

**IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE**

1. IN RE: AMENDMENTS TO TENNESSEE RULES OF APPELLATE PROCEDURE

Filed January 15, 2004

ORDER

The Court adopts the attached new Rule 8A, effective July 1, 2004, subject to approval by resolutions of the General Assembly. New Rule 8A establishes special procedures to expedite appeals as of right in termination of parental rights proceedings. In addition to adopting new Rule 8A, the Court also adopts the attached Advisory Commission Comments to the specified rules of appellate procedure; the new Comments provide appropriate cross-references to Rule 8A.

FOR THE COURT:

FRANK F. DROWOTA, III,

CHIEF JUSTICE

TENNESSEE RULES OF APPELLATE PROCEDURE
RULE 8A

APPEAL AS OF RIGHT IN TERMINATION OF PARENTAL
RIGHTS CASES

Rule 8A. Appeal as of Right in Termination of Parental Rights Cases. This rule shall govern any appeal as of right in a termination of parental rights proceeding. The other rules of appellate procedure also apply to such a appeal; however, when a provision of this rule conflicts with another rule of appellate procedure, the provision of this rule shall control.

(a) Appeal as of Right; Time for Filing Notice of Appeal. C (1) It shall not be necessary for a party to file a motion to alter or amend the judgment or a motion for new trial in order to obtain appellate review of the judgment of the trial court.

(2) In addition to meeting the requirements of Rule 3(f) (A Content of the Notice of Appeal @), a notice of appeal in a termination of parental rights proceeding shall indicate that the appeal involves a termination of parental rights case.

(b) Stay or Injunction Pending Appeal. C Any party may obtain review of an order entered pursuant to Rule 62 of the Tennessee Rules of Civil Procedure or Rule 39(g)(4) of the Rules of Juvenile Procedure granting, denying, or altering the conditions of a stay of execution pending appeal, or granting, denying, or altering the conditions of additional or modified relief pending appeal; such appellate review shall be conducted pursuant to Rule 7 of the Rules of Appellate

Procedure.

(c) Content and Preparation of the Record. C In addition to the papers excluded from the record pursuant to Rule 24(a), any portion of a juvenile court file of a child dependency, delinquency or status case that has not been properly admitted into evidence at the termination of parental rights trial shall be excluded from the record.

(1) Any transcript of the evidence or proceedings filed pursuant to Rule 24(b) shall be filed within 45 days after filing the notice of appeal. If the appellee has objections to the transcript as filed, the appellee shall file objections thereto with the clerk of the trial court within 10 days after service of notice of the filing of the transcript. Unless the time has been extended by order, if the appellant fails to file within 45 days from the filing of the notice of appeal either the transcript or statement of evidence or notice that no transcript or statement is to be filed, the clerk of the trial court shall provide written notice within 10 days to the clerk of the appellate court of the appellant's failure to comply with this subdivision, with a copy provided to counsel and pro se parties.

(2) Any statement of the evidence or proceedings filed pursuant to Rule 24(c) shall be filed within 45 days after filing the notice of appeal. If the appellee has objections to the statement as filed, the appellee shall file objections thereto with the clerk of the trial court within 10 days after service of the declaration and notice of the filing of the statement.

(3) If no transcript or statement of the evidence or proceedings is to be filed, the appellant shall, within 15 days after filing the notice of appeal, file with the clerk of the trial court and serve upon the appellee a notice that no transcript or statement is to be filed. If the appellee deems a transcript or statement of the evidence or proceedings to be necessary, the appellee shall, within 15 days after service of the appellant's notice, file with the clerk of the trial court and serve upon the appellant a notice that a transcript or statement is to be filed. The appellee shall prepare the transcript or statement at the appellee's own expense or apply to the trial court for an order requiring the appellant to assume the expense. Subdivisions (c)(1) and (c)(2) of this rule are applicable to the transcript or statement filed by the appellee under this subdivision, except that the appellee under this subdivision shall perform the duties assigned to the appellant in subdivisions (c)(1) and (c)(2) of this rule and the appellant under this subdivision shall perform the duties assigned to the appellee in such subdivisions.

(d) Approval of the Record by the Trial Judge or Chancellor. C After the expiration of the 10-day period for objections by the appellee, the trial judge shall approve the transcript or statement of the evidence and shall authenticate the exhibits. If not approved within 20 days after the expiration of the period for filing objections by the appellee, the transcript or statement of the evidence and the exhibits shall be deemed to have been approved and shall be so considered by the appellate court, except in cases where such approval did not occur by reason of the death or inability to act of the trial judge, which cases shall be governed by Rule 24(f).

(e) Completion and Transmission of the Record. C The record on appeal shall be assembled, numbered and completed by the clerk of the trial court and transmitted to the clerk of the appellate court within 5 days of the approval of the record by the trial judge or by operation of the automatic-approval provision of subdivision (d), whichever occurs first.

(f) Extension of Time for Completion of the Record. C If the record cannot be completed within the time permitted by subdivision (e) of this rule, the clerk of the trial court shall request an extension of time from the appellate court to which the appeal has been taken. The request shall set forth the reasons for the requested extension and must be made within the time originally prescribed for completing the record or within an extension previously granted. Extensions of time for completion of the record in termination of parental rights cases are disfavored and will be granted by the appellate court only upon a particularized showing of good cause. Trial court clerks shall give priority to completion of the record in termination of parental rights cases over other types of cases. The time for completing the record shall not be extended to a day more than 60 days after the date of the filing of the transcript or statement of evidence or the appellant's notice that no transcript or statement is to be filed. In the event of the failure of the clerk of the trial court to complete the record within the time allowed, the clerk of the appellate court shall notify the trial court and take such other steps as may be directed by the appellate court.

(g) Filing and Service of Briefs. C The appellant shall serve and file a brief within 30 days after the date on which the record is filed with the clerk. The appellee shall serve and file a brief within 20 days after the appellant's brief is filed with the clerk. Reply briefs shall be served and filed within 14 days after filing of the preceding brief. All other matters regarding briefs of the appellant and appellee shall be governed by Rules 27, 28, 29, 30 and 32.

(h) Appeal by Permission from Court of Appeals to Supreme Court C The provisions of Rule 11 control review by the Supreme Court in a termination of parental rights proceeding.

(i) Extension of Time. C Extensions of time in an appeal of a termination of parental rights proceeding are disfavored and will be granted by the appellate court only upon a particularized showing of good cause.

NEW ADVISORY COMMISSION COMMENTS

Rule 3. Advisory Commission Comment [2004]. Termination of Parental Rights Proceedings. Rule 8A imposes special requirements governing the appeal of any termination of parental rights proceeding. In particular, Rule 8A(a)(2) imposes a special provision regarding the content of a notice of appeal in such a proceeding.

Rule 4. Advisory Commission Comment [2004]. Termination of Parental Rights Proceedings. Rule 8A imposes special requirements governing the appeal of any termination of parental rights proceeding. In particular, Rule 8A(a)(1) imposes a special provision regarding the filing of a notice of appeal in such a proceeding.

Rule 7. Advisory Commission Comment [2004]. Termination of Parental Rights Proceedings. Rule 8A imposes special requirements governing the appeal of any termination of parental rights proceeding. In particular, Rule 8A(b) imposes a special provision regarding a stay or injunction pending appeal of such a proceeding.

Rule 21. Advisory Commission Comment [2004]. Termination of Parental Rights Proceedings. Rule 8A imposes special requirements governing the appeal of any termination of parental rights

proceeding. In particular, Rule 8A(i) imposes a special provision regarding extensions of time in such an appeal.

Rule 24. Advisory Commission Comment [2004]. Termination of Parental Rights Proceedings. Rule 8A imposes special requirements governing the appeal of any termination of parental rights proceeding. In particular, Rules 8A(c) and 8A(d) impose special provisions regarding the content and preparation of the record in such an appeal.

Rule 25. Advisory Commission Comment [2004]. Termination of Parental Rights Proceedings. Rule 8A imposes special requirements governing the appeal of any termination of parental rights proceeding. In particular, Rules 8A(e) and 8A(f) impose special provisions regarding the completion and transmission of the record in such an appeal.

Rule 29. Advisory Commission Comment [2004]. Termination of Parental Rights Proceedings. Rule 8A imposes special requirements governing the appeal of any termination of parental rights proceeding. In particular, Rule 8A(g) imposes a special provision regarding the filing of briefs in such an appeal.