

Chapter 17 – Appeals

17.1 Overview

In recognition of the fact that childhood is brief and final decisions in dependency cases must be rendered as quickly as possible to ensure permanency for the children involved, the Pennsylvania Supreme Court has adopted a special set of expedited Children’s Fast Track (CFT) appellate rules. All appeals from orders involving dependency, termination of parental rights, adoptions, custody, and paternity are designated as CFT appeals (Pa.R.A.P. 102.). The expedited CFT rules streamline the requirements for filing appeals and submitting records, transcripts, and trial court opinions and speed the processes used by the higher courts to decide appellate issues.

17.2 CFT Rules at a Glance

The distinctive features of appeals under the CFT rules, which became effective March 16, 2009 and apply to all appeals from orders involving dependency, termination of parental rights, adoptions, custody and paternity, are noted below:

Notice of appeal and concise statement of errors:

- The notice of appeal shall include a statement that the appeal is a children’s fast track appeal (Pa.R.A.P. 904(f)).
- The clerk must stamp the notice of appeal with “Children’s Fast Track” designation in red ink (Pa.R.A.P. 905(b)).
- The concise statement of errors complained of on appeal must be filed and served with the notice of appeal required by Rule 905 (Pa.R.A.P. 1925(a)(2)(i)).

Opinion and record:

- Upon receipt of the notice of appeal and the concise statement, if the reasons for the subject order do not already appear in the record, the Judge who entered the order must, within 30 days, file at least a brief opinion indicating the reasons for the order (Pa.R.A.P. 1925(a)(2)(ii)).
 - The late filing of a Rule 1925 statement by the Appellant will not lead to the automatic finding of waiver. In *In re K.T.E.L.*, 2009 WL 3367060 (Pa. Super. October 21, 2009), the Superior Court distinguished the filing of a Rule 1925 statement under the new Children’s Fast Track rules from those instances where a Rule 1925 statement was ordered by the trial court (See *Commonwealth v. Lord*, 555 Pa. 415, 719 A.2d 306 (1998) and *Commonwealth v. Castillo*, 585 Pa. 395, 888 A.2d 775 (2005)). Under the new Children’s Fast Track rules, the failure to file a timely Rule 1925 statement is treated as excusable under Pa.R.A.P. 902 as a defective notice of appeal, rather than the failure to comply with an order of court.

- The record on appeal, including transcripts and exhibits necessary for determination of the appeal, must be transmitted to the appellate court within 30 days after the notice of appeal is filed (Pa.R.A.P. 1931(a)(2)).

Dispositive motions:

- Dispositive motions must be filed within 10 days of filing the concise statement of errors complained of on appeal or within 10 days of trial court's filing of its Rule 1925(a) opinion, whichever period expires last (Pa.R.A.P. 1972(b)).

Anders Briefs:

- When counsel believes that there are no meritorious issues for appeal, counsel may file a brief with the appellate court requesting to withdraw from representation pursuant to **Anders v. California**, 386 U.S. 738 (1967). Along with the **Anders** brief, counsel should also file a separate petition to withdraw from representation with the appellate court's prothonotary. **See In re V.E.**, 611 A.2d 1267 (Pa.Super. 1992), in which the Superior Court extended the **Anders** principles to appeals involving the termination of parental rights. The briefing requirements of **Anders** are appropriate and applicable in an appeal from an order terminating parental rights. **In re S.M.B.**, 856 A.2d 1235, 1237 (Pa.Super. 2004). The Pennsylvania Supreme Court recently addressed the **Anders** briefing requirements for briefs filed pursuant to briefing schedules established after August 25, 2009. **See Commonwealth v. Santiago**, (Pa. 2009).

17.3 Trial Judge's Role in Expediting Appeals

Although the responsibility for expediting CFT appeals rests largely with the appellate court, all parties should seek to ensure these cases are given priority and heard in a timely manner. There are several ways trial judges can help to ensure the expedited process runs smoothly.

First, the Judge should be sure to place on the record a comprehensive discussion of the reasons for the final order in the case. When a case is appealed, Pennsylvania requires the trial court to write an opinion that discusses the reasons for its decision. In lieu of a written opinion, however, Pa.R.A.P. 1925(a) authorizes the court to indicate the place in the record where the reasons for its decision appear. This is a useful alternative in dependency cases that are appealed, because the CFT rules impose a 30-day (as opposed to the usual 60-day) deadline for transmitting the record, including the transcript and exhibits necessary for the determination of the appeal, to Superior Court.

Second, in exercising its responsibility to prepare and transmit the record to the appellate court, the trial court should give priority to cases involving termination of

parental rights or adoption and make sure that processes are in place for speedy preparation and transmission of the record.

Finally, if an adoptive home for the child must be found, the trial court must ensure the search for an adopting family continues pending the decision on the appeal, in the same manner as if the case were not being appealed. If an appropriate family is found for the child, visits and placement in the home should proceed while the appeal is pending. The risk that the appeal might be granted is overshadowed by the detriment an extended delay would cause if the search were placed on hold during the appeals process and the trial court's ruling upheld.