dc's CHILDREN'S LAW CENTER practice kit

■ PRACTICE KIT 5 ■

Appellate Practice in D.C. Abuse and Neglect Cases

Revised July 2018

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TABLE OF CONTENTS

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APPELLATE PRACTICE IN D.C. ABUSE AND NEGLECT CASES

INTRODUCTION

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

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

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

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CHAPTER ONE: APPELLATE JURISDICTION

A. Introduction

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

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

B. Final Orders and Judgments

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

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

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

C. Interlocutory Appeals of Orders Granting or Denying Injunctions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER TWO: OTHER APPELLATE PRINCIPLES

A. Standing

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

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

B. Mootness

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

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

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

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

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

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

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

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

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

C. Preservation of Issues for Appeal

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

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

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

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

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

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

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

CHAPTER THREE: SCOPE AND STANDARD OF REVIEW

A. Scope of Review

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

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

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

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

B. Standard of Review

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

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

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

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

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

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

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

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

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

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

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

C. Harmless Error

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

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

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

CHAPTER FOUR: REVIEW OF MAGISTRATE JUDGE ORDERS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. Parties Appealing

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

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

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

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

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

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

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

CHAPTER SIX: SHELTER CARE APPEALS

A. Jurisdiction

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

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

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

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

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

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

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

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

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

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

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

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

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

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

D. Part Two: Court of Appeals

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER SEVEN: LOGISTICS OF APPEALS PROCESS

A. Timing for Filing Appeal

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

B. Electronic Filing

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

C. Transcripts

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

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

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

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

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

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

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

D. Revised Rules

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

CASE SUMMARIES – APPELLATE JURISDICTION (APPEALABLE ORDERS)

CASE	TYPE OF CASE	PRIMARY ISSUES AND RULING	RATIONALE	COMMENTS
In re A.B., 486 A.2d 1167 (D.C. 1984) Mother did not appeal neglect adjudication until after entry of disposition order.	**NEGLECT – ADJUDICATION**	**FINAL ORDER** Disposition is final order for purposes of appeal	Final order for purposes of appeal is the dispositional order, not the neglect adjudication. Together, the two orders constitute the final appealable order.	
In re C.I.T., 369 A.2d 171 (D.C. 1977) Father appealed TPR more than 30 days after entry of termination order.	**TPR – ORDER TERMINATING RIGHTS**	**FINAL ORDER** TPR is final order for purposes of appeal	TPR is final order for appeal, which must be noted within 30 days. The fact that there is an on-going neglect case does not toll or extend period for filing TPR appeal. Appeal was dismissed as untimely because it was not filed within 30 days of entry of TPR order.	
In re D.B., 879 A.2d 682 (D.C. 2005) Trial court granted guardianship order and restricted mother's visitation. Mother filed for AJ review. AJ rejected motion as untimely. Mother appealed. COA held motion for review timely, decided merits of case and affirmed.	**GUARDIANSHIP – PERMANENT GUARDIANSHIP ORDER**	**FINAL ORDER** Guardianship order is final order for purposes of appeal	COA affirmed trial court's entry of permanent guardianship order; no jurisdictional discussion.	COA also includes discussion of AJ review of MJ orders in connection with mandatory time for filing and computation of time

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In re D.B., 947 A.2d 443 (D.C. 2008) After an evidentiary hearing, judge prohibited visitation by father with his children, who were in foster care. Father appealed.	**NEGLECT- ORDER BANNING VISITATION (POST-DISPOSITION)**	**INTERLOCUTORY APPEAL** Immediate appeal allowed of order prohibiting visitation in post-disposition stage of neglect case.		
In re D.M., 771 A.2d 360 (D.C. 2001) Mother moved to reinstate visitation with her 12-year-old daughter, who was in foster care. Mother also moved for investigation into circumstances of how her daughter became pregnant while in foster care. Trial court denied both requests and mother appealed. COA heard appeal from ban on visitation and affirmed on merits. COA dismissed appeal of order denying foster home investigation.	**NEGLECT – ORDER BANNING VISITATION (POST- DISPOSITION)** **REQUEST FOR INVESTIGATION OF FOSTER HOME (POST- DISPOSITION)**	**INTERLOCUTORY APPEAL** **Visitation order -** Immediate appeal allowed of order banning visitation in post-disposition stage of neglect case. **Order denying request for investigation** - Interlocutory appeal not allowed.	Immediate appeal of order banning visitation allowed, where no TPR/adoption was pending. Otherwise, mother's fundamental rights could be denied indefinitely without appeal. Fact that ban on visitation had been in effect for several years did not preclude mother from appealing most recent order. Visitation sufficiently separate from merits of case to allow interlocutory appeal. Order denying investigation of foster home was not an appealable order. Issue could only be raised on appeal from a final order – for example, if mother sought but was denied custody.	**Collateral Order Doctrine** COA did not expressly state that order banning visitation was appealable under collateral order doctrine, but reasons given by COA appear to be based on the doctrine.

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In re D.R., 718 A.2d 149 (D.C. 1998) Neglect judge ordered residential placement for neglected child and GAL appealed.	**NEGLECT – DISPOSITION**	**FINAL ORDER** COA heard appeal brought by GAL of order placing child in residential facility at dispositional stage of case.		
In re J.A.P., 749 A.2d 715 (D.C. 2000) Parental consent to adoption waived. Trial court granted interlocutory adoption decree (because child had not lived with petitioner for six months) which was to become final in six months.	**ADOPTION – INTERLOCUTORY DECREE** **ADOPTION – CERTIFIED QUESTION OF LAW**	**INTERLOCUTORY APPEAL** Immediate appeal of interlocutory adoption decree not allowed. **CERTIFIED QUESTION OF LAW**	Interlocutory appeal not allowed because it would be contrary to child's best interests. Interlocutory appeal to be used only when the alternative would mean greater delay and expense than would be caused by the interlocutory review itself. COA accepted as certified question of law whether parent was entitled to court-appointed counsel in contested adoption, but dismissed matter as improvidently granted because mother obtained permanent pro bono counsel.	Compare to *In re R.M.G.*, which allowed appeal of an interlocutory adoption decree. **Mootness** COA dismissed certified question of law as improvidently granted, but did not use the term "moot."

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In re J.J., 111 A.3d 1038 (D.C. 2015) Parents challenged sufficiency of trial court's finding that they withheld consent to adoption of their child contrary to the child's best interest.	**ADOPTION – WAIVER OF PARENTAL CONSENT**	**FINDINGS** MJ did not abuse discretion in waiving parental consent to adoption, even in the absence of an express finding on fitness.	Even if a trial court fails to make an explicit finding on fitness in waiving parental consent to adoption, the trial court can still satisfy its responsibility if the trial court makes an equivalent finding that the parent lacks the capacity or motivation to meet the child's needs or protect the child from harm. Such a finding suffices to overcome the parental presumption.	Applies *In re S.L.G.*, 110 A.3d 1275 (D.C. 2015)
In re J.W., 806 A.2d 1232 (D.C. 2002) Putative father sought immediate custody and visitation. Trial court denied request pending investigation. Father appealed. Among other issues, father raised due process claim (denial of evidentiary hearing) for first time on appeal.	**NEGLECT – PRE-TRIAL ORDERS DENYING CUSTODY AND VISITATION**	**NON-FINAL ORDER** Order denying temporary custody and visitation to putative father was not final because request was still under investigation. **INTERLOCUTORY INJUNCTIONS** Order also not an injunction subject to interlocutory appeal by statute.	Order denying immediate custody/visitation was preliminary, pending full investigation of father's request. There was no appellate jurisdiction to review order because it was not final and was not an interlocutory injunction subject to appeal by statute.	
In re Ko.W., 774 A.2d 296 (D.C. 2001) Children were adjudicated as neglected by their	**NEGLECT – ORDER BANNING VISITATION**	**INTERLOCUTORY APPEALS** An order denying a parent the right to visit his child is appealable.	An order denying a parent the right to visit his child is appealable notwithstanding the fact that proceedings to terminate parental rights have not been instituted. COA cited *In re D.M.*, which had been decided a few	

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mother. Father was not included in the hearing but the court prohibited visitation based on allegations of father's sexual abuse. Father requested visitation rights. The trial judge denied the request and the father appealed.			months earlier and which contained analysis as to why orders banning visitation were immediately appealable.	
In re L.L., 653 A.2d 873 (D.C. 1995) Trial court denied motion to terminate father's parental rights (and denied adoption petition filed by foster parents). GAL and adoption petitioners appealed. COA reversed denial of TPR (and adoption) and remanded to trial court.	**TPR –** **ORDER DENYING TPR**	**FINAL ORDER** Appeals from orders denying motions to terminate parental rights are orders subject to immediate appeal.		

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In re M.F., 55 A.3d 373 (D.C. 2012) Trial court found child neglected based on several witnesses' testimony, including a social worker, pediatrician, and psychologist who each shared statements from child regarding father's abuse during their testimony. Father only objected on hearsay grounds to one witness sharing child's statements, but trial court admitted all statements. Trial court also ordered that father could not visit child until after criminal case against father ended. Father challenged both orders on appeal.	**NEGLECT**	**PRESERVATION OF ISSUES FOR APPEAL** Any error in admission of child's hearsay statements by the one witness that father had objected to below on hearsay grounds, was harmless where other evidence corroborated the challenged information. **NON-FINAL ORDER** Order prohibiting father from any visitation with child until after criminal case against father ended was not a final, appealable order.	COA rejected father's argument that there was insufficient evidence to support lower court's neglect finding because it relied on inadmissible hearsay from two witnesses. COA ruled it did not need to decide if lower court properly admitted child's hearsay statements by the one witness that father objected to at trial on hearsay grounds because that witness's testimony was consistent with, and corroborated by, that of other witnesses, who testified without a hearsay objection by father. Trier of fact can consider and give full probative value to hearsay admitted without objection. Court's order was only temporary because it made clear that the court would allow supervised visits under certain conditions, after completion of pending criminal case against father.	The Sixth Amendment's Confrontation Clause does not apply in civil neglect proceedings, and objecting to evidence on such grounds is not the same as objecting to that evidence on hearsay grounds.
In re M.L.DeJ., 310 A.2d 834 (D.C. 1973) Juvenile was charged with crimes, and was ordered detained. The trial judge denied his application for	**JUVENILE – SHELTER CARE ORDER**	**SHELTER CARE ORDER** Juvenile allowed to pursue appeal of shelter care order that was not filed within the time required by the statute for emergency	Juvenile could not use emergency appeal statute (now D.C. Code §16-2328) as basis for appeal of shelter care order because two day filing requirement had not been met. However, COA treated shelter care order as final for purposes of appeal and reviewed it under those circumstances, in which case no	

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reconsideration of his detention. He appealed.		shelter care appeals.	special time limitations applied.	
In re Na.H., 65 A.3d 111 (D.C. 2013) Mother filed motion for review more than three months after disposition order was entered on docket, but within ten business days after MJ issued additional written findings and conclusions. AJ dismissed motion as untimely, but issued an alternative ruling on merits affirming finding as well.	**NEGLECT**	**FINAL ORDER – TIME TO APPEAL** In neglect cases, the disposition is the final order. Relevant date for determining timeliness of appellant's motion for review is when disposition hearing order was entered on docket.	Even when disposition order that is entered indicates that additional written findings of fact and conclusions of law will be issued at a later date (and MJ indicates the same orally), that does not impact the finality of that order unless it indicated that it was contingent upon issuance of future findings or upon outcome of later hearings. Lack of written neglect findings also does not impact finality of disposition order that is entered on docket.	If, in a different case, a meaningful review was thwarted by a lack of findings, parties could seek a remand, asking leave to supplement motion for review after findings were entered.
In re R.M.G., 454 A.2d 776 (D.C. 1982) Competing adoption petitions filed by foster parents, with whom child lived, and child's grand-parents. Trial court granted interlocutory adoption decree in favor of grandparents, to become final in six months.	**ADOPTION – INTERLOCUTORY DECREE**	**INTERLOCUTORY APPEAL** Foster parents could immediately appeal interlocutory adoption decree.	Foster parents could immediately appeal interlocutory adoption decree (granted to child's grandparents) under doctrine of practical finality. COA held that delaying appeal until entry of final decree six months later would be harmful to child.	Compare to *In re J.A.P.*, which dismissed appeal of interlocutory adoption decree.

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In re S.C.M., 653 A.2d 398 (D.C. 1995) Child placed in third-party custody with caretaker who mistakenly believed he was the child's father. Trial court ordered that child remain in legal custody of the caretaker and his wife, but be placed in physical custody of the mother. This was an interim step towards full reunification. GAL appealed the order returning child to parental custody.	**NEGLECT – CHANGE IN PLACEMENT**	**INTERLOCUTORY APPEAL – INJUNCTION** Order placing child in parent's physical custody in nature of preliminary injunction and subject to interlocutory appeal.	GAL's appeal of order provisionally returning child to physical custody of parent permitted. Order was in nature of preliminary injunction subject to appeal by statute.	**Stays; Expedited Appeals** Stay denied, case expedited. **Issues Not Raised Below** GAL raised numerous issues for first time on appeal and COA would not consider these issues **Trial Court Jurisdiction Pending Appeal** Trial court retained jurisdiction over ongoing neglect case. Order on appeal was effectively a preliminary injunction and did not dispose of entire case **Jurisdiction** Raised *sua sponte*
In re S.L.G., 110 A.3d 1275 (D.C. 2015) Mother challenged sufficiency of trial court's finding that she withheld consent to the adoption of her child contrary to the	**ADOPTION – WAIVER OF PARENTAL CONSENT**	**FINDINGS** Remand necessary because MJ failed to make express findings as to the parental presumption and the mother's fitness to parent her child in	While there was ample support in the record for the trial court's decision to waive the mother's consent to adoption, the trial court erred by failing to make the necessary predicate determination that the mother was unfit to parent her child. Such a finding is required by the parental presumption.	

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child's best interest.		particular.		
In re S.J., 772 A.2d 247 (D.C. 2001) Parent appealed waiver of consent before decree of adoption entered.	**ADOPTION – WAIVER OF PARENTAL CONSENT**	**NON-FINAL ORDER** Order waiving parental consent not final for purposes of appeal. **INTERLOCUTORY INJUNCTION** The order dispensing with the need for parental consent is not an injunction subject to interlocutory appeal under D.C. Code § 11-721 (a)(2)(A).	Order waiving parental consent not final for purposes of appeal because parental rights and duties not terminated until entry of adoption decree. Appeal is from entry of decree, not from waiver of consent.	This was a *per curiam* decision without full analysis.
In re Ta.L., 149 A.3d 1060 (D.C. 2016) (en banc) In adoption appeal, birth parents argued they should have been permitted to immediately appeal earlier order in related neglect case changing permanency goal for their children from reunification to adoption.	**NEGLECT – APPEALABILITY OF PERMANENCY GOAL CHANGE**	**FINAL ORDER** When a trial court changes the permanency goal in a neglect case from reunification to adoption, that order is immediately appealable.	A permanency goal change from reunification to adoption is a critical point in a neglect proceeding, one that often irreversibly dictates the result in a subsequent adoption proceeding. Such a goal change must be immediately appealable as of right.	The COA says orders changing the goal from reunification to adoption are "effectively" final.
In re T.L., 859 A.2d 1087 (D.C. 2004) Parent appealed order denying visitation. COA	**NEGLECT – VISITATION ORDER (POST-DISPOSITION)**	**INTERLOCUTORY APPEAL** Order banning visitation could be immediately appealed.	"Although, in a child neglect proceeding such as this one, an order denying a parent the right to visit his or her child does not finally conclude the litigation, we have held that such an order is appealable and that this	

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heard appeal from visitation order, affirming it on the merits.			court has jurisdiction of the appeal."	
In re Ti.B., 762 A.2d 20 (D.C. 2000) Father who was subject of neglect petition also had criminal charges arising out of same incident. Neglect judge excluded criminal atty from neglect proceedings.	**NEGLECT – ORDER EXCLUDING CRIMINAL ATTORNEY FROM PROCEEDINGS**	**INTERLOCUTORY APPEAL – COLLATERAL ORDER** Trial judge's exclusion of father's criminal attorney from neglect proceedings subject to immediate appeal as collateral order.	Met criteria for collateral order doctrine.	
In re A.R., 679 A.2d 470 (D.C. 1996) Father's counsel argued for reversal of TPR on grounds that trial judge had not heard from child directly. At trial, father's counsel had suggested that court should interview child in chambers, but judge declined to interview child in chambers. Neither father nor any other party called child as witness.	**TPR**	**PRESERVATION OF ISSUES FOR APPEAL** While counsel had not precisely articulated at trial issues now raised on appeal, objections made below could reasonably be construed to encompass claims raised on appeal.	COA not prepared to reject father's substantive claims on the basis of imprecise articulation by counsel, given the "historic concern of the courts with the welfare of minors."	

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CASE SUMMARIES – OTHER ISSUES (E.G., STANDING, MOOTNESS, PRESERVATION OF ISSUES, INEFFECTIVE ASSISTANCE)

CASE	TYPE OF CASE	PRIMARY ISSUES AND RULING	RATIONALE	COMMENTS
In re A.B., 999 A.2d 36 (D.C. 2010)	**NEGLECT-ADJUDICATION**	**MOOTNESS** Appeal not moot	Mother's appeal was not moot even though children were returned to her and neglect cases closed because neglect adjudications could still indirectly affect mother's status in future proceedings relating to the children (*i.e.* custody).	Dicta. Mootness issue discussed in footnote 25.
In re Amey, 40 A.3d 902 (D.C. 2012) Trial court ordered appellant's involuntary civil commitment for one year after a jury determined that appellant was mentally ill and, as a result, likely to injury himself or others if not committed. At time of appeal to COA, appellant's one-year commitment had expired by its own terms.	**CIVIL COMMITMENT**	**MOOTNESS** Appeal not moot because of continuing collateral consequences on appellant	A final order of involuntary civil commitment on the ground of mental illness and dangerousness imposes significant and continuing collateral consequences on the patient long after the expiration of the commitment. Thus, the appeal is not moot even though appellant's one-year involuntary civil commitment has expired and he is no longer subject to court-ordered treatment.	On appeal, appellant challenged the admissibility of expert testimony based on hearsay. The COA decided that the hearsay was admissible as the basis of the expert's opinion unless it is clearly more prejudicial than probative.

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In re A.O.T., 10 A.3d 160 (D.C. 2010) Biological father of three children moved to have the adoption and TPR trial reassigned to an AJ. MJ denied motion; AJ agreed that consent of the parties was not required for MJ to conduct the proceedings. After a trial, MJ found it was in children's best interests to waive parental consent and grant A.O.T.'s petition to adopt them. AJ affirmed.	**ADOPTION**	**MJ'S AUTHORITY** Because appellant withheld his consent to trial before a MJ, COA reversed and remanded for a new adoption trial before an AJ.	Congress was silent on the necessity for party consent to MJ trials in Family Court. So that was some indication that it was satisfied to leave the question to the Court's discretion, as exercised via its rule-making power. And notwithstanding provisions of the District of Columbia Family Court Act of 2001, the Family Court's General Rule D (c) does not authorize a MJ to conduct an adoption trial without the parties' consent.	Superior Court has recently changed the rule requiring consent of the parties for a case to be heard by an MJ in response to *In re A.O.T.;* now, no consent is required. *See* Rule Promulgation Order 11-04.
In re C.A.B., 4 A.3d 890 (D.C. 2010) Trial court denied grandmother's adoption petition, to which biological mother had consented, and granted foster parents' competing adoption petition.	**ADOPTION – COMPETING PETITIONS**	**FINDINGS/ STANDING** A parent's preference for her child's caretaker may be overridden only by clear and convincing evidence. Despite the MJ and AJ's erroneous view that foster parents' petition could be granted if preponderance of evidence showed that it was in the child's best interest, reversal	Because clear and convincing evidence supported one of the MJ's (alternative and independently sufficient) grounds for granting the foster parents' petition, and the AJ affirmed the ruling, the trial court did apply, and the evidence did meet, the clear and convincing standard necessary to grant foster parents' petition.	COA explained that where two competing adoption petitions have been consolidated for trial, and only one of the petitions has been ruled upon by the MJ, the AJ should: decline to consider, review or rule upon the matter raised in the motion for review of that order and dismiss the motion.

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		was not required because MJ had also found by clear and convincing evidence that custody with grandmother was not in the child's best interest. Grandmother had standing to challenge the standard of proof on appeal.		
In re C.L.O., 41 A.3d 502 (D.C. 2012) Unwed noncustodial father was unaware of his child at birth. He learned about child five months before being served with TPR notice around child's second birthday. Shortly thereafter, he was served with notice of proposed adoption by child's foster parent C.L.O. Two months later – after a paternity test – father sought visitation. MJ delayed adoption show	**ADOPTION**	**STANDARD OF PROOF** Because lower court's waiver of father's consent to adoption was supported by clear and convincing evidence, COA upheld adoption and a majority of the panel did not find it necessary to decide whether father grasped his opportunity interest. **FINDINGS** Although COA is	From majority and first concurring opinion: a fit, unwed, noncustodial father who has seized his opportunity interest has a right to presumptive custody of his child that can be overridden only by clear and convincing evidence that it is in child's best interests to be placed with someone else. Likewise, parental rights may only be terminated by clear and convincing evidence. So it was unnecessary to reach opportunity interest question.	From second concurring opinion: COA should decide whether father grasped his opportunity interest so father is given full assurance all facts were considered and to serve appearance of justice overall. (Father here did not grasp his opportunity interest.)

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cause hearing until child was three. Ultimately, MJ found by clear and convincing evidence that it was in child's best interests to waive father's consent to adoption by C.L.O.		technically reviewing AJ's decision, COA can still look to findings and conclusions of fact finder (the MJ), on which ruling is based.		
In re C.T., 724 A.2d 590 (D.C. 1999) Siblings with same mother but different fathers were subjects of TPR proceedings. Father of one sibling appealed TPR both as to his child and as to sibling with whom he had no legal parent-child relationship.	**TPR**	**STANDING** Non-parent did not have standing to appeal TPR.	To have standing to appeal TPR order, party's own legal rights must be impaired or denied. Therefore, father could only appeal TPR as to his child and not as to child's half-sibling.	

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In re D.B., 947 A.2d 443 (D.C. 2008) Father's counsel objected to admission of hearsay evidence (out-of-court statements of child) at hearing to reinstate father's visitation rights. Hearsay objection overruled and trial court banned visitation. Father argued for first time on appeal that admission of hearsay statements violated his due process rights.	**NEGLECT – VISITATION**	**PRESERVATION OF ISSUES FOR APPEAL-HEARSAY OBJECTION** Hearsay objection to out-of-court statements of child did not preserve due process challenge to admission of evidence.	Objection to admission on hearsay grounds, which was overruled, was insufficient to preserve due process claim raised for first time on appeal. While due process issue was not "frivolous," court need not directly confront it because issues raised for first time on appeal reviewed only for plain error (and none found).	
In re D.S.,52 A.3d 887 (D.C. 2012) Children removed from mother for physical abuse. Unwed biological father was in hospital at time of removal and although CFSA did not locate or notify him of FTM, father found out about it and participated by phone. Father did not live with children at their mother's home, but they stayed with him every	**NEGLECT**	**STANDARD OF PROOF** Fit parents have a right to presumptive custody of their children. To rebut this presumption, court must first find that parent failed to grasp opportunity interest in children; there is clear and convincing evidence that parent is unfit; or there is clear and convincing evidence that it is in child's best	Parental preference applies to temporary placement of a neglected child. Lower court's determination that it was in children's best interests to be committed to CFSA failed to sufficiently take into account the parental presumption. Court cannot treat government's lack of information as a reason to reject father as placement; court should have taken evidence on any disputed claims.	*Aff'd on reh'g*, 60 A.3d 1225 (D.C. 2013) (clear and convincing evidence is standard of proof necessary to rebut parental presumption in a neglect disposition when applied to a fit unwed, noncustodial father who has grasped his opportunity interest); *aff'd*, 88 A.3d 678 (D.C. 2014) (reiterating previous holdings, but also explicitly noting that the court was "express[ing] no opinion on

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weekend and he had close ongoing relationship with them. Father consistently requested custody of children. Mother waived probable cause; father did not. No allegations against father in neglect petition. No finding father was unfit. Mother stipulated to neglect and MJ committed children to CFSA over father's objection.		interests to be placed elsewhere. COA reversed trial court's order affirming disposition of commitment, and remanded case so trial court could incorporate parental presumption into its analysis.		the evidentiary standard for determining fitness").
In re E.R., 649 A.2d 10 (D.C. 1994) Mother appealed neglect adjudication finding that she had physically abused child. While appeal pending, child moved out of the country to live with relatives.	**NEGLECT – ADJUDICATION**	**MOOTNESS** Appeal not moot.	Appeal was not moot because adjudication could have serious future consequences for mother, who had three other children.	

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In re G.H., 797 A.2d 679 (D.C. 2002) Mother's boyfriend neglected child. Child was removed from the home at disposition. Mother did not appeal. Boyfriend appealed neglect adjudication and disposition.	**NEGLECT – ADJUDICATION, DISPOSITION**	**STANDING** Person acting *in loco parentis* has standing to appeal neglect adjudication but not disposition.	Boyfriend had standing to appeal neglect adjudication, which affected his reputational interest. Boyfriend did not have standing to appeal disposition of child, as boyfriend had no legal rights with respect to custody of child.	
In re J.W., 837 A.2d 40 (D.C. 2003) Father sought dismissal of neglect petition against him on grounds that mother had already entered into a stipulation. Trial court denied motion to dismiss and entered an adjudication of neglect based on father's sexual abuse of child. On appeal, father (who had related criminal charges pending) claimed neglect case should have been continued until completion of criminal case, to protect his Fifth Amendment rights.	**NEGLECT – ADJUDICATION**	**PRESERVATION OF ISSUES FOR APPEAL** Fifth Amendment claim not raised below not preserved for appeal.	Constitutional claims not made in the trial court are ordinarily unreviewable on appeal. COA deviates from this general rule only in exceptional situations and when necessary to prevent a clear miscarriage of justice apparent from the record. To invoke this plain error exception, the appellant must show that the alleged error is obvious and so clearly prejudicial to substantial rights as to jeopardize the very fairness and integrity of the proceeding. "Appellant neither asked the court for a continuance of the kind urged on appeal, nor did he ever actually invoke his Fifth Amendment privilege against self-incrimination. Rather, appellant attempted to dismiss the neglect petition on the ground previously discussed, that the court lacked jurisdiction to enter findings against him	

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			because neglect findings already had been made pursuant to [mother's] stipulation. The motion to dismiss made no reference to due process nor requested postponement until his then-pending criminal appeal was exhausted."	
Jordan v. Jordan, 14 A.3d 1136 (D.C. 2011) Trial court awarded joint legal and physical custody of two children to appellant mother and appellee father – despite allegations and findings of domestic violence by father against mother.	**CUSTODY DISPUTE**	**NECESSITY OF EXPLICIT FINDINGS** Even though trial court neglected to make express findings that Mr. Jordan did not pose a danger to Ms. Jordan and the children, and that joint custody would not significantly impair the children's emotional development, it is clear on the record that the trial court fully considered the evidence of domestic violence, and applied the relevant statutory provisions in making its custody determination.	D.C. Code § 16-914 (a-l) (2001) requires a court to make particular findings regarding the safety and emotional well-being of the children before awarding custody or visitation to a party who has committed an intrafamily offense. The record demonstrates that the court made the required findings implicitly when it determined that Mr. Jordan was a fit parent and that joint custody was in the children's best interests.	The trial court also appointed a "Parenting Coordinator/Special Master" pursuant to D.C. Super. Ct. R. Dom. Rel. R. 53, to mediate and make final determinations on any disputes concerning the children. COA held that Rule 53 authorized the trial court both to appoint the coordinator in this case and to delegate decision-making authority to the coordinator over day-to-day issues that did not implicate the court's exclusive responsibility to adjudicate the parties' rights to custody and visitation.
In re K.S., 966 A.2d 871 (D.C. 2009)	**NEGLECT – DISPOSITION**	**MOOTNESS**	In dicta (n.1), COA notes that any dispute over child's placement would become moot when child turned 21.	

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Mother appealed neglect adjudication and also appealed trial court's order placing child with relatives rather than in foster care. Child was almost 21 when appeal was decided.				
In re N.D., 909 A.2d 165 (D.C. 2006) Government moved orally to revoke protective supervision. Parent requested evidentiary hearing, which was held. On appeal from order revoking protective supervision, parent raised for first time that the motion should have been in writing.	**NEGLECT – REVOCATION OF PROTECTIVE SUPERVISION**	**PRESERVATION OF ISSUES FOR APPEAL** Challenge to procedure used to revoke protective supervision not raised below and thus not preserved for appeal.	Parent did not object to proceeding with evidentiary hearing on oral motion to revoke protective supervision and in fact is the party who requested the hearing. Therefore, parent's challenge to order revoking protective supervision on grounds that revocation required a written motion was raised for first time on appeal and would be heard only for plain error, but none found.	
In re N.P.*, 882 A.2d 241, 247 (D.C. 2005)* The COA rejected the father's challenge to the sufficiency of evidence for his child's neglect adjudication.	**NEGLECT**	**INVITED ERROR** A party may not take one position at trial and a contradictory position on appeal.	One of the father's claims of error concerned the fact that the child did not testify. The father, however, withdrew his initial request to have the child testify. The COA ruled that the father could not claim on appeal that the child's testimony was crucial to refute the evidence presented against him when it was he who decided that she would not be called to the stand.	

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CASE	TYPE OF CASE	PRIMARY ISSUES AND RULING	RATIONALE	COMMENTS
In re Phy.W., 722 A.2d 1263 (D.C. 1988) Foster mother sought review of court order returning custody of fraternal twins to their natural mother.	**NEGLECT - REUNIFICATION ORDER**	**STANDING** Foster parent had standing as aggrieved party to appeal reunification order.		
In re R.E.S., 978 A.2d 182 (D.C. 2009) Caregiver sought to adopt child. The father opposed the adoption. The court appointed an attorney to represent him.	**ADOPTION**	**INEFFECTIVE ASSISTANCE OF COUNSEL** COA recognized a statutory right to effective court-appointed counsel in cases where parental rights are subject to termination, including adoption; claim of ineffective assistance of counsel should be raised on direct appeal of order terminating rights/granting adoption without parental consent.		COA announced that it would apply the *Strickland v. Washington*, 466 U.S. 668 (1984), standard when evaluating claims that a parent was deprived of effective assistance in proceedings to terminate his or her parental rights. Accordingly, a parent must show both that counsel's performance was deficient and that actual prejudice resulted.
In re R.E.S., 19 A.3d 785 (D.C. 2011) COA remanded the record	**ADOPTION**	**INEFFECTIVE ASSISTANCE OF COUNSEL** Ineffectiveness claim	COA rejected father's argument that the trial judge's assessment of whether counsel's performance undermined confidence in the outcome of the adoption proceeding was	A termination proceeding, unlike a criminal trial, implicates more than just the personal liberty

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(not the case) for further inquiry concerning the performance of father's court-appointed counsel. The trial court held a trial, after which it ultimately rejected father's ineffectiveness claim. It concluded that he had not satisfied the prejudice prong of *Strickland*.		failed because father did not demonstrate prejudice.	flawed because she failed to factor in the principle of weighty consideration for his preference for a caretaker. Also, even though the COA is evaluating whether a parent's rights were violated, the best interest of the child is still the decisive consideration.	interest of one person – e.g. the parent's fundamental liberty interest in care, custody, and control of his child. The child's interests in stability, safety, security, and a normal family home are also at stake. A court need not address the deficient performance prong of *Strickland* if it can dispose of the ineffectiveness claim based on lack of prejudice alone.
In re S.C.M., 653 A.2d 398 (D.C. 1995) Child placed in third-party custody with caretaker who mistakenly believed he was the child's father. Trial court ordered that child remain in legal custody of the caretaker and his wife, but be placed in physical custody of the mother. This was an interim step towards full reunification. GAL	**NEGLECT – PLACEMENT**	**PRESERVATION OF ISSUES FOR REVIEW** GAL raised numerous issues in challenge to order placing child in parents' physical custody; some of those issues were not raised below and were thus reviewed on appeal for plain error only.	Issues not raised by GAL below were reviewed only for plain error on appeal; none found.	

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CASE	TYPE OF CASE	PRIMARY ISSUES AND RULING	RATIONALE	COMMENTS
appealed the order returning child to parental custody.				
In re S.S., 821 A.2d 353 (D.C. 2003) Child lived with great-aunt but visited with mother. Trial court found child had been sexually abused by older children in mother's home and entered a neglect adjudication based on mother's failure to protect child. On appeal, mother argued for first time that neglect petition could not be brought against a non-custodial parent.	**NEGLECT – ADJUDICATION**	**PRESERVATION OF ISSUES FOR APPEAL** Issue not preserved, thus COA used plain error review.	Mother's argument that neglect petition could not be pursued against non-custodial parent raised for first time on appeal and reviewed only for plain error, and none found.	

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CASE	TYPE OF CASE	PRIMARY ISSUES AND RULING	RATIONALE	COMMENTS
In re Ta.L., 149 A.3d 1060 (D.C. 2016) (en banc) In adoption appeal, birth parents argued they should have been permitted to immediately appeal earlier order in related neglect case changing permanency goal for their children from reunification to adoption.	**NEGLECT – PERMANENCY GOAL CHANGE**	**FINDINGS** Before changing the goal in a neglect case from reunification to adoption, the court must find: (1) D.C. has expended reasonable efforts to reunify the family; (2) the goals set for the parents were appropriate and reasonable; and (3) other vehicles for avoiding the pursuit of termination have been adequately explored.	Given the importance of permanency hearings, the impact on the direction of a neglect case when the permanency goal is changed from reunification to adoption, and the parental due process rights at stake, before changing a neglect permanency goal from reunification to adoption, the trial court must hold an evidentiary hearing where the government bears the burden of proof and specific findings must be made by the court.	The new findings requirement is also a practical corollary to the COA's separate holding in *In re Ta.L.* that such goal changes are now appealable as of right.

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CASE	TYPE OF CASE	PRIMARY ISSUES AND RULING	RATIONALE	COMMENTS
In re T.J.L., 998 A.2d 853 (D.C. 2010).	**ADOPTION**	**STANDING** Birth mother did not have standing to appeal adoption on the basis of deficient service of the notice and order to show cause on the putative father	To have standing to appeal an adoption order a party must assert a legal right that belongs to them. Therefore, mother could not appeal adoption on the basis of putative father's deficient service.	

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CASE	TYPE OF CASE	PRIMARY ISSUES AND RULING	RATIONALE	COMMENTS
In re T.L., 859 A.2d 1087 (D.C. 2004) On appeal from order banning visitation, parent raised constitutional challenge for first time. Government did not argue against COA considering claim and did not suggest that it do so only for plain error.	**NEGLECT – ORDER BANNING VISITATION**	**PRESERVATION OF ISSUES FOR REVIEW**	COA would hear constitutional challenge raised by mother for first time on appeal of order banning visitation, where government did not suggest in its brief that claim should not be heard or that it should be heard only for plain error. COA wary of applying technical rules – such as failure to preserve issue below – where fundamental rights of parent at stake.	

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CASE	TYPE OF CASE	PRIMARY ISSUES AND RULING	RATIONALE	COMMENTS
***In re T.R.J.**, 661 A.2d 1086, 1088 (D.C. 1995)* Appeal brought by a former neglect ward who argued that the trial court prematurely terminated his commitment.	**NEGLECT**	**MOOTNESS** Appeal moot, but issue is capable of repetition yet evading review	The COA recognized that by the time it published the decision, the appellant had reached age twenty-one. Because commitment cannot extend beyond age twenty-one, the case was technically moot, and it would have been impossible for the issue presented to again affect the appellant. However, the court reached the merits of the appeal anyway, concluding that the issue was "capable of repetition yet evading review." The COA observed it was "quite likely that other young people who flounder in the juvenile neglect system may face the same prospects as they near the age for termination of the court's jurisdiction and that the obligation of the government for their continued care cannot be fully litigated before they become age ineligible."	The "capable of repetition" exception is applicable in a case whether or not the mooted issue could again affect the same party.

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CASE	TYPE OF CASE	PRIMARY ISSUES AND RULING	RATIONALE	COMMENTS
In re T.W.M., 964 A.2d 595 (D.C. 2009) Case involved competing adoptions of foster parent and a relative. Trial court granted petition of foster parents. Parents appealed. GAL had supported petition of relative below and agreed with parents that trial court order should be reversed. GAL filed a brief to that effect.	**ADOPTION**	**STANDING** GAL did not have standing to participate as an appellant where GAL did not file a notice of appeal.	GAL who did not file appeal was not an appellant and brief submitted challenging trial court decision would not be considered. Even where appeal initiated by another party, GAL needed to file own notice of appeal to be treated as an appellant.	

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CASE	TYPE OF CASE	PRIMARY ISSUES AND RULING	RATIONALE	COMMENTS
In re T.W.M., 18 A.3d 815 (D.C. 2011) After a new trial before a new judge, the trial court again granted foster parent's adoption petition and denied relative's petition, which parents supported.	**ADOPTION**	**LEGAL STANDARD** Trial court did not abuse its discretion when it found that adoption by relative would be contrary to child's best interests because it was supported by clear and convincing evidence; and trial court did not fail to consider child's opinion of her own best interests.	Trial court did not abuse its discretion when it chose not to question child directly or indirectly about her custodial preference.	As opposed to the first appeal, this time the relative (who filed the adoption petition that the trial court denied), appealed. Also unlike the first appeal, the GAL filed a brief and the COA considered the GAL's arguments.

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CASE	TYPE OF CASE	PRIMARY ISSUES AND RULING	RATIONALE	COMMENTS
In re Ty.B., 878 A.2d 1255 (D.C. 2005)	**NEGLECT-ADJUDICATION**	**PRESERVATION OF ISSUES FOR REVIEW - HEARSAY OBJECTION** Hearsay objection does not preserve other challenges to admission of the evidence over hearsay objection		

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In re Wyler, 46 A.3d 396 (D.C. 2012) The trial court dismissed proceedings for involuntary commitment of Mr. Wyler, and the government was not seeking to re-hospitalize him. The government conceded its appeal was moot, but appealed the trial court's exclusion of proposed expert testimony from a social worker, claiming it was an issue capable of repetition yet evading review.	**CIVIL COMMITMENT**	**MOOTNESS** Appeal is moot	Although technically moot, appeal raises an important procedural question (whether a social worker could qualify as an expert on mental illness and dangerousness), that is likely to recur (the government claimed it would continue to proffer social workers as experts), and is likely to be moot in the future too because of the short timelines for civil commitment. COA declined to reach the merits of the question though until the COA could decide the issue on a fully developed record, since here the government proffered almost no information, legal or factual, at trial.	

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CASE	TYPE OF CASE	PRIMARY ISSUES AND RULING	RATIONALE	COMMENTS
Kenda v. Pleskovic, 39 A.3d 1249 (D.C. 2012) The case involved child custody litigation in D.C., Indiana, and London. In this matter, ex-wife appealed from D.C. Superior Court's 2009 denial of her motion to reaffirm the (original) 2002 D.C. custody order and declare a 2006 Indiana custody order void as a matter of law.	**JURISDICTION**	**JUDICIAL ESTOPPEL**	Ex-wife is judicially estopped from challenging the Indiana court's jurisdiction. She voluntarily availed herself of that jurisdiction; affirmatively argued that the Indiana court had jurisdiction; and in resolving the couple's London litigation, formally agreed that Indiana then had jurisdiction over all matters relating to the welfare of the couple's child. Accordingly, ex-wife cannot now take the opposite view to the COA out of self interest. (Only after she received the Indiana court's 2006 decision awarding ex-husband custody did ex-wife raise a jurisdictional issue based on the District's initial 2002 child-custody determination under the Uniform Child Custody Jurisdiction Enforcement Act.)	Judicial estoppel occurs when a party switches legal positions in two related judicial proceedings, taking one side of an issue at trial and saying the opposite on appeal. The purpose of a reviewing court applying this doctrine is to protect the integrity of the judicial process by prohibiting parties from deliberately changing positions according to the exigencies of the moment.

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CASE	TYPE OF CASE	PRIMARY ISSUES AND RULING	RATIONALE	COMMENTS
Khawam v. Wolfe, 84 A.3d 558 (D.C. 2014) The trial court granted the parties a divorce and, among other things, granted father sole custody of parties' child, and subsequently denied mother's motion to modify custody order. Mother appealed.	**CUSTODY**	**NECESSITY OF FINDINGS** Trial court abused its discretion by summarily denying mother's motion to modify without even mentioning the motion's important allegations.	Trial court was required either to conduct an evidentiary hearing or to explain with specificity why such a hearing was not required, despite the serious allegations raised by mother's motion to modify, where the motion had several attachments readily showing that there were material facts in dispute.	

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CASE	TYPE OF CASE	PRIMARY ISSUES AND RULING	RATIONALE	COMMENTS
V.K. v. Child & Family Servs. Agency of D.C., 14 A.3d 628 (D.C. 2011) Father challenged decision of CFSA hearing officer, which upheld the agency's decision to place his name on the DC Child Protection register.	**APPEAL OF FAIR HEARINGS OFFICE DECISION**	The hearing officer's decision (about whether the report that petitioner abused child by hitting him was substantiated) was properly supported by substantial evidence. That is, the evidence did not compel the hearing officer to conclude that the charge of substantiated abuse was unsupported by credible evidence or against the weight of the evidence.	Father gave "shifting" and "non-specific" answers regarding how the children's injuries occurred, which provided a basis for the hearing officer to discount his credibility and to accord greater weight to the "aggregation" of consistent hearsay reports to the contrary.	Hearing officer also did not err as a matter of law when she found, based on social worker's testimony and photos of scars on boy's body, that it was more likely than not that petitioner repeatedly hit son with cord or other instrument, and treated that discipline as excessive.

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CASE	TYPE OF CASE	PRIMARY ISSUES AND RULING	RATIONALE	COMMENTS
W.H. v. D.W., 78 A.3d 327 (D.C. 2013) Biological father appealed order granting joint legal and physical custody of his children to their brother and maternal grandmother, where the trial court issued its order pursuant to the District of Columbia Safe and Stable Homes for Children and Youth Act of 2007 (the Act).	**CUSTODY**	**STANDING** Brother met one of the criteria for having standing under the Act because he had resided continually in the same house as the children since their births and had primarily assumed the duties and obligations for which a parent was legally responsible, and he satisfied general standing requirements because he was threatened with deprivation of a legal right created by statute.	Although grandmother alone did not satisfy the Act's standing requirements, pursuant to other provisions of the Act, the family court did not err in including her in the custody award based on the children's best interests. Brother and grandmother adequately rebutted statutory presumption in favor of parental custody.	

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List of Cases Included in Case Summaries
(*appearing in alphabetical order*)

1. *In re A.B.*, 486 A.2d 1167 (D.C. 1984).
2. *In re A.B.*, 999 A.2d 36 (D.C. 2010).
3. *In re A.O.T.*, 10 A.3d 160 (D.C. 2010).
4. *In re A.R.*, 679 A.2d 470 (D.C. 1996).
5. *In re Amey*, 40 A.3d 902 (D.C. 2012).
6. *In re C.A.B.*, 4 A.3d 890 (D.C. 2010).
7. *In re C.I.T.*, 369 A.2d 171 (D.C. 1977).
8. *In re C.L.O.*, 41 A.3d 502 (D.C. 2012).
9. *In re C.T.*, 724 A.2d 590 (D.C. 1999).
10. *In re D.B.*, 879 A.2d 682 (D.C. 2005).
11. *In re D.B.*, 947 A.2d 443 (D.C. 2008).
12. *In re D.M.*, 771 A.2d 360 (D.C. 2001).
13. *In re D.R.*, 718 A.2d 149 (D.C. 1998).
14. *In re D.S.*, 52 A.3d 887 (D.C. 2012).
15. *In re E.R.*, 649 A.2d 10 (D.C. 1994).
16. *In re G.H.*, 797 A.2d 679 (D.C. 2002).
17. *In re J.A.P.*, 749 A.2d 715 (D.C. 2000).
18. *In re J.J.*, 111 A.3d 1038 (D.C. 2015).
19. *In re J.W.*, 806 A.2d 1232 (D.C. 2002).
20. *In re J.W.*, 837 A.2d 40 (D.C. 2003).
21. *In re K.S.*, 966 A.2d 871 (D.C. 2009).
22. *In re Ko.W.*, 774 A.2d 296 (D.C. 2001).
23. *In re L.L.*, 653 A.2d 873 (D.C. 1995).
24. *In re M.F.*, 55 A.3d 373 (D.C. 2012).
25. *In re M.L.DeJ.*, 310 A.2d 834 (D.C. 1973).
26. *In re N.D.*, 909 A.2d 165 (D.C. 2006).
27. *In re N.P.*, 882 A.2d 241 (D.C. 2005).
28. *In re Na.H.*, 65 A.3d 111 (D.C. 2013).
29. *In re Phy.W.*, 722 A.2d 1263 (D.C. 1998).
30. *In re R.E.S.*, 19 A.3d 785 (D.C. 2011).
31. *In re R.E.S.*, 978 A.2d 182 (D.C. 2009).

32. *In re R.M.G.*, 454 A.2d 776 (D.C. 1982).
33. *In re S.C.M.*, 653 A.2d 398 (D.C. 1995).
34. *In re S.J.*, 772 A.2d 247 (D.C. 2001).
35. *In re S.L.G.*, 110 A.3d 1275 (D.C. 2015).
36. *In re S.S.*, 821 A.2d 353 (D.C. 2003).
37. *In re T.G.M.*, 154 A.3d 95 (D.C. 2016).
38. *In re T.J.L.*, 998 A.2d 853 (D.C. 2010).
39. *In re T.L.*, 859 A.2d 1087 (D.C. 2004).
40. *In re T.R.J.*, 661 A.2d 1086 (D.C. 1995).
41. *In re T.W.M.*, 18 A.3d 815 (D.C. 2011).
42. *In re T.W.M.*, 964 A.2d 595 (D.C. 2009).
43. *In re Ta.L.*, 149 A.3d 1060 (D.C. 2016).
44. *In re Ti.B.*, 762 A.2d 20 (D.C. 2000).
45. *In re Ty.B.*, 878 A.2d 1255 (D.C. 2005).
46. *In re Wyler*, 46 A.3d 396 (D.C. 2012).
47. *Jordan v. Jordan*, 14 A.3d 1136 (D.C. 2011).
48. *Kenda v. Pleskovic*, 39 A.3d 1249 (D.C. 2012).
49. *Khawam v. Wolfe*, 84 A.3d 558 (D.C. 2013).
50. *V.K. v. Child & Family Servs. Agency of D.C.*, 14 A.3d 628 (D.C. 2011).
51. *W.H. v. D.W.*, 78 A.3d 327 (D.C. 2013).

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.

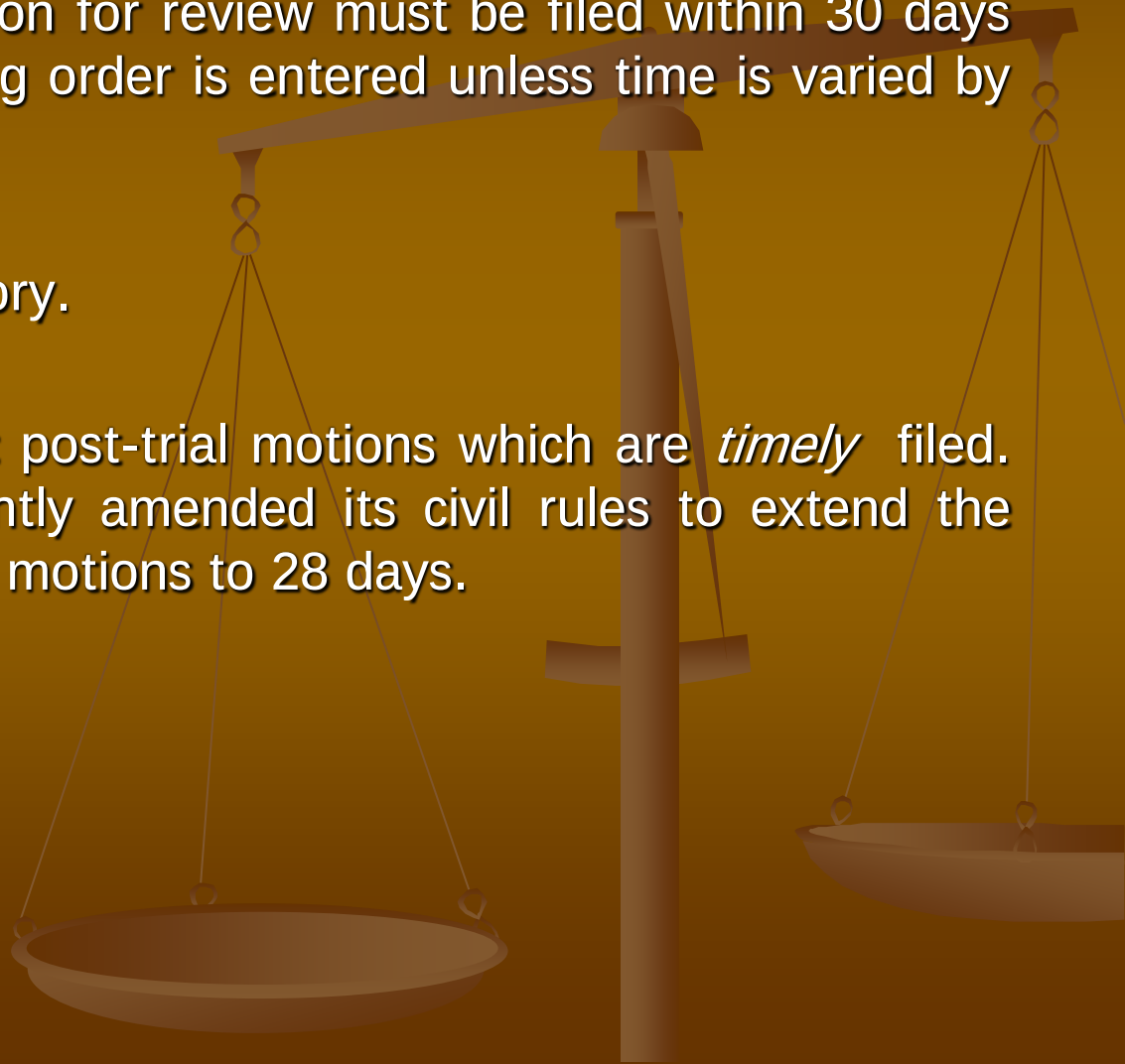
Jurisdiction

- 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

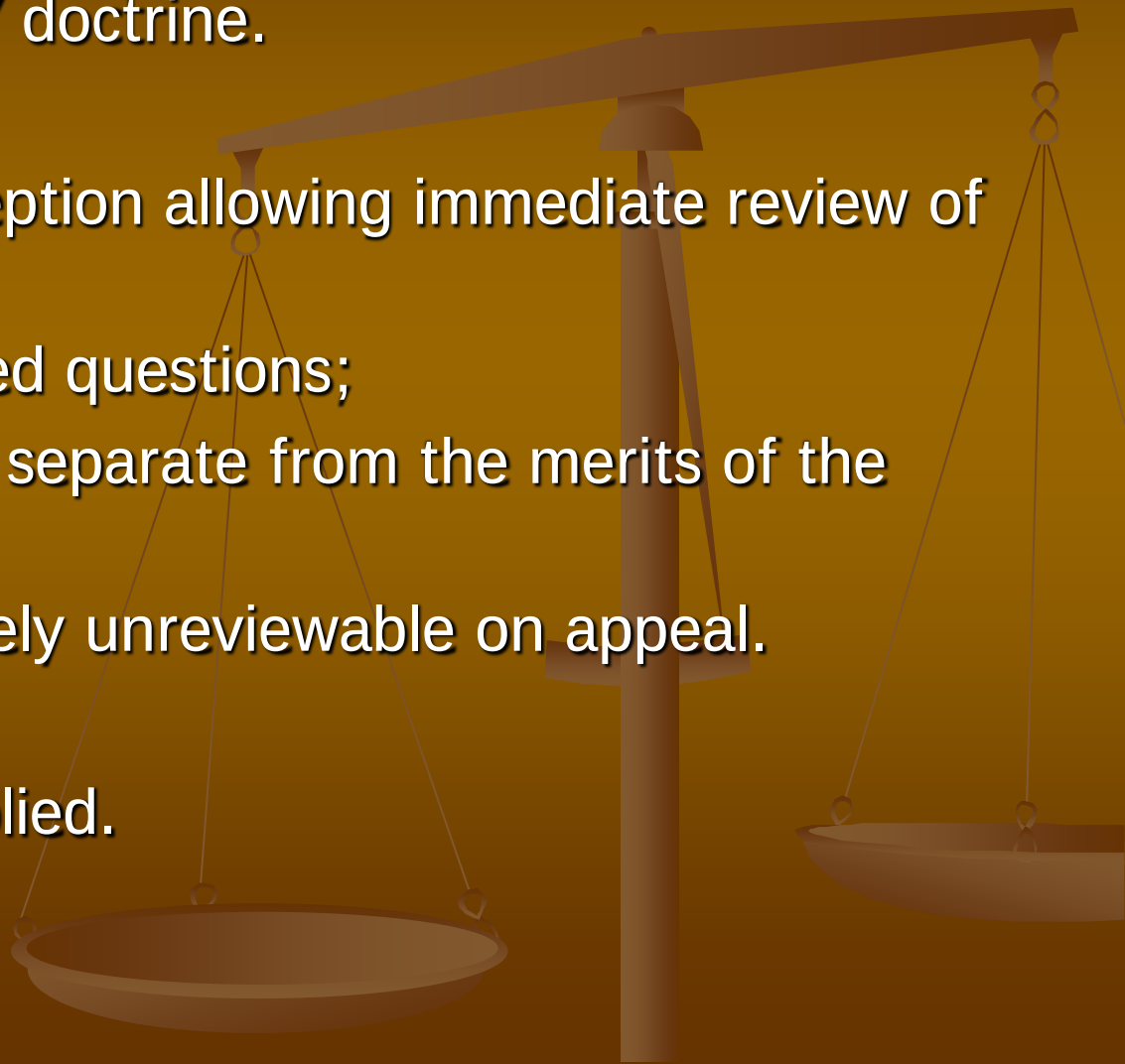
- By statute, certain non-final orders may be immediately reviewed:
  - Injunctions.
  - Receivers, guardians, or conservators.
  - Changing or affecting the possession of property.
  - Pretrial detentions.
  - Shelter care determinations.
  - Referral of a juvenile for prosecution as an adult.
  - Evidentiary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

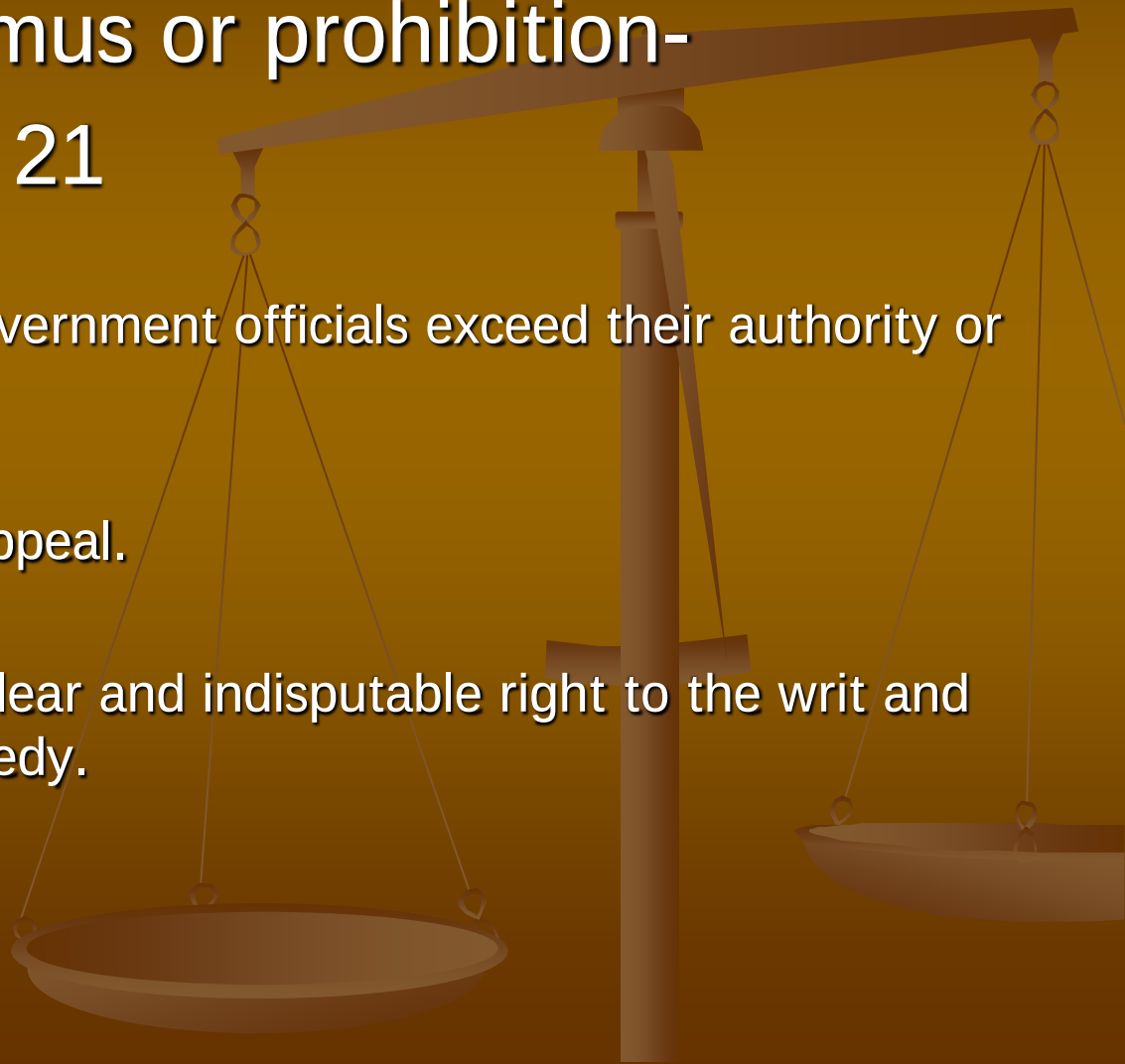
Interlocutory Review

- 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.

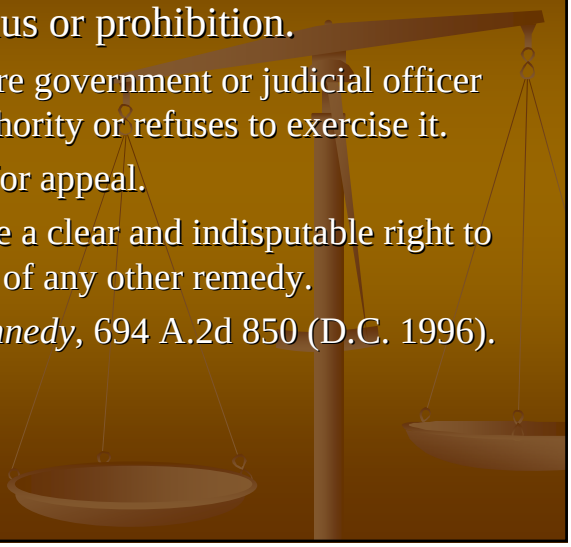
- Stays. D.C. App. R. 8.
  - Must be sought in the trial court first unless impracticable.
  - Motion must include reasons for granting the requested relief and supporting facts.
  - Motion must attach any materials supporting claim that facts are subject to dispute.
  - Motion must attach any relevant 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
Law Librarian	(202) 879-2767

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