditions will reasonably assure that person's appearance in court, or the safety of any other person or the community. D.C. Code § 23-1322 (b)(2) (2012 Repl.). Certain offenses are presumed dangerous, *see* D.C. Code § 23-1331 (3) & (4); therefore, there is a rebuttable presumption that no condition or combination of conditions will reasonably assure the safety of a person or the community, *see* D.C. Code § 23-1322 (c). The judge must also take a laundry list of other factors into consideration. *Id.* § 23-1322 (e).

iii. A person who has been convicted and is awaiting sentence, or whose appeal is pending, will be detained unless the trial judge "finds by clear and convincing evidence that he is not likely to flee or pose a danger to any other person or to the property of others." *Id.* § 23-1325. Because a finding of guilt has been made, detention is the norm unless the trial court finds, by clear and convincing evidence, that exceptional circumstances justify a departure from the norm. *See*

Ibn-Tamas v. United States, 368 A.2d 520, 521 (D.C. 1977).

iv. This Court's review is deferential, particularly with respect to the trial court's factual findings, and it will not substitute its assessment of dangerousness or risk of flight. *Pope v. United States*, 739 A.2d 819, 824 (D.C. 1999).

III. Practice Pointers.

A. Filing a Notice of Appeal (civil and criminal cases) or a Petition for Review (agency cases).

1. A notice of appeal is filed with the Clerk of the Superior Court in the specific division where the case originated, D.C. App. R. 3 (a), 4 (a)(1), (b)(1). Petitions for review, Applications for Allowance of appeal are filed with the Court of Appeals, and Applications for Permission to Appeal. D.C. App. R. 5, 6 (a), 15 (a). Also please include your email address.

2. Specify the party or parties taking the appeal and designate the judgment or order(s) to be reviewed. D.C. App. R. 3 (c), 15 (a)(3). *See Patterson v. District of Columbia*, 995 A.2d 167 (D.C. 2010); *Vines v. Manufacturers & Traders Trust Co.*, 935 A.2d 1078, 1083 (D.C. 2007).

3. The notice or petition must be signed by the appellant or counsel. D.C. App. R. 3 (c), 15 (a). If any party is not an individual person it must be represented by counsel.

4. The Clerk of the Superior Court serves the notice on the other parties, and the Clerk of the Court of Appeals serves the petition on the respondent agency and the Office of the Attorney General, D.C. App. R. 3 (d), 15 (c); however, the petitioner must serve copies of the petition on any other party and must file a list of those served with the Clerk of the Court. *Id.*

   a. This does not apply to cases from the Office of Administrative Hearings, where the respondent is not the agency. In those cases, the Clerk serves the respondent

employer or the claimant.

5. The Court has initiated an early intervention mandatory mediation program for certain appeals. Currently these cases include cases where all parties are represented by counsel in all petitions for review from agencies and in all cases originating from the Civil Division, Probate Division, final orders from the family Division involving divorce, child custody, visitation and child support. In these cases, appellants and petitioners must file the mediation screening statement with the notice of appeal or petition for review. See Admin. Order 4-16 (January 9, 2017).

B. **E-Filing for cases after the originating document is filed**. The court has initiated a voluntary efiling program. Parties may register to efile and once registered agree to be served through the e-filing system. See Admin. Ord. 3-16 (August 18, 2016). The Court contemplates requiring efiling by all attorneys sometime in 2018. Admin. Ord. 2-16 (July 20, 2016) provides the proposed rules for efiling and these are the rules that are applicable for voluntary efiling. Of importance is the requirement to mail (or file) two copies of the pleading in the Clerk's Office within 48 hours of e-filing; however, if the pleading pertains to an emergency of expedited matter an original and copies must be filed pursuant to those rules (same day to the Clerk's Office with appropriate telephonic notice).

C. Record preparation.

1. The record consists of the original papers and exhibits filed in the Superior Court, any transcripts, and a certified copy of the docket entries which is prepared by the Clerk of that court. D.C. App. R. 10 (a).

2. Within 10 days after filing the notice of appeal, an appellant must either order the parts of the transcript it considers necessary or file a certificate stating that no transcript will be ordered. D.C. App. R. 10 (b)(1).

   a. Unless the entire transcript is ordered, the appellant must, within the same 10 days, file a statement of issues to be presented on appeal and serve a copy of that statement as well as a copy of the transcript order or certificate on all other

parties. D.C. App. R. 10 (b)(3).

b. If another party considers additional transcript necessary, it may designate the additional parts to be ordered within 10 days after receiving the appellant's transcript order or certificate and statement of issues. *Id.*

c. If the appellant fails to order the additional transcript within 10 more days, the designating party may either order those parts or file a motion in Superior Court for an order requiring the appellant to do so. *Id.*

d. **Exceptions**: In criminal and juvenile cases, in which counsel has been appointed under the Criminal Justice Act, the transcripts are prepared automatically; however, counsel should verify that all necessary transcript has been designated and alert the Court Reporting Office if any transcript is missing. D.C. App. R. 10 (b)(5)(B); *see also Gaskins v. United States*, 265 A.2d 589 (D.C. 1970). A party proceeding *in forma pauperis* in a civil case must also file a motion in the Superior Court for the preparation of transcripts without costs. D.C. App. R. 10 (b)(5)(A); *Hancock v. Mutual of Omaha Ins. Co.*, 472 A.2d 867 (D.C. 1984). In Child Abuse and Neglect ("CCAN") cases, counsel must secure vouchers from the finance office, complete then, along with a motion to unseal, and submit them to the trial judge for approval. D.C. App. R. 10 (b)(5)(C). If you have been appointed to represent an appellant under CJA or CCAN, you will be notified that the transcript is complete via the web voucher system and you will receive your copy of the transcript electronically.

e. Subject to the exceptions above, the appellant must make the arrangements for payment for the transcripts at the time the transcripts are ordered. D.C. App. R. 10 (b)(4).

3. "While it is primarily appellant's burden to provide an adequate record, our appellate rules explicitly impose upon appellees the duty of designating additional portions of the transcript which they deem necessary . . . . [A]n appellee's duty [is] to assure that information helpful to his or her cause is not omitted." *Sterling Mirror, Inc. v.*

Gordon, 619 A.2d 64, 69 (D.C. 1993).

D. Motions.

1. The parties must seek each other's consent before filing **non-dispositive** procedural motions. D.C. App. R. 27 (b)(4).

2. A response to a motion may be filed within 7 calendar days of service, and a reply 3 days thereafter. D.C. App. R. 27 (a)(4)-(5). A cross-motion for summary disposition may be filed in lieu of a response. D.C. App. R. 27 (c). A reply may not present matters that do not relate to the response. D.C. App. R. 27 (a)(5).

3. Motions for summary affirmance or reversal will automatically stay the briefing schedule unless otherwise ordered by the Court. D.C. App. R. 27 (c). If counsel deems it appropriate, a statement may be included in either the motion or responsive pleading indicating that it may be treated as the party's brief on the merits if the Court denies the motion or defers consideration on the merits. *Id.*

4. A motion or response may not exceed 20 pages, and a reply may not exceed 10 pages. D.C. App. R. 27 (d)(2).

E. Computing time.

1. In computing time under the Court's rules or the applicable statutes, do not include the day of the triggering event or act. Start counting from the next day and do not include intervening weekends and legal holidays when the relevant time period is less than 11days. D.C. App. R. 26 (a). Intervening weekend and legal holidays are included, however, if a statute or order expressly provides for their inclusion or when the relevant period is stated in *calendar* days. D.C. App. R. 26 (a)(2). If the last day of the relevant period is a Saturday, Sunday, a legal holiday, or a day on which the weather or other conditions cause the Clerk's office to be closed, the due date becomes the next business day. D.C. App. R. 26 (a)(3). Please note the time to respond to motions is computing in calendar days.

2. If a party is required or permitted to act with a certain time after a paper is served on them, 5 calendar days are added to the prescribed

period unless the paper is delivered on the date stated in the proof of service. D.C. App. R. 26 (c). This provision does not apply to orders of the Court that prescribe a period of time for a party to act. This provision does not apply to the filing of notices of non-criminal appeals, *see Clark v Bridges*, 75 A.3d 149 (D.C. 2013). Additionally, for pleadings served through the e-filing system are considered hand-served for the purpose of computing time for those parties who have registered for e-filing. D.C. App. EFS 9.

F. Briefs.

1. The appellant's brief is due 40 days after the Clerk notifies the parties that the record has been filed or, after such notice, the Court has denied a motion for summary disposition. The appellee's brief is due 30 days after service of the appellant's brief and any reply is due within 21 days after the appellee's brief has been served. D.C. App. R. 31 (a)(1).

2. Opening briefs by appellant and appellee may not exceed 50 pages and a reply brief may not exceed 20 pages. D.C. App. R. 32 (a)(6).

3. D.C. App. R. 28 (a) requires a brief to contain:

   a. A title page with the appeal number, the name of the Court, the title of the case as it appears on the appellate docket, the nature of the proceeding, the name of the lower court, agency or board, the title of the brief (identifying the party or parties on whose behalf it is filed), and the name, address and phone number of counsel filing the brief. **Counsel who will argue the matter must be denoted with an asterisk if more than one counsel is listed.**

   b. A certificate of counsel which will enable judges of the Court to consider disqualification or recusal, including a disclosure statement if required by D.C. App. R. 26.1

   c. A table of contents with page references.

   d. A table of authorities including cases (arranged alphabetically), statutes. and other authorities referencing the page of the brief cited. Authorities chiefly replied on should

be indicated with an asterisk.

e. Statement of jurisdiction.

f. A statement of the issues.

g. A statement of the case.

h. A statement of the relevant facts with appropriate references to the record.

i. A statement of the argument.

j. An argument with citations to supporting authorities and the record.

k. A short conclusion specifying the precise relief sought.

4. An *amicus* brief may not be filed without the consent of all parties or leave of the Court, unless it is filed by the United States, the District of Columbia, or another state. It may not exceed 25 pages. D.C. App. R. 29.

5. Unless the appellant is proceeding *in forma pauperis* or counsel is appointed under CJA or CCAN, the parties must file a joint appendix to their briefs containing the relevant docket entries, pleadings, charges, findings, or opinion; the judgment, order, or decision in question; and, any other parts of the record they wish to include. D.C. App. R. 30 (a)(1).

a. The parties are to cooperate in the preparation of the appendix, and are not to include unnecessary materials unless they wish to face sanctions. D.C. App. R. 30 (b)(1).

b. The appellant is to pay for preparing the appendix except for those parts requested by another party which the appellant considers to be unnecessary. For those parts, the requesting party is to pay the cost of inclusion. Appendix costs may be recovered by the prevailing party. D.C. App. R. 30 (b)(2).

c. The parties may be excused from the appendix requirement

upon a showing of "good cause." D.C. App. R. 30 (e).

d. If appellant is proceeding *in forma pauperis* or where counsel has been appointed to represent a party, appellant must only file an abbreviated appendix. D.C. App. R. 30 (f).

6. If a brief is not e-filed, the party must, in addition to filing an original and three copies of the brief and appendix, parties represented by counsel **must** email to the Court, within 24 hours of filing the brief, a copy of the brief in PDF format to briefs@dcappeals.gov. *See* Admin Order 4-11 (November 30, 2011).

G. Calendaring and argument.

1. Cases on the Regular Calendar are scheduled for oral argument, and counsel is notified, about a month in advance. D.C. App. R. 33 (a). Cases on the Summary Calendar are not scheduled for argument; however, a party may file a motion for oral argument within 10 days after notice of calendaring. D.C. App. R. 33.

a. If a case is screened for the regular calendar, counsel will receive prior notice of the three-month period of time when the case is expected to be calendared. Please respond expeditiously to the request for unavailability. In addition, this information should be expeditiously undated, if needed. Late requests for continuances after the calendar is set are highly disfavored.

2. The appellant is entitled to open and conclude the oral argument. D.C. App. R. 34 (c). If there is a cross-appeal, D.C. App. R. 28 (i) determines which party is the appellant and which the appellee for purposes of oral argument. D.C. App. R. 34 (d).

3. Subject to the Court's discretion, each side has 15 minutes for argument. If the Court hears a case en banc the Court will set the time for argument.

4. An intervenor may not argue, except by permission of the Court, D.C. App. R. 29 (g), unless counsel on whose side the intervenor has intervened is willing to share its allotted time. D.C. App. R. 34 (g).

5. Any pleading filed after the case has been calendared should indicate the argued or submitted date on the front of the pleading.

6. Each Thursday, the list of cases to be argued the following week, including any summary calendar case that is scheduled for argument, will be listed on the Court's website along with the composition of the merits division assigned to hear the appeal.

H. Judgments and opinions.

1. The Clerk prepares, signs, and enters the judgment after receipt of the Court's opinion or as otherwise instructed by the Court if no opinion is issued. D.C. App. R. 36 (a). The opinion or order is then mailed to each party. D.C. App. R. 36 (b).

2. Opinions may be published or unpublished. In the case of an unpublished opinion, any interested party may move for publication within 30 days after issuance. D.C. App. R. 36 (c).

I. Petitions for rehearing or for rehearing en banc.

1. May be filed within 14 days after entry of the judgment. D.C. App. R. 35 (c), 40 (a)(1). Any requests for additional time to file the petition must be filed prior to the expiration of the time for filing a petition.

2. Must state with particularity the points of law or fact which the petitioner believes the Court overlooked or misapprehended. It cannot exceed 15 pages. No oral argument is contemplated. D.C. App. R. 35 (b), 40 (a)(2), (b). If you are requesting both rehearing before the panel and the full court, both requests must be made in the same petition.

3. An answer to the petition may <u>not</u> be filed unless called for by the Court. D.C. App. R. 35, (e), 40 (a)(3).

4. En banc hearings or rehearings are not favored and will normally be ordered only when necessary to secure or maintain uniformity of the Court's decisions or when the case involves a question of exceptional importance. D.C. App. R. 35 (a).

J. Mandate.

1. The mandate issues 21 days after judgment unless either (1) the Court directs it to be issued earlier, or (2) a timely petition for rehearing or rehearing en banc is filed. If a timely petition is filed, issuance is stayed until 7 days after the petition is resolved. D.C. App. R. 41 (b).

2. A party may move to stay issuance of the mandate pending the filing of a petition for *certiorari*. D.C. App. R. 41 (d)(2)(A). This motion must be filed prior to the issuance of the mandate. If granted, that stay is not to exceed 90 days unless good cause is shown or a *certiorari* petition is filed and a notice to that effect is received from the Clerk of the Supreme Court, D.C. App. R. 41 (d)(2)(B), in which case, the mandate will not issue until final disposition by the Supreme Court, *id.* Issuance will follow immediately on the denial of *certiorari*. D.C. App. R. 41 (d)(2)(D).

3. A motion to recall the mandate in a criminal case because of the alleged ineffectiveness of appellate counsel must be filed within 180 days after issuance. D.C. App. R. 41 (f).

K. Fees and costs.

1. The Court does not generally award attorney's fees except in frivolous cases when they may be assessed as a sanction, *see Slater v. Biehl*, 793 A.2d 1268, 1278 (D.C. 2002), when an appeal is taken for an improper purpose or when a party fails to comply with an order of the Court. D.C. App. R. 38. Moreover, the Court has recently held that requests for fees, including those incurred on appeal, should be presented to the Superior Court or agency in the first instance. *See District of Columbia Metro. Police Dep't v. Stanley*, 951 A.2d 65 (D.C. 2008). The Court, however, specifically reserved the power to review fee petitions as it deems appropriate or when its authority is exclusive, as in Workers Compensation cases.

2. Costs, however, are assessed against the appellant if the appeal is dismissed or the judgment is affirmed. They are assessed against the appellee if the judgment is reversed. D.C. App. R. 39 (a). Costs are assessed against the United States only if authorized by law. D.C.

App. R. 39 (b).

3. Costs must be requested within 14 days from the date of decision. D.C. App. R. 39 (d). However, if a petition for rehearing/rehearing en banc is filed the Court will not resolve the motion for costs until after the petition is resolved.

4. Costs include filing fees, transcript costs, copying, postage, and messenger costs. D.C. App. R. 39 (d)(1); Administrative Order M-253-16 (Feb. 12, 2016); *see also Camper v. Stewart-Lange*, 782 A.2d 762, 763 (D.C. 2001).

FROM THE GROUND UP:

The Fundamentals of Practice in the D.C. Court of Appeals.

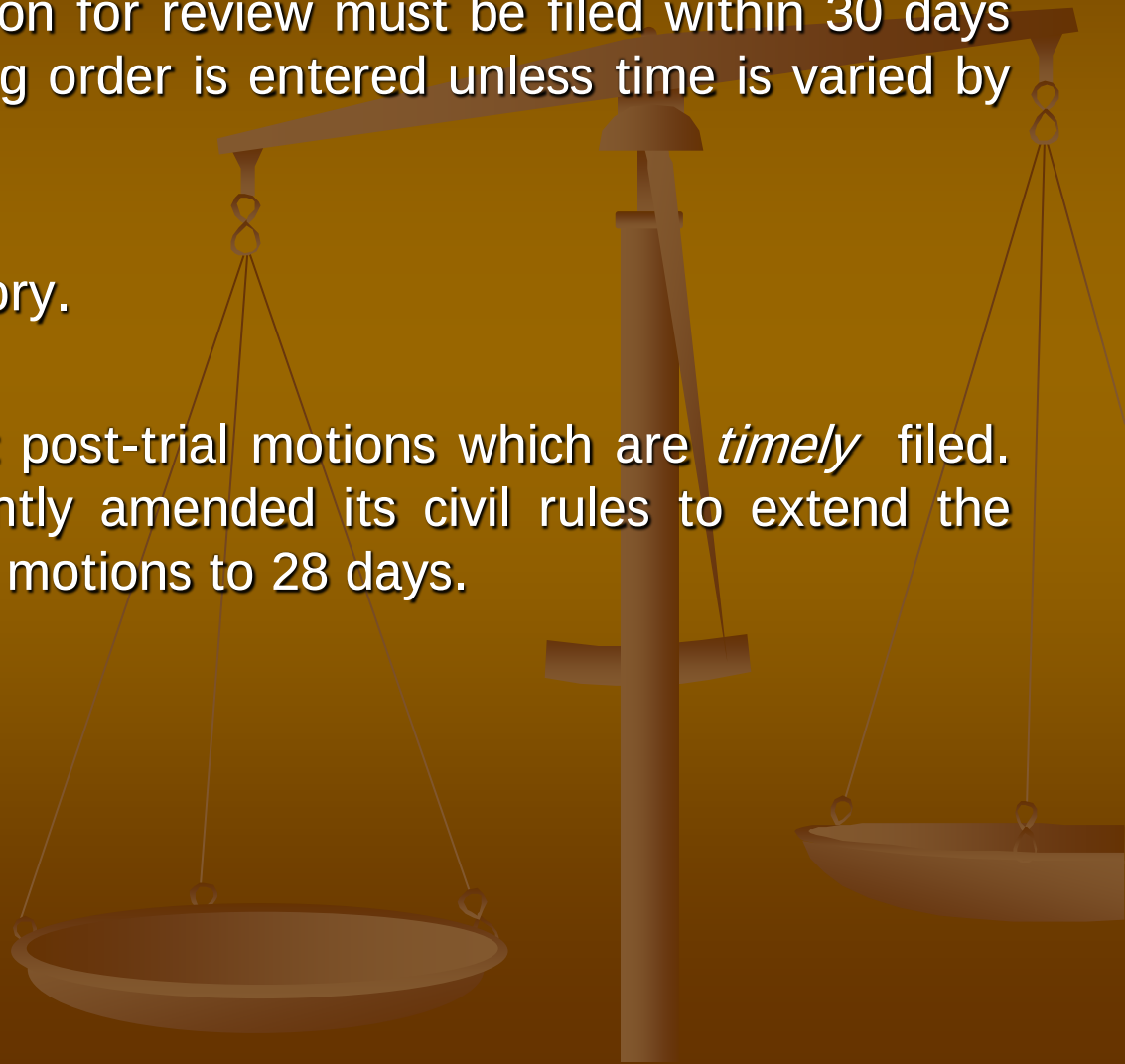
Jurisdiction

- Final orders or judgments of the Superior Court.
  - A final order disposes of the entire case. Final orders do not include:
    - Discovery orders, unless directed to a disinterested third party.
    - A contempt order, unless sanctions have actually been imposed.
    - An order which is anything less than a final action terminating a parent's rights with respect to his or her children, or foreclosing all visitation on a non-temporary basis. But see, *In re Ta.L.,* 149 A.3d 1060 (D.C. 2016) (en banc), the court held that an order that changed a permanency plan in a neglect proceeding to adoption only is immediately appealable.

- Final orders or decisions of the Mayor or an agency in a contested case.
  - "Contested cases" are those in which the legal rights, duties, or privileges of specific parties are required by law or the Constitution to be determined after a trial type hearing. Court has held that the termination of a housing Choice voucher is a final appealable order. *See, Mathis v. District of Columbia Housing Authority*, 124 A.3d 1089 (D.C. 2015).

Timing

- Notice of appeal or petition for review must be filed within 30 days of the date the underlying order is entered unless time is varied by statute.
- Time frames are mandatory.
- May be tolled by specific post-trial motions which are *timely* filed. Superior Court has recently amended its civil rules to extend the time to file certain tolling motions to 28 days.



Discretionary Review

- Applications for Allowance of Appeal- D.C. App. R. 6
  - Taken from Small Claims decisions and in misdemeanors where the fine paid is less than $50.00. Note, Small Claims jurisdiction has been raised to $10,000.
  - Decisions often made by Magistrate Judge whose order is not *final* until reviewed by an Associate Judge of the Superior Court.
    - Request for review by an Associate Judge must be made within 10 days.
  - Application must be filed within 3 days of final order.
  - If an AAA is granted, it will then receive and appeal number and treated as an appeal of right.

Interlocutory Review

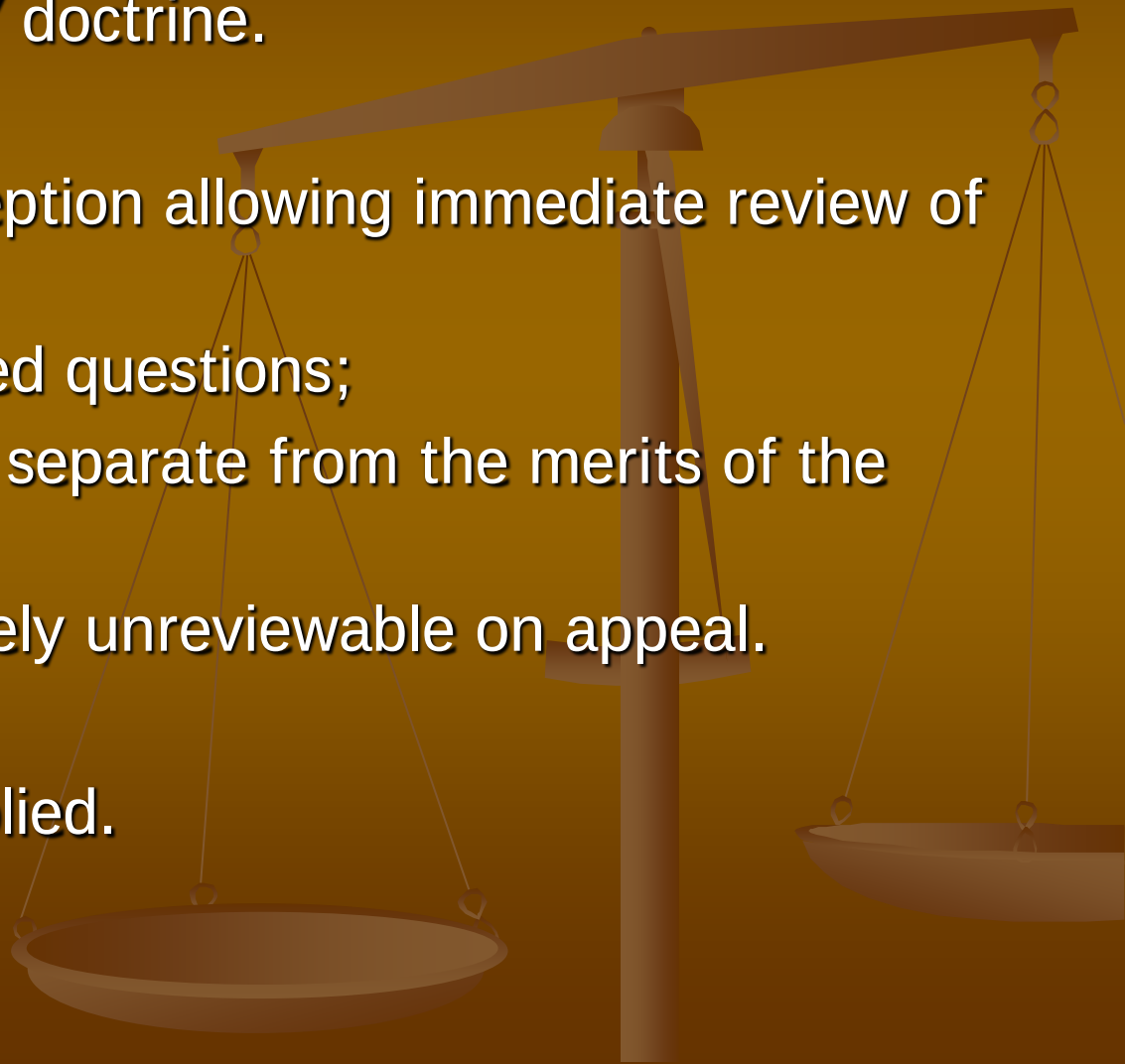
- By statute, certain non-final orders may be immediately reviewed:
  - Injunctions.
  - Receivers, guardians, or conservators.
  - Changing or affecting the possession of property.
  - Pretrial detentions.
  - Shelter care determinations.
  - Referral of a juvenile for prosecution as an adult.
  - Evidentiary rulings against the government in criminal cases.
  - Extradition orders.
  - Dismissal of criminal charges.

Interlocutory Review

- The Superior Court may also certify a question for interlocutory review. D.C. App. R. 5
  - Trial judge must state that the case involves a controlling question of law for which there's substantial ground for differing opinions and that immediate appeal will materially advance the case.
  - Applications for permission to appeal must be filed within 10 days of trial court certification.
  - Certification does not guarantee review.

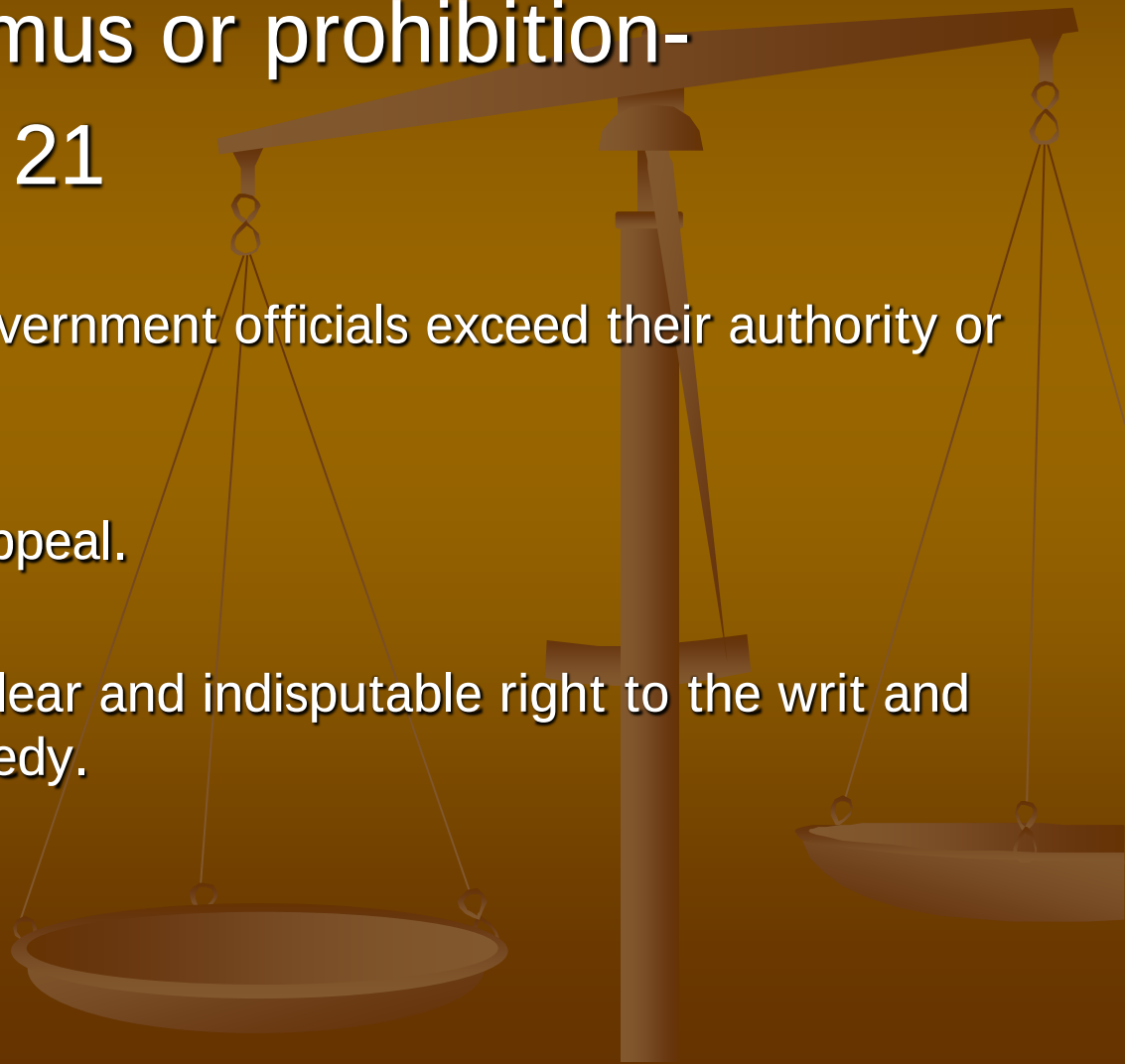
Interlocutory Review

- The “collateral order” doctrine.
  - Common-law exception allowing immediate review of orders that:
    - Resolve disputed questions;
    - Are completely separate from the merits of the case; and
    - Will be effectively unreviewable on appeal.
  - Very narrowly applied.



Extraordinary Writs

- Writs of mandamus or prohibition- D.C. App. R. 21
  - Appropriate where government officials exceed their authority or refuse to exercise it.
  - Not a substitute for appeal.
  - Must demonstrate a clear and indisputable right to the writ and lack of any other remedy.



Emergency Motions

- Stays- D.C. App. R. 8 (orders from Superior Court) & 18 (from agency decision)
  - Must be sought in the trial court first unless impracticable.
  - Must include reasons for granting the requested relief and supporting facts.
  - Must attach any materials supporting facts that are subject to dispute.
  - Must attach any relevant parts of the record, *including* the order or judgment being appealed.
  - Must demonstrate a likelihood of success on the merits, that irreparable harm will result from the denial of a stay, that the non-moving party will not be harmed, and that a stay is in the public interest.
  - If you want expedited attention, you must hand serve all other parties. Fax or email service is acceptable if all parties agree.

Emergency Motions

- Release in criminal cases. D.C. App. R. 9
  - If seeking pre-trial or pre-sentencing release, you must first file a notice of appeal from the detention order. If you are seeking release pending appeal, motions are filed in the direct appeal.
  - Cross-motions for summary disposition are preferred.
  - Get the transcript prepared and transmitted as soon as possible.
  - Notify the clerk's office by phone and identify all necessary transcript by date and judicial officer.
  - Specify grounds for release in writing and address the relevant standard. Remember to attach Form 6.
  - Attach the order on appeal and any other relevant materials.
  - The parties must serve each other personally, not by mail.
    - Fax or email service is acceptable if all parties agree.

Starting the Process

- Notice of appeal is filed in the Superior Court; Petition for Review, Application for Allowance of Appeal and Petitions for Writ of Mandamus are filed in the Court of Appeals.
  - Generally, an NOA or Petition must be filed within 30 days and an AAA within 3 days.
  - Must specify who is taking the appeal.
  - Must specify the judgment or order to be reviewed.
  - Must be signed by the appellant, petitioner, or counsel. All non-persons must be represented by counsel. A non-attorney individual may not represent another individual.

MANDATORY EARLY INTERVENTION MEDIATION PROGRAM (All Parties Represented by Counsel)

- Program mandatory for all cases originating from the Civil Division, Probate Division, final orders from the family Division involving divorce, child custody, visitation and child support. In addition, all petitions for review from agencies.

- Mediation statement is to be filed with the notice of appeal or petition for review

Voluntary E-filing

- The Court has recently instituted voluntary e-filing. Information on how to register is found at: http://www.dccourts.gov/internet/appellate/efileappeals.jsf. The court contemplates making e-filing mandatory for all attorneys sometime in 2018.
- E-filing may **not** be used for originating documents, e.g., NOA, Petition for Review, Applications for Allowance of Appeal or Mandamus Petitions
- If e-filing an emergency and expedited motion, you must also immediately file paper copies with the Clerk's Office.
- If a document is e-filed, two paper copies **must** be filed or mailed within two days of e-filing.

Record Preparation
D.C. App. R. 10

- For appeals taken from the Superior Court, the record now consists primarily of original papers filed below and the responsibility for its transmission is largely on the Superior Court.
  - In practice, unless the appellant is proceeding *in forma pauperis*, only an index is prepared and transmitted.
  - Often exhibits are not transmitted to the court and appellant must file a motion to supplement the record with the missing exhibits.

- But, transcript or a statement that none is necessary must be ordered or filed by the appellant within 10 days of filing NOA. Also, see, R 10 (b)(3) as to additional requirements if only a partial entire transcript of the proceedings is ordered.
  - Appellee may seek to have additional transcript prepared.
  - Transcript is automatically prepared in CJA criminal and juvenile cases.
  - In all paid cases, appellant arranges for payment at the time of ordering.

For Agency appeals, the agency is directed to transmit the record.

Motions Practice
D.C. App. R. 26

- Motion and response may not exceed 20 pages; reply may not be more than 10 pages.
- Response may be filed within 7 *calendar* days; reply 3 days thereafter (the court may resolve motion prior to reply).
- Motion for summary affirmance or reversal will automatically stay the briefing schedule unless otherwise ordered.

Computing Time
D.C. App. R. 26

- Begin counting the day after the "triggering event."
- Don't count intervening weekends and legal holidays when the time period is less than 11 days.
- DO count them if the time is given in *calendar* days or if a statute requires it.
- 5 calendar days are added to the time period when a party is permitted to act after a paper is served on them, unless the paper is actually served on the date stated in the proof of service. (The 5 days are added to the response time, e.g. 7 days to file an opposition, plus 5 mailing days equals 11 days to file a response.)
  - Does not apply to orders issued by the Court.

Briefing
D.C. App. R. 28 & 32

- Court orders briefing after the record & transcript are filed.
- Appellant's brief is due 40 days after the Clerk notifies the parties that the record has been filed.
- The opening briefs on the merits may not exceed 50 pages and a reply may not exceed 20 pages.
- Format is set forth in Rule 28.
- New requirement: unless you are registered for e-filing, you must email the Court a copy of the brief within 24 hours of filing the brief. The brief must be emailed to briefs@dcappeals.gov in PDF format. The email should identify the appeal by case number in the subject section.
- Remember, if more than one attorney is list on the brief, star the attorney that will argue because that attorney will receive all calendar related notices.

Appendix
D.C. App. R. 30

- Parties are to cooperate in preparation. *See* D.C. App. R. 30.
- Should not include unnecessary materials.
- Must contain:
  - Relevant docket entries and pleadings.
  - The findings, opinion, judgment, order, or decision in question.
  - Other parts of the record deemed necessary by the parties.
- Preparation cost is the responsibility of the appellant.
- Not required in IFP cases or where counsel has been appointed.
  - But, an "abbreviated" appendix is required in these cases.
  - The "abbreviated" appendix must include, at a minimum, the order on appeal or the portion of the transcript that contains the findings of the court. *See* D.C. App. 30 (f).

Calendaring
D.C. App. R. 33 & 34

- Cases are screened after the appellee's brief is filed.
- Cases screened the Regular Calendar are scheduled for oral argument and the parties are notified about a month ahead of time. Each side is allotted 15 minutes for oral argument. Prior to being notified of the calendar date, counsel will receive a notice from the court identifying the three month window for expected argument that also directs counsel to identify any conflicts within the three month window. Counsel should also update that information if additional conflicts arise.
- Cases on the Summary Calendar are not scheduled for argument. A party may file a motion for argument within 10 days of the calendar notice. If granted, each side is allotted 15 minutes for oral argument.
- Once a calendar date has been set, any additional filings to the court must include that calendar date on the front on the filing.

D.C. Court of Appeals Practice

Prepared by

D.C. Court of Appeals Staff

The Basics – Filing an Appeal.

- A Notice of Appeal ("NOA") is filed in the Superior Court; an Application for Allowance of Appeal ("AAA") is filed in the Court of Appeals. D.C. App. R. 3 (a)(1), 4 (a)(1), 5 (a)(1).
  - Generally, an NOA must be filed within 30 days and an AAA within 10 days. D.C. App. R. 4 (a)(1), 5 (a)(2).
    - Time frames are mandatory and DCCA lacks jurisdiction to review an untimely NOA. *In re C.I.T.*, 369 A.2d 171 (D.C. 1977).
    - 30 day period may be tolled by specific post-trial motions which must themselves be *timely* filed. D.C. App. R. 4 (a)(4), 4 (b)(3).
  - NOA must specify who is taking the appeal. D.C. App. R. 3 (c).
  - NOA must specify the judgment or order to be reviewed. *Id.*
  - NOA must be signed by the appellant, petitioner, or counsel. *Id.*

The Basics – The Record. D.C. App. R. 10.

- Consists primarily of original papers filed below and responsibility for its transmission is largely on the Superior Court.
- But transcript, or a statement that no transcript is necessary, must be ordered or filed by the appellant within 10 days of filing the NOA.
- In cases where counsel has been appointed under the Prevention of Child Abuse and Neglect Act, D.C. Code § 16-2304 (2001), vouchers must be secured for transcript preparation from the Finance Office and submitted to the trial judge for approval. D.C. App. R. 10 (b)(5)(C).

The Basics – Appendix. D.C. App. R. 30 (f).

- Full appendix not required in neglect appeals or where counsel has been appointed.
- But an "abbreviated" appendix is required in those cases. 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; and
  - May file any other portions of the record to be called to the court's attention.
- The appellee may then file any additional portions of the record to be called to the court's attention.

The Basics – Briefing

- Appellant's brief due 40 days after Clerk notifies the parties the record has been filed. D.C. App. R. 31 (a)(1).
- A brief on the merits may not exceed 50 pages and a reply may not exceed 20 pages. D.C. App. R. 32 (a)(6).
- Brief must contain certain material. D.C. App. R. 28 (a).
- Because adoption and termination of parental rights (TPR) cases are expedited under D.C. App. R. 4 (c), the court's practice is to issue an abbreviated briefing order in these matters which directs preparation of the record, sets dates for briefing, and calendars the case.

The Basics - Motions Practice. D.C. App. R. 27.

- Motion and response may not exceed 20 pages; reply no more than 10 pages.
- Response may be filed within 7 *calendar* days; reply 3 days thereafter
- Motion for summary affirmance or reversal will automatically stay the briefing schedule unless otherwise ordered.

The Basics - Computing Time. D.C. App. R. 26.

- Begin counting the day after the "triggering event."
- Don't count intervening weekends and legal holidays when the time period is less than 11 days.
- DO count them if the time is given in *calendar* days or if a statute requires it.
- 5 calendar days are added to periods when a party is permitted to act after a paper is served on them, unless the paper is actually served on the date stated in the proof of service.
  - **Does not apply to orders issued by the Court.**

General Jurisdiction.

- Final orders or judgments of the Superior Court. D.C. Code § 11-721 (a)(1) (2001).
  - A final order disposes of the entire case on the merits as to all parties and all causes of action. *In re D.M.*, 771 A.2d 360 (D.C. 2001).
- Final (or appealable) orders include:
  - Disposition orders which follow a finding of neglect. *In re Z.C.*, 813 A.2d 199 (D.C. 2002).
  - Orders terminating parental rights. *In re K.M.T.*, 795 A.2d 688 (D.C. 2002).
  - Final adoption decrees. *In re S.J.*, 772 A.2d 247 (D.C. 2001).
  - Orders which deny or substantially curtail visitation. *In re T.L.*, 859 A.2d 1087 (D.C. 2004); *In re D.M.*, 771 A.2d 360 (D.C. 2001).

A Final Order is not:

- A contempt finding unaccompanied by a sanction. *Crane v. Crane*, 614 A.2d 935 (D.C. 1992).
- A pretrial discovery order. *Crane v. Crane*, 657 A.2d 312 (D.C. 1995).
- A Magistrate Judge's order. D.C. Code § 11-1732 (k) (2001); Super. Ct. Civ. R. 73 (b).
- A permanency planning order. *In re K.M.T.*, 795 A.2d 688 (D.C. 2002).
- A neglect finding. *In re Z.C.*, 813 A.2d 199 (D.C. 2002).
- An order waving consent to adoption. *In re W.E.T.*, 793 A.2d 471 (D.C. 2002).

Interlocutory Review (Statutory).

- Orders respecting injunctions. D.C. Code § 11-721 (a)(2)(A) (2001).
- Orders respecting receivers, guardians, or conservators. *Id.* § 11-721 (a)(2)(B).
- Pretrial detention orders. *Id.* § 23-1324.
- Shelter care determinations. *Id.* § 16-2328 (a).
  - May only be appealed by the child/guardian *ad litem*. *See In re S.J.*, 632 A.2d 112 (D.C. 1993).
- Orders referring a juvenile for prosecution as an adult. *Id.* § 16-2328 (b).

Interlocutory Review (Statutory).

- Trial court may certify a question for interlocutory review if the case involves a controlling question of law for which there's substantial ground for differing opinions and immediate appeal will materially advance the case. D.C. Code § 11-721 (d) (2001).
  - Review is reserved for exceptional cases. *Medlantic Health Care Group, Inc. v. Cunningham*, 755 A.2d 1032 (D.C. 2000).
    - Trial judge should do more than merely quote the statutory language. *In re J.A.P.*, 749 A.2d 715, 717 (D.C. 2000).
  - AAA must be filed within 10 days of trial court certification. D.C. App. R. 5 (a)(2).
  - Certification does not guarantee review, decision is discretionary.

Interlocutory Review (Non-statutory).

- The "collateral order" doctrine. *Bible Way Church v. Beard*, 680 A.2d 419 (D.C. 1996).
  - Common-law exception allowing immediate review of non-final orders which:
    - Resolve disputed questions;
    - That are completely separate from the merits of the case; and
    - Will be effectively unreviewable on appeal.
  - Very narrowly applied. Possible basis for decisions holding that orders which deny or curtail visitation may be immediately appealed. *See In re T.L.*, 859 A.2d 1087 (D.C. 2004) (citing *In re D.M.*, 771 A.2d 360 (D.C. 2001)).

Emergency Matters.

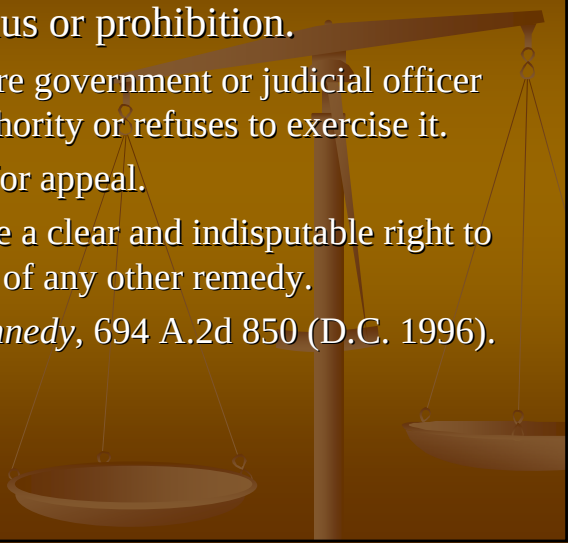
- Stays. D.C. App. R. 8.
  - Must be sought in the trial court first unless impracticable.
  - Motion must include reasons for granting the requested relief and supporting facts.
  - Motion must attach any materials supporting claim that facts are subject to dispute.
  - Motion must attach any relevant parts of the record, *including* the order or judgment being appealed.
  - Standard:
    - Generally, the movant must demonstrate a likelihood of success on the merits of their claim, that irreparable harm will result from the denial of a stay, that the non-moving party will not be harmed, and that a stay is in the public interest. *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987).

Emergency Matters.

- If an order detains or places a child in shelter care, or transfers a juvenile for prosecution as an adult, a notice of appeal must be filed with two (2) days from the date of its entry. D.C. Code § 16-2328 (a) (2001).
  - If notice is filed within two days, DCCA must expedite case and hear argument within 3 days of the notice (Sundays excluded). *Id.* § 16-2328 (b).
  - If not, DCCA need only expedite the case.

Extraordinary Writs – D.C. App. R. 21.

- Writs of mandamus or prohibition.
  - Appropriate where government or judicial officer exceeds their authority or refuses to exercise it.
  - Not a substitute for appeal.
  - Must demonstrate a clear and indisputable right to the writ and lack of any other remedy.
  - *See Banov v. Kennedy*, 694 A.2d 850 (D.C. 1996).



Appellate Practice in D.C. Abuse and Neglect Cases

Key Staff Contacts in the D.C. Court of Appeals

Title	Phone Number
Clerk's Office, Main Number	(202) 879-2700
Clerk of the Court, Julio Castillo	(202) 879-2725
Calendar Clerk	(202) 879-2735
Public Office Director	(202) 879-2702
Records Manager	(202) 879-2853
Office on Admissions and the Unauthorized Practice of Law	(202) 879-2710
Staff Counsel	(202) 879-2718
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If you have a question about an ongoing appeal or about procedure in the D.C. Court of Appeals generally, contact the Clerk's Office at (202) 879-2700.

If you need assistance with a calendaring issue, contact the Calendar Clerk at (202) 879-2735.

For assistance being admitted to practice in the D.C. Court of Appeals, contact the Office on Admissions and the Unauthorized Practice of Law at (202) 879-2710.

Appellate Practice in D.C. Abuse and Neglect Cases

Online Resources

D.C. Court of Appeals

- www.dccourts.gov/court-of-appeals

ProBono.net

- www.probono.net/dc/family

Bar Association of D.C.

- www.badc.org