IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 11-9138

FINAL REPORT OF THE TASK FORCE FOR POST-TRIAL RULES IN CASES INVOLVING TERMINATION OF THE PARENTAL RELATIONSHIP

Submitted to the Supreme Court of Texas on October 14, 2011

TO THE HONORABLE SUPREME COURT:

I. INTRODUCTION

The Task Force for Post-Trial Rules in Cases Involving Termination of the Parental Relationship was established on July 15, 2011 by the Texas Supreme Court, pursuant to Misc. Docket No. 11-9138. The Task Force was charged with the responsibility to advise the Supreme Court regarding rules to be adopted or revised for post-trial proceedings in cases involving termination of the parental relationship.

The need for a revision of the rules arose from House Bill 906, enacted by the 82nd Legislature (Act of May 5, 2011, 82nd Leg., R.S., ch. 75) and effective September 1, 2011, which amended Sections 107.013, 107.016, 109.002(a) and 263.405 of the Family Code, regarding the appointment of attorneys to represent indigent litigants on appeal, and providing for the accelerated disposition of appeals from orders terminating parental rights or appointing the Department of Family and Protective Services (DFPS) as managing conservator. HB 906 required that the amended rules be adopted by March 1, 2012. The Task Force was directed to consider revisions to Rule 28, Texas Rules of Appellate Procedure; the adoption of new rules; the general impact of chapter 13, Texas Civil Practice and Remedies Code; and any other matter that may assist in implementing HB 906. The Supreme Court directed the Task Force to advise the Court by August 15, 2011, what rules or rules amendments should be adopted before September 1, 2011, if any. The Supreme Court further directed the Task Force to make final recommendations to the Court by October 17, 2011, on the rules to be adopted, to be presented to the Supreme Court Advisory Committee at its regular meeting on October 21-22, 2011.

The following persons served on the Task Force:

Hon. Dean Rucker, Chair – Presiding Judge, Seventh Administrative Judicial Region of Texas; Judge, 318th Family District Court; *Midland*

Tina Amberboy – Executive Director, Permanent Judicial Commission for Children, Youth and Families, *Austin*

Sandra D. Hachem – Senior Assistant County Attorney, Office of the Harris County Attorney, *Houston*

Hon. Debra H. Lehrmann – Justice, Supreme Court of Texas, *Austin*

Jo Chris Lopez – Langley & Banack, *San Antonio*

Jack Marr – Marr, Meier & Bradicich L.L.P., *Victoria*

Hon. Ann Crawford McClure – Chief Justice, Court of Appeals, Eighth District of Texas, *El Paso*

Richard R. Orsinger – McCurley, Orsinger, McCurley, Nelson & Downing, L.L.P., *San Antonio*

Georganna L. Simpson – Simpson Martin, L.L.P., *Dallas*

Charles A. Spain, Jr. – Senior Staff Attorney, Court of Appeals, First District of Texas, *Houston*

Court Liaison: Hon. Eva Guzman – Justice, Supreme Court of Texas, *Austin*

Rules Attorney: Marisa Secco – Rules Attorney, Supreme Court of Texas, *Austin*

II. PROCESS OF REVIEW

The Task Force held its first meeting by teleconference on August 10, 2011. Additional teleconferences were held on August 12, September 15, and September 28, and a formal meeting was held in Austin on October 7, 2011. The focus of the first two teleconferences was to advise the Supreme Court, by August 15, 2011, what rules or rules amendments, if any, should be adopted before September 1, 2011. The Task Force determined that the only rules amendments that needed to be proposed on an exigent basis for implementation on September 1, 2011, were amendments to Rule 20.1, Texas Rules of Appellate Procedure, governing the process for establishing indigence in a suit filed by a governmental entity in which termination of the parent-child relationship or managing conservatorship is requested for purposes of entitling an appellant to a clerk's record and reporter's record on appeal, without advance payment of costs. That recommendation is the subject of an interim report submitted to the Supreme Court of Texas on August 15, 2011. Members of the Task Force presented the interim report to the Supreme Court Advisory Committee on September 27, 2011. The Supreme Court of Texas thereafter promulgated its Order Adopting Amended Texas Rules of Appellate Procedure 20.1 and 25.1 on August 31, 2011.

The Task Force held additional telephone conferences on September 15 and September 28, 2011, and an in-person meeting on October 7, 2011. These meetings involved discussions about possible changes to various other Rules of Civil Procedure and Rules of Appellate Procedure discussed below.

III. RECOMMENDATIONS

A. RULES RELATING TO FINDINGS OF FACT AND CONCLUSIONS OF LAW

After a non-jury trial, any party may request that the trial court set out in findings of fact and conclusions of law the factual and legal bases for its judgment. Tex. R. Civ. P. 296. The Task Force was aware that the normal time sequence of requesting findings of fact and conclusions of law under Texas Rules of Civil Procedure 296-299a did not interface well with the deadlines associated with accelerated appeals. In an accelerated appeal: the notice of appeal must be filed within 20 days after judgment is signed. Tex. R. App. P. 26.1(b). The clerk's record and reporter's record must be filed within 10 days after the notice of appeal is filed, Tex. R. App. P

35.1(b); and the appellant's brief must be filed within 20 days of the filing of the later of when the clerk's record was filed or the reporter's record was filed. Tex. R. App. P. 38.6(a). In appeals from final judgments, the deadline for requesting findings of fact and conclusions of law is 20 days after judgment is signed. Tex. R. Civ. P. 296. The trial court's findings and conclusions are due 20 days after the request is filed. Tex. R. Civ. P. 297. If the court misses the deadline, an aggrieved party can file a reminder of past due findings and conclusions up to 30 days after the original request was filed. Tex. R. Civ. P. 297. The court then has until 40 days after the original request was filed to file its findings and conclusions. Tex. R. Civ. P. 297. If findings and conclusions are filed, any party may, within 10 days of when the original findings and conclusions are filed, file a request for specified additional or amended findings or conclusions. If they do, such additional or amended findings are due 10 days after the request is filed. Tex. R. Civ. P. 298. In many cases it would be impossible to reconcile the timetable for findings and conclusions with the deadlines in an accelerated appeal from a final judgment. In sum, the length of time involved in obtaining findings of fact and conclusions of law can take as many as 80 days after the date the final order was signed.

To cure this problem, the Task Force suggests that this Court adopt a separate rule of procedure for findings of fact and conclusions of law following non-jury trials in parental termination and cases in which DFPS is appointed managing conservator of children. A proposed Rule 299b, Texas Rules of Civil Procedure, is attached to this report as Appendix A. All of the procedures associated with findings and conclusions after a non-jury trial in which a parent's rights are terminated or DFPS is appointed managing conservator of a child are gathered into this one rule. To compress the time associated with the process, in this proposed rule, trial courts are required to automatically file, at the time the judgment is signed and in a document separate from the judgment, written findings of fact and conclusions of law. See proposed Tex. R. Civ. P. 299b(a). If the trial court fails to do so, any party may within 10 days file a notice of past due findings and conclusions, which extends the deadline to file findings and conclusions until the 20th day after judgment. If the trial court still fails to file findings and conclusions, any party may, after perfecting an appeal, file a motion with the court of appeals for an order directing the trial court to do so. See proposed Tex. R. Civ. P. 299b(a). When findings and conclusions are filed, any party may within 5 days file a request for specified additional or amended findings and conclusions, which are due within 10 days of when they are requested. See proposed Tex. R. Civ. P. 299b. The maximum length of time for obtaining findings and conclusions is thus reduced from a maximum of 80 days to a maximum of 45 days, and the process for securing the assistance of the appellate court in seeing that findings and conclusions are filed by the trial court is moved to the front of the appellate process. If findings and conclusions, or amended findings and conclusions, are filed by the trial court after the clerk's record is prepared, they may be forwarded to the court of appeals in a supplemental clerk's record pursuant to Rule 34.5(c).

The Task Force believes that these proposals maintain the general features of the existing procedures for securing findings and conclusions while compressing the time frame to be consistent with the deadlines in proposed Rule 28.4 that are set out below.

B. RULES RELATING TO ACCELERATED APPEALS

1. Mandate

The Task Force observed that the existing practices regarding the issuance of mandate by the appellate court clerks at the conclusion of an appeal sometimes entails delays that are not consistent with House Bill 906's policy of expediting the appellate process. The Task Force recommends an amendment to Rule 18.6 by changing the title of the rule and adding an additional paragraph, contained in proposed Rule 18.6(b), stating that in cases subject to proposed Rule 28.4, discussed below, the clerk of the appellate court must issue the mandate on the first date that it may issue under Rule 18.1, Texas Rules of Appellate Procedure. The proposed changes are contained in Appendix B to this report.

2. Contest to Indigence

On September 1, 2011, amendments to Rule 20.1, Texas Rule of Appellate Procedure became effective. The Task Force recommends additional amendments to Rule 20.1 that are reflected in Appendix B. Proposed Rule 20.1(e) would contain an additional paragraph stating that a presumption of indigence established under Rule 20.1(a)(3) may be challenged by filing a contest that articulates facts showing a good faith belief that the parent is no longer indigent due to a material and substantial change in the parent's financial circumstances. The requirement of a change of circumstances precludes relitigating indigence determinations on facts already presented to the court. The Task Force recommends that the contest not be required to be sworn or limited to personal knowledge, since the sworn, admissible evidence presented at the hearing on the contest will adequately protect the integrity of the process. The proposed rule change provides that the contest be filed within 3 days of the filing of a notice of appeal. This short period reflects the Task Force's desire that the contest procedure should not delay the appellate process.

Proposed Rule 20(g) would contain an additional paragraph stating that, where a presumption of indigence has been established as provided by Rule 20.1(a)(3), the burden of production and persuasion is on the party filing the contest to prove that the parent is no longer indigent due to a material and substantial change in financial circumstances since the time of the last determination of indigence. The Task Force believes the presumption of indigence is rebuttable, but the burden to overcome that presumption should be on the party filing the contest.

The Task Force recommends amending Rule 20.1(i)(1) & (4) to make clear that the procedures of Rule 20.1(i) apply both when a contest is filed to an affidavit of indigence and when a contest is filed to a presumption of indigence. Without this change, these rules apply only to the contest of an affidavit of indigence.

The Task Force recommends amending Rule 20.1(i) by adding a subpart (5), pertaining to appellate court review of an order sustaining a contest of a finding of indigence. Review may be sought by filing a motion in the court of appeals, within 10 days after the trial court rules on the contest, or within 10 days after the notice of appeal is filed, whichever is later. The unsuccessful

party to the challenge may file the motion. No charge may be assessed for the filing of the motion. The trial court clerk and court reporter are required to prepare, certify and file their respective records. Both records must be provided without advance payment of the cost of the record. The Task Force also considered a proposal that would prohibit appellate review of an order denying a contest. After some discussion, the Task Force was divided whether the unsuccessful party should have the right to appellate review of an order denying a contest. As such a matter is grounded in policy considerations, the Task Force makes no recommendation and defers that issue to the wisdom of the Supreme Court Advisory Committee and the Court for a determination.

3. Accelerated Appeals

The Task Force recommends that Rule 25.1, Texas Rules of Appellate Procedure be altered slightly to reflect that a notice of appeal must indicate whether the case involves a parental termination or child protection case. The Task Force believes that the clerks of the courts of appeals should be advised of this fact at the very beginning of the appellate process, so that necessary administrative steps can be taken from the outset. The notice of appeal is likely the first document to be received by the clerk of the appellate court, so it is the best place to give first notice. *See* Appendix B. The Task Force recommends a similar addition to the docketing statement under Rule 32.1, Texas Rules of Appellate Procedure, discussed below.

The Task Force recommends that Rule of Appellate Procedure 28 be changed by adding a section 28.4 entitled "Accelerated Appeals in Parental Termination and Child Protection Cases," which gathers together in one place the appellate rules unique to accelerated appeals in parental termination and child protection cases. Gathering into one rule the procedures relating to appeals in these cases will better inform the practitioners on what to do, and will diminish the need for the practitioner to correlate provisions scattered throughout several different appellate rules. The new rules proposed by the Task Force are included in Appendix B to this report. The following explanation sets out the Task Force's rationale for these proposed rule changes.

Proposed Rule 28.4, title, and Rule 28.4(a). Both the title to proposed Rule 28.4 and subsection (a) of the proposed rule extend the effect of new Rule 28.4 only to cases involving termination of parental rights and to child protective services cases. Section 3 of House Bill 906 amended Family Code Section 109.002(a) to provide in part:

> The procedures for an accelerated appeal under the Texas Rules of Appellate Procedure apply to an appeal in which the termination of the parent-child relationship is in issue.

The new statutory language thus extends to all parental termination cases, including cases filed by a private party and cases filed by DFPS.

Section 4 of House Bill 906 amended 263.405(a), Texas Family Code to read:

> (a) An appeal of a final order rendered under this subchapter is governed by the procedures [rules of the supreme court] for accelerated appeals in civil cases under the

Texas Rules of Appellate Procedure.

Chapter 263 of the Family Code relates to cases involving placement of children under the care of the DFPS. Section 263.405 falls under Subchapter E, entitled "Final Orders for Child Under Department Care." Final orders rendered under Subchapter E include cases in which DFPS is seeking termination of parental rights and/or sole managing conservatorhip of a child without terminating parental rights. Tex. Fam. Code § 263.404. Thus, the title of proposed Rule 28.4, and the scope of the rule described in Rule 28.4(a), reflect that Rule 28.4 applies to all parental termination cases, as well as to suits filed by DFPS for managing conservatorship.

Proposed Rule 28.4(a)(1)-(3). *Application and Definitions.* Proposed Rule 28.4(a) sets out the scope of the rule and contains definitions of terms used in the rule.

Proposed Rule 28.4(a)(1) provides that Rule 28.4 prevails over all contrary appellate rules, including procedures pertaining to accelerated appeals that are not parental termination or child protection cases. This is necessary to ensure that lawyers appealing a parental termination or child protection orders can rely upon the deadlines and procedures in Rule 28.4 as opposed to the many other deadlines and procedures set out elsewhere in the Rules of Appellate Procedure.

Proposed Rule 28.4(a)(2)(A) defines a "parental termination case" as a suit in which termination of the parent-child relationship is an issue. Such proceedings are brought under Chapter 161, Texas Family Code. This definition includes both private parental termination cases and parental termination cases brought by DFPS.

Proposed Rule 28.4(a)(2)(B) defines "child protection case" as a suit affecting the parent-child relationship filed by a governmental agency for appointment as sole managing conservator. This definition correlates with Family Code Chapter 262, entitled "Procedures in Suit By Governmental Entity to Protect Health and Safety of Child." Orders under Chapter 262, Subchapter E, are final orders appointing the DFPS as managing conservator of a child without terminating the parent-child relationship. The term "child protection case" used in proposed Rule 28.9(a)(1) is meant to include such cases under Subchapter E of Chapter 262. The term "suit affecting the parent-child relationship" is defined in Section 101.032(a), Texas Family Code.

Proposed Rule 28.4(b). *Perfecting Appeal.* Proposed Rule 28.4(b) indicates that perfecting appeal from a judgment in a parental termination or child protection case is done in compliance with Rule 25.1, within the time period specified in Rule 26.1(b), which is within 20 days after the judgment or order is signed. This is the same deadline that exists for other accelerated appeals under Rule 26.1(b).

Proposed Rule 28.4(c). *Appellate Record.* Proposed Rule 28.4(c) deals with the appellate record in parental termination or child protection cases. The "appellate record" means the clerk's record and the reporter's record. *See* Tex. R. App. P. 34.1.

Proposed Rule 28.4(c)(1). *Responsibility for Preparation of Reporter's Record.* Proposed Rule 28.4(c)(1) carries the duty of the trial court beyond the requirement in Rule 35.3(c) that "[t]he trial

and appellate courts are jointly responsible for ensuring that the appellate record is timely filed." Under the proposed rule, the trial court has the duty to direct the court reporter to commence preparation of the reporter's record when that duty arises under Rule 35.3(b). The Task Force believed that much of the delay in this type of appeals results from a conflict between the reporter's duty to report hearings and trials on an ongoing basis and the duty to prepare records for appeals. The Task Force realizes that, as a practical matter, the court reporter must attend hearings and trial at the direction of the trial judge. The Task Force believed that the court reporter cannot be singled out as the sole reason why a reporter's record might not be filed on an accelerated basis, and that placing the obligation on the trial court to ensure that the reporter's record is prepared on an accelerated basis would best accomplish the Legislature's goal of an expedited appeal.

Proposed Rule 28.4(c)(2). *Time to File Record.* Proposed Rule 28.4(c)(2) provides that the appellate record must be filed in the court of appeals within 30 days of when the notice of appeal is filed. The Task Force believed that Rule 35.1(b)'s deadline in accelerated appeals of 10 days after notice of appeal was filed would be impractical in appeals that could well involve trials lasting a week or longer. The 30-day deadline is substantially faster than Rule 35.1(a)'s 120-day deadline in cases where the extended appellate timetable has been triggered.[1]

Proposed Rule 28.4(c)(3). *Extension of Time.* Proposed Rule 28.4(c)(3) provides that the appellate court can grant extensions of the deadline for filing the appellate record, only for good cause and not to exceed 60 days cumulatively, absent extraordinary circumstances. The extension procedure under the proposed rule varies from the procedure in non-accelerated appeals where under Rule 37.3(a)(1), if the record is not timely filed, then the appellate court clerk must send notice that the record must be filed in 30 days – tantamount to an automatic 30-day extension. The Task Force considered language that would limit the appellate court to one extension of the deadline to file the record but decided against that because extraordinary circumstances could arise that would constitute good cause for a subsequent extension. The Task Force agreed that capping extensions at 60 days, absent extraordinary circumstances, was in keeping with the goal of HB 906.

Proposed Rule 28.4(c)(4). *If No Clerk's Record Filed Due to Appellant's Fault.* Proposed Rule 28.4(c)(4) discusses the consequences of the failure to file the appellate record. If the clerk's record is not filed within 90 days after the notice of appeal was filed, and the delay resulted from the appellant's failure to pay or make arrangements to pay for the record and the appellant is not entitled to a free record, then under the proposed rule, after providing notice and an opportunity to cure, the appellate court *must* dismiss the appeal, unless extraordinary circumstances excuse the appellant's failure. The direction to dismiss the appeal absent extraordinary circumstances contrasts with Rule 37.3(b), which says that in such a situation, the appellate court *may* dismiss the appeal for want of prosecution.

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[1] Under TRAP 35.1, the deadline to file the record is: in accelerated appeals, 10 days after notice of appeal is filed; in appeals from final judgment where the timetable is not extended, within 60 days after the judgment is signed; in appeals from final judgment where the timetable is extended, 120 days after the judgment is signed, and in restricted appeals, 30 days after the notice of appeal is filed.

Proposed Rule 28.4 (c)(5). *If No Reporter's Record Filed Due to Appellant's Fault.* If the clerk's record is filed but the reporter's record is not filed within 90 days after the notice of appeal was filed as a result of the appellant's failure to request, or pay for, or make satisfactory arrangements to pay for, the reporter's record, then the proposed rule requires the appellate court to give the appellant notice and an opportunity to cure, failing which the court "shall" decide the appeal based on the clerk's record alone. The proposed rule provides that the appellate court can allow the appellant to file the reporter's record after the notice and opportunity to cure has expired, only if the delay is excused by extraordinary circumstances. This is consistent with Rule 37.3(c) which says that when the deadline is missed, the appellate court must give the appellant notice and an opportunity to cure before disposing of the appeal only on complaints that do not require a reporter's record.

Rule 35.3(c) says that the trial and appellate courts are jointly responsible to see that the appellate record is timely filed. Under Rule 35.3(c), if the missed deadline is not the appellant's fault, the appellate court *must* allow a late-filed record, and the court *may* do so even if the delay is the appellant's fault. The Task Force contemplates that an appellant cannot be made to forfeit the right to an appellate record if he or she was not at fault for the missed deadline. However, the more lenient standard of Rule 35.3(c), that an appellate court *may* allow a later-filed appellate record even if the delay is appellant's fault, would not apply to parental termination and child protection cases under Proposed Rule 28.4(b)(5) once notice and the opportunity to cure has expired. The filing of the appellate record after notice and an opportunity to cure is allowed only upon extraordinary circumstances.

Proposed Rule 28.4(c)(6). *Restriction on Preparation Inapplicable.* Section 13.003, Civil Practice and Remedies Code provides that an indigent appellant is not entitled to a free appellate record unless the trial judge first finds that the appeal is not frivolous and that the clerk's record and reporter's record are needed to decide the issue presented by the appeal. Proposed Rule 28.4(c)(6) states that Section 13.003 does not apply to appeals in parental termination and child protection cases. Section 13.003 may likely be modified by the proposed rule in accordance with Section 22.004, Texas Government Code, which provides that rules adopted by the Court repeal all conflicting laws on procedure in civil cases, including statutes enacted by the Legislature. Section 22.004 requires the Court to list each article or section of general law or each part of an article or section of general law that is repealed or modified in any way.

Proposed Rule 28.4(d). *Appellate Briefs.* Proposed Rule 28.4(d)(1) provides that normal rules for accelerated appeals apply to the filing of briefs, with the two exceptions noted below. Under Rule 38.6, in an accelerated appeal, the appellant's brief is due 20 days after the clerk's record is filed, and appellee's brief is due 20 days after appellant's brief is filed. Appellant's reply brief is due 20 days after appellee's brief is filed. Rule 38.6(d) permits appellate courts to shorten or extend the time for filing a brief. The contents of motions to extend time are prescribed in Rule 10.5(b). The requirement includes "the facts relied on to reasonably explain the need for an extension." In contrast, proposed Rule 28.4(d) requires the party seeking an extension to show good cause, not just a reasonable explanation. The other exception created by the proposed rule is that the appellate court cannot grant extensions of the deadline to file a brief that exceed 40 days

cumulatively, absent extraordinary circumstances.

Proposed Rule 28.4(e). *Motions for Rehearing in the Court of Appeals.* Proposed Rule 28.4(e)(1) incorporates the standards for extending the time for filing a motion for rehearing. However, such extensions cannot exceed 30 days cumulatively, absent extraordinary circumstances. If a motion for rehearing or motion for rehearing en banc is timely filed, the appellate court is required to rule on it within 60 days of when it is filed. If no ruling is issued by then, then the motion is overruled by operation of law on the 61st day after it was filed.

Proposed Rule 28.4(f). *Motions for En Banc Reconsideration.* Proposed Rule 28.4(f) incorporates the standards for extending the time for filing a motion for en banc reconsideration. However, such extensions cannot exceed 30 days cumulatively, absent extraordinary circumstances. If a motion for rehearing or motion for rehearing en banc is timely filed, the appellate court is required to rule on it within 60 days of when it is filed. If no ruling is issued by then, then the motion is overruled by operation of law on the 61st day after it was filed.

Proposed Rule 28.4(g). *Petitions For Review.* Proposed Rule 28.4(g) prohibits a party from requesting an extension of the deadline for filing a petition for review, absent extraordinary circumstances. If a petition for review is timely filed, the Supreme Court is required to rule on it within 120 days, or it will be overruled by operation of law on the 121st day.

Proposed Rule 28.4(h). *Mandates Accelerated.* Proposed Rule 28.4(h) requires the clerk of the appellate court that rendered the judgment to issue its mandate in accordance with Rule 18.6. That rule, proposed by the Task Force and included in Appendix B to this report, provides for the issuance of mandate on an accelerated basis.

Proposed Rule 28.4(i). *Remand for New Trial.* Proposed Rule 28.4(i) provides that, if the appellate court reverses and remands the case for a new trial, the appellate court's judgment must instruct the trial court to commence the new trial within 180 days after the mandate is issued. The Task Force believed this was adequate time for the parties to complete discovery on events transpiring since the first trial, while still setting an outside limit on the delay in putting the case to trial.

IV. CONFORMING RULES AMENDMENTS

Proposed Rule 32.1(g). *Docketing Statement.* The Task Force proposes an amendment to Rule 32.1(g) to provide that the docketing statement reflect whether the appeal is an accelerated appeal in a parental termination or child protection case.

Proposed Rule 35.1(b). The amendment to this rule alerts the appellate attorney that proposed Rule 28.4 provides a different time within which the appellate record must be filed.

Proposed Rule 38.6(d). *Modifications of Filing Time.* This amendment alerts the appellate attorney that proposed Rule 28.4 differs in the manner in which it handles extensions of time to file appellate briefs.

Proposed Rule 49.8. *Extensions.* This amendment alerts the appellate attorney that proposed Rule 28.4 provides a different manner for addressing extensions of time generally.

Proposed Rule 53.7(f). *Extension of Time.* This amendment alerts the appellate attorney that proposed Rule 28.4 provides an exception to the general rule for extensions of time on a petition for review.

V. ADDITIONAL MATTERS

Appellate Time Standards for Resolution of Parental Termination and Child Protection Cases. The Task Force also discussed the appropriateness of a rule imposing a deadline on appellate courts to dispose of parental termination and child protection cases similar to Rule 6 of the Rules of Judicial Administration.[2] Rule 6 imposes a duty on trial courts to dispose of cases within certain time standards, but there is no corresponding rule for appellate courts. In a recent study performed by the Institute for Court Management, the study notes the American Bar Association (ABA) model rules recommend appellate resolution of dependency cases within 175 days from the filing of the notice of appeal. As used in the study, "dependency cases" were defined as "cases involving child abuse and neglect, termination of parental rights, child in need of assistance (CINA), custody, termination of parental rights (TPR), and adoption." *See* INST. FOR COURT MGMT., EXPEDITING DEPENDENCE APPEALS: EVALUATING AND IMPROVING THE PROCESS 3 (2011) (citing American Bar Association and National Council of Juvenile and Family Court Judges proposed appellate timetables). Appellate judges expressed concern about the idea of having timelines imposed on the disposition of the cases, so the Task Force did not include a timeline in the recommended rules. Ultimately, the Task Force determined that it should be left to the Legislature to impose such a requirement.

Style of Appeals. The Task Force observed that successful implementation of specific procedures for parental termination and child protection cases will depend on the clerks' ability to easily differentiate these cases from other civil matters. Currently, there is not an easy means of quickly identifying the cases as exists in juvenile cases which are statutorily required to be styled "In the matter of ____." TEX. FAM. CODE §§ 53.04(b), 56.01(j). While the Family Code requires that petitions filed under Title 5 be styled "In the interest of _____, a child," the Family Code does not provide a similar provision for the styling of appeals from such suits. TEX. FAM. CODE § 102.008(a). Further, because Title 5 of the Family Code applies to all suits affecting the parent-child relationship, its application extends to a broader range of cases in addition to parental termination and child protection cases.

The styling of appeals in parental termination and child protection cases is inconsistent among the courts of appeals. Some use the format "In re [child's initials]," while others follow the general styling format: "[Appellant's name] v. Department of Family and Protective Services." The style "In re [child's initials]" is also confusingly similar to the styling of original proceedings. *See* TEX. R. APP. P. 52.1 (requiring petition in original proceeding to be styled "*In re* [name of relator]"). As discussed above, the Task Force recommends that the rules relating to the

[2] Tex. R. Jud. Admin. 6.

docketing statement and notice of appeal be amended to require a party to indicate if a case is a parental termination or child protection case, which may be of some assistance to the clerks in identifying the cases subject to the special procedure. However, a special format of case style would also be helpful so that the courts can quickly pull all relevant cases by simply searching for the particular language in the style. The Task Force believes that a case style unique to parental termination and child protection cases would be of assistance to the appellate courts, permitting the courts to immediately recognize and track these cases on their dockets, and dispose of them in a manner consistent with the rules proposed by the Task Force. The Task Force believes this is an issue which should be addressed by the Legislature.

Anders Briefs. The appellate courts have concluded an *Anders* brief may be filed by an appointed attorney for an appealing party in a parental termination or child protection case if the attorney concludes the appeal is frivolous and without merit, and the brief is filed in a manner consistent with the requirements of *Anders v. California*, 386 U.S. 738 (1967).[3] In satisfying such procedure, the *Anders* brief presents a professional evaluation of the record demonstrating why there are no arguable grounds to be advanced. The attorney must accompany the brief with a motion to withdraw from representation. The attorney must also certify that a copy of the brief was delivered in person or by mail, by certified and by first-class mail, to the party at the party's last known address. The appellate court will send notice to the appellant of his or her right to examine the appellate record and file a pro se response within a certain number of days of the appellate court's notice. If no response is filed within the requisite time, the appellate court will proceed to determine if the appeal is frivolous and without merit without a pro se response.

The Task Force considered a proposal to include *Anders* brief procedures in proposed Rule 28.4. It was the Task Force's consensus that as *Anders* has not been codified in the Texas Rules of Appellate Procedure, we should not include such a procedure solely for parental termination and child protection cases. The Task Force recommends that the Supreme Court and the Court of Criminal Appeals consider whether *Anders* brief procedures should be included in the Texas Rules of Appellate Procedure or remain governed by case law.

Interlocutory Appeal from Trial Court Determination of Indigence. The Task Force discussed whether a party has a right to an interlocutory appeal from a trial court determination on indigence in appointments governed by Chapter 107, Texas Family Code. The Task Force agreed this was a matter which should be addressed through legislation.

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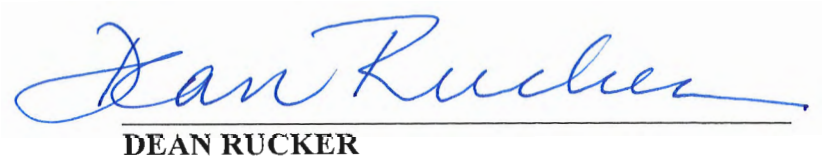
[3] All fourteen of the intermediate courts of appeals in Texas have held that the *Anders* procedure applies in CPS cases. *See In re K.D.*, 127 S.W.3d 66, 67 (Tex. App.—Houston [1st Dist.] 2003, no pet.); *In re K.M.*, 98 S.W.3d 774, 777 (Tex. App.—Fort Worth 2003, no pet.); *Taylor v. Tex. Dep't of Protective & Regulatory Servs.*, 160 S.W.3d 641, 646-47 (Tex. App.—Austin 2005, pet. denied); *In re EMLTCR*, No. 04-09-00660-CV (Tex. App.—San Antonio); *In re D.D.*, 279 S.W.3d 849, 850 (Tex. App.—Dallas 2005, pet. denied); *In re PMH*, No. 06-10-00008-CV (Tex. App.—Texarkana 2010); *In re A.W.T.*, 61 S.W.3d 87, 88 (Tex. App.-Amarillo 2001, no pet.); *In re J.B.*, 296 S.W.3d 618, 619 (Tex. App.-El Paso 2009, no pet.); *In re L.D.T.*, 161 S.W.3d 728, 731 (Tex. App.—Beaumont 2005, no pet.); In re E.L.Y., 69 S.W.3d 838, 841 (Tex. App.-Waco 2002, no pet.); *In re LKH*, No. 11-10-00080-CV (Tex. App.—Eastland 2011); *In re K.S.M.*, 61 S.W.3d 632, 634 (Tex. App.—Tyler 2001, no pet.); *Porter v. Tex. Dep't of Protective & Regulatory Servs.*, 105 S.W.3d 52, 56 (Tex. App.-Corpus Christi 2003, no pet.); *In re D.E.S.*, 135 S.W.3d 326, 329 (Tex. App.-Houston [14th Dist.] 2004, no pet.).

VI. CONCLUSION

I am honored to have been selected to chair this Task Force of distinguished lawyers and judges. On behalf of the members of the Task Force, allow me to express our gratitude for the privilege of assisting the Court in the exercise of its important role in overseeing the rules of procedure that govern litigation in the courts of our State.



DEAN RUCKER
Chair of the Task Force

APPENDIX A

RULE 299b. FINDINGS OF FACT AND CONCLUSIONS OF LAW IN SUIT FOR TERMINATION OF THE PARENT-CHILD RELATIONSHIP OR SUIT BY GOVERNMENTAL ENTITY FOR MANAGING CONSERVATORSHIP

(a) *Time to File Findings of Fact and Conclusions of Law.* In a suit for termination of the parent-child relationship or a suit affecting the parent-child relationship filed by a governmental entity for managing conservatorship that is tried without a jury, the court shall file its findings of fact and conclusions of law at the time the final order is signed. Findings of fact shall be filed with the clerk of the court as a document separate and apart from the final order. The court shall cause a copy of its findings and conclusions to be mailed to each party in the suit.

If the court fails to file findings of fact and conclusions of law at the time the final order is signed, any party may, within ten days after the final order is signed, file with the clerk and serve on all other parties in accordance with Rule 21a a "Notice of Past Due Findings of Fact and Conclusions of Law" which shall be immediately called to the attention of the court by the clerk. Upon filing this notice, the time for the court to file findings of fact and conclusions of law is extended to twenty days from the date the final order was signed. If the court does not file findings of fact and conclusions of law within twenty days from the date the final order is signed, any party may, after an appeal is perfected, file a motion with the appellate court for an order directing the trial court to prepare findings of fact and conclusions of law.

(b) *Additional or Amended Findings of Fact and Conclusions of Law.* After the court files original findings of fact and conclusions of law, any party may file with the clerk of the court a request for specified additional or amended findings or conclusions. The request for these findings shall be made within five days after the filing of the original findings and conclusions by the court. Each request made pursuant to this rule shall be served on each party to the suit in accordance with Rule 21a.

The court shall file any additional or amended findings and conclusions that are appropriate within ten days after such request is filed, and cause a copy to be mailed to each party to the suit. No findings or conclusions shall be deemed or presumed by any failure of the court to make any additional findings or conclusions.

APPENDIX B

18.6 Mandate in Accelerated Appeals and Parental Termination and Child Protection Cases

(a) *Interlocutory Orders.* In an accelerated appeal, ~~T~~the appellate court's judgment on an appeal from an interlocutory order takes effect when the mandate is issued. The court may issue the mandate with its judgment or delay the mandate until the appeal is finally disposed of. If the mandate is issued, any further proceeding in the trial court must conform to the mandate.

(b) *Parental Termination and Child Protection Cases.* In cases subject to Rule 28.4, the clerk of the appellate court that rendered the judgment must issue the mandate on the first date that it may issue under Rule 18.1.

Rule 20. When Party is Indigent

20.1 Civil Cases.

...

(e) ***Contest to ~~Affidavit~~ Indigence.*** The clerk, the court reporter, the court recorder, or any party may challenge an affidavit that is not accompanied by a TAJF certificate by filing — in the court in which the affidavit was filed — a contest to the affidavit. The contest must be filed on or before the date set by the clerk if the affidavit was filed in the appellate court, or within 10 days after the date when the affidavit was filed if the affidavit was filed in the trial court. The contest need not be sworn.

In cases in which a presumption of indigence has been established as provided by Rule 20.1(a)(3), the presumption of indigence may be challenged. The contest must articulate facts showing a good faith belief that the parent is no longer indigent due to a material and substantial change in the parent's financial circumstances. The contest must be filed in the trial court within three days after notice of appeal is filed. The contest need not be sworn.

...

(g) ***Burden of Proof.*** If a contest is filed, the party who filed the affidavit of indigence must prove the affidavit's allegations. If the indigent party is incarcerated at the time the hearing on a contest is held, the affidavit must be considered as evidence and is sufficient

to meet the indigent party's burden to present evidence without the indigent party's attending the hearing.

In cases in which a presumption of indigence has been established as provided by Rule 20.1(a)(3), the party filing the contest must prove that the parent is no longer indigent due to a material and substantial change in the parent's financial circumstances since the most recent determination of indigence.

...

(i) ***Hearing and Decision in the Trial Court.***

(1) ***Notice Required.*** If the affidavit of indigence is filed in the trial court or a presumption of indigence has been established as provided by Rule 20.1(a)(3) and a contest is filed, or if the appellate court refers a contest to the trial court, the trial court must set a hearing and notify the parties and the appropriate court reporter of the setting.

(2) ***Time for Hearing.*** The trial court must either conduct a hearing or sign an order extending the time to conduct a hearing:

(A) within 10 days after the contest was filed, if initially filed in the trial court; or

(B) within 10 days after the trial court received a contest referred from the appellate court.

(3) ***Extension of Time for Hearing.*** The time for conducting a hearing on the contest must not be extended for more than 20 days from the date the order is signed.

(4) ***Time for Written Decision; Effect.*** Unless — within the period set for the hearing — the trial court signs an order sustaining the contest, the affidavit's allegations will be deemed true or the presumption of indigence will continue unabated, and the party will be allowed to proceed without advance payment of costs.

(5) ***Review of Order Sustaining Contest.*** If the court sustains a contest, the unsuccessful party may seek review of the court's order by filing a motion with the appellate court without advance payment of costs. The motion shall be filed within 10 days after the order sustaining the contest is signed, or within 10 days after the notice of appeal is filed, whichever is later. The trial court clerk and court reporter shall prepare, certify and file the clerk's record and reporter's record of the indigence hearing, if any, and the hearing on the contest, which shall be provided without advance payment of costs.

Rule 25. Perfecting Appeal

25.1. Civil Cases

...

(d) *Contents of Notice.* The notice of appeal must:

(1) identify the trial court and state the case's trial court number and style;

(2) state the date of the judgment or order appealed from;

(3) state that the party desires to appeal;

(4) state the court to which the appeal is taken unless the appeal is to either the First or Fourteenth Court of Appeals, in which case the notice must state that the appeal is to either of those courts;

(5) state the name of each party filing the notice;

(6) in an accelerated appeal, state that the appeal is accelerated and state whether it is a parental termination or child protection case, as defined in Rule 28.4;

(7) in a restricted appeal:

(A) state that the appellant is a party affected by the trial court's judgment but did not participate — either in person or through counsel — in the hearing that resulted in the judgment complained of;

(B) state that the appellant did not timely file either a postjudgment motion, request for findings of fact and conclusions of law, or notice of appeal; and

(C) be verified by the appellant if the appellant does not have counsel.

(8) state, if applicable, that the appellant is presumed indigent and may proceed without advance payment of costs as provided in Rule 20.1(a)(3).

Rule 28. Accelerated, Agreed and Permissive Appeals in Civil Cases

...

28.4 Accelerated Appeals in Parental Termination and Child Protection Cases

(a) *Application and Definitions.*

(1) The rules of appellate procedure, including the rules for accelerated appeals, apply to parental termination and child protection cases, except that, to the extent of any conflict between those rules and Rule 28.4, Rule 28.4 prevails.

(2) In this rule:

(A) a "parental termination case" means a suit in which termination of the parent-child relationship is at issue.

(B) a "child protection case" means a suit affecting the parent-child relationship filed by a governmental entity for sole managing conservatorship.

(b) *Perfecting Appeal.* An appeal under this rule is perfected by filing a notice of appeal in compliance with Rule 25.1 within the time allowed by Rule 26.1(b) or as extended by Rule 26.3.

(c) *Appellate Record.*

(1) *Responsibility for Preparation of Reporter's Record.* In addition to the responsibility imposed upon the trial court in Rule 35.3(c), the trial court shall direct the official or deputy reporter to commence the preparation of the reporter's record when the reporter's responsibility to prepare, certify and timely file the reporter's record arises under Rule 35.3(b).

(2) *Time to File Record.* The appellate record must be filed within 30 days after the notice of appeal is filed.

(3) *Extension of Time.* The appellate court may grant an extension of time to file a record upon a showing of good cause; however, the extension or extensions granted may not exceed 60 days cumulatively, absent extraordinary circumstances.

(4) *If No Clerk's Record Filed Due to Appellant's Fault.* If the clerk's record was not filed by the 90th day after the notice of appeal was filed because the appellant failed to pay or make arrangements to pay for the clerk's record, after giving the appellant notice and opportunity to cure, the appellate court must dismiss the appeal for want of prosecution pursuant to Rule 37.3 and 42.3, absent extraordinary circumstances, unless the appellant was entitled to proceed without payment of costs

(5) *If No Reporter's Record Filed Due to Appellant's Fault.* If the clerk's record has been filed, but no reporter's record has been filed by the 90th day after the notice of appeal was filed because appellant failed to comply with Rule 37.3(c), after giving the appellant notice and opportunity to cure, the appellate court shall decide those issues or points that do not require a reporter's record for a decision, absent extraordinary circumstances, unless appellant was entitled to proceed without payment of costs.

(6) *Restriction on Preparation Inapplicable.* Section 13.003 of the Civil Practice & Remedies Code shall not apply to an appeal from a parental termination or child protection case.

(d) *Appellate Briefs.* All briefs must be filed within the time required for accelerated appeals under Rule 38.6. An extension of time may only be granted upon motion complying with Rule 10.5(b) if the requesting party shows good cause for the extension; however, the extension or extensions of time for such party may not exceed 40 days cumulatively, absent extraordinary circumstances.

(e) *Motions for Rehearing in the Court of Appeals.* An extension of time for a motion for rehearing may only be granted upon motion complying with Rule 10.5(b) if the requesting party shows good cause for the extension; however, the extension or extensions of time for such party may not exceed 30 days cumulatively, absent extraordinary circumstances. If a timely motion for rehearing is filed, the appellate court must grant or deny such motion within 60 days after it is filed. If an appellate court fails to grant or deny a decision on a motion for rehearing within 60 days after it is filed, it will be considered overruled by operation of law on the 61st day after the motion is filed.

(f) *Motions for En Banc Reconsideration.* An extension of time for a motion for en banc reconsideration may only be granted upon motion complying with Rule 10.5(b) if the requesting party shows good cause for the extension; however, the extension or extensions of time for such party may not exceed 30 days cumulatively, absent extraordinary circumstances. If a timely motion for en banc reconsideration is filed, the appellate court must grant or deny such motion within 60 days after it is filed. If an appellate court fails to grant or deny a decision on a motion for en banc reconsideration within 60 days after it is filed, it will be considered overruled by operation of law on the 61st day after the motion is filed.

(g) *Petitions for Review.* A party may not file a motion to extend the time for filing a petition for review, absent extraordinary circumstances. If a petition for review is timely filed, the Supreme Court must issue an order on the petition as provided under Rule 56.1, within 120 days after it is filed, or it will be considered denied by operation of law on the 121st day after the petition for review is filed.

(h) *Mandates Accelerated.* The clerk of the appellate court that rendered the judgment in a parental termination or child protection case must accelerate the issuance of the mandate pursuant to Rule 18.6.

(i) *Remand for New Trial.* If the judgment of the appellate court reverses and remands a parental termination or child protection case for a new trial, the judgment must instruct the trial court to commence the new trial no later than 180 days after the mandate is issued by the appellate court.

Rule 32. Docketing Statement

32.1. Civil Cases

Upon perfecting the appeal in a civil case, the appellant must file in the appellate court a docketing statement that includes the following information:

(a) (1) if the appellant filing the statement has counsel, the name of that appellant and the name, address, telephone number, fax number, if any, and State Bar of Texas identification number of the appellant's lead counsel; or (2) if the appellant filing the statement is not represented by an attorney, that party's name, address, telephone number, and fax number, if any;

(b) the date the notice of appeal was filed in the trial court and, if mailed to the trial court clerk, the date of mailing;

(c) the trial court's name and county, the name of the judge who tried the case, and the date the judgment or order appealed from was signed;

(d) the date of filing of any motion for new trial, motion to modify the judgment, request for findings of fact, motion to reinstate, or other filing that affects the time for perfecting the appeal;

(e) the names of all other parties to the trial court's judgment or the order appealed from, and:

(1) if represented by counsel, their lead counsel's names, addresses, telephone numbers, and fax numbers, if any; or

(2) if not represented by counsel, the name, address, and telephone number of the party, or a statement that the appellant diligently inquired but could not discover that information;

(f) the general nature of the case — for example, personal injury, breach of contract, or temporary injunction;

(g) whether the appeal's submission should be given priority ~~or~~, whether the appeal is an accelerated one under Rule 28 or another rule or statute, and whether the appeal is an accelerated one in a parental termination or child protection case under Rule 28.4;

(h) whether the appellant has requested or will request a reporter's record, and whether the trial was electronically recorded;

(i) the name of the court reporter;

(j) whether the appellant intends to seek temporary or ancillary relief while the appeal is pending;

(k) (1) the date of filing of any affidavit of indigence;

(2) the date of filing of any contest;

(3) the date of any order on the contest; and

(4) whether the contest was sustained or overruled;

(l) whether the appellant has filed or will file a supersedeas bond; and

(m) any other information the appellate court requires.

Rule 35. Time to File Record; Responsibility for Filing Record

35.1. Civil Cases

The appellate record must be filed in the appellate court within 60 days after the judgment is signed, except as follows:

(a) if Rule 26.1(a) applies, within 120 days after the judgment is signed;

(b) if Rule 26.1(b) applies, within 10 days after the notice of appeal is filed unless Rule 28.4 applies; or

(c) if Rule 26.1(c) applies, within 30 days after the notice of appeal is filed.

38.6. Time to File Briefs

(a) *Appellant's Filing Date.* Except in a habeas corpus or bail appeal, which is governed by Rule 31, an appellant must file a brief within 30 days — 20 days in an accelerated appeal — after the later of:

(1) the date the clerk's record was filed; or

(2) the date the reporter's record was filed.

(b) *Appellee's Filing Date.* The appellee's brief must be filed within 30 days — 20 days in an accelerated appeal — after the date the appellant's brief was filed. In a civil case, if the appellant has not filed a brief as provided in this rule, an appellee may file a brief within 30 days — 20 days in an accelerated appeal — after the date the appellant's brief was due.

(c) *Filing Date for Reply Brief.* A reply brief, if any, must be filed within 20 days after the date the appellee's brief was filed.

(d) *Modifications of Filing Time.* Except as provided in Rule 28.4, o~~O~~n motion complying with Rule 10.5(b), the appellate court may extend the time for filing a brief and may postpone submission of the case. A motion to extend the time to file a brief may be filed before or after the date a brief is due. The court may also, in the interests of justice, shorten the time for filing briefs and for submission of the case.

49.8. Extensions of Time

Except for cases subject to Rule 28.4, a~~A~~ court of appeals may extend the time for filing a motion for rehearing or en banc reconsideration if a party files a motion complying with Rule 10.5(b) no later than 15 days after the last date for filing the motion.

53.7. Time and Place of Filing

(a) *Petition.* Unless the Supreme Court orders an earlier filing deadline, the petition must be filed with the Supreme Court clerk within 45 days after the following:

(1) the date the court of appeals rendered judgment, if no motion for rehearing or en banc reconsideration is timely filed; or

(2) the date of the court of appeals' last ruling on all timely filed motions for rehearing or en banc reconsideration.

(b) *Premature Filing.* A petition filed before the last ruling on all timely filed motions for rehearing and en banc reconsideration is treated as having been filed on the date of, but after, the last ruling on any such motion. If a party files a petition for review while a motion for rehearing or en banc reconsideration is pending in the court of appeals, the party must include that information in its petition for review.

(c) *Petitions Filed by Other Parties.* If a party files a petition for review within the time specified in 53.7(a) — or within the time specified by the Supreme Court in an order granting an extension of time to file a petition — any other party required to file a petition may do so within 45 days after the last timely motion for rehearing is overruled or within 30 days after any preceding petition is filed, whichever date is later.

(d) *Response.* Any response must be filed with the Supreme Court clerk within 30 days after the petition is filed.

(e) *Reply*. Any reply must be filed with the Supreme Court clerk within 15 days after the response is filed.

(f) *Extension of Time*. Except for cases subject to Rule 28.4, t~~T~~he Supreme Court may extend the time to file a petition for review if a party files a motion complying with Rule 10.5(b) no later than 15 days after the last day for filing the petition. The Supreme Court may extend the time to file a response or reply if a party files a motion complying with Rule 10.5(b) either before or after the response or reply is due.

(g) *Petition Filed in Court of Appeals*. If a petition is mistakenly filed in the court of appeals, the petition is deemed to have been filed the same day with the Supreme Court clerk, and the court of appeals clerk must immediately send the petition to the Supreme Court clerk.