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Proposed Comments of the Courts, Lawyers and the Administration of Justice Section[1] of the District of Columbia Bar on the District of Columbia Court of Appeals' Proposed New Amendments to DCApp Rule 4(c)

The Courts, Lawyers and the Administration of Justice Section[2] ("Section") and its Court Rules and Legislation Committee ("Committee") submit these comments on the Court of Appeals' proposed new amendments to DCApp Rule 4(c) ("Expedited and Emergency Appeals"). The Committee and the Section generally endorse the Court's proposal, which clarifies current practice by distinguishing between "emergency appeals" (which must be decided within a matter of days) and "expedited appeals" (which must be decided promptly, but not on a time frame that is defined in "days"). The Court of Appeals' proposal also complies with the District of Columbia Family Court Act of 2001 (Pub.L. 107-114, 115 Stat. 2100), which requires expedited appellate review in termination of parental rights (TPR) cases and cases "granting or denying a petition to adopt" (115 Stat. at 2111).

The Committee and the Section, after carefully considering comments from the Superior Court, family law practitioners, the Children's Law Center, the Council on Court Excellence, and the Corporation Counsel's Office, respectfully recommend that DCApp Rule 4(c) also provide for expedited appeal of two very narrowly defined categories of child neglect cases. The vast bulk of child abuse appeals should continue to be examined, on a case-by-case basis, in the context of motions for fully expedited appellate treatment of calendaring and oral argument. But two special categories of child abuse appeals should receive full expedited appeals treatment by rule. ***First***, "emergency appeal" status under proposed new DCApp Rule 4(c)(2)A ("Emergency Appeals") should be accorded to the special category of appeals where "reasonable efforts" at original-family-reunification are dispensed with and a "permanency hearing" is statutorily required within 30 days from the critical Superior Court finding of cruelty/abandonment/abuse under review. *See* DC Code §4-1301.09a(d)(2001); DC Code §16-2323(a)(3) (2001) and DC Code §4-1301.09a(e)(2001); Adoption and Safe Families Amendment Act of 2000 (Law 13-136, DC Act 13-315, 47 DC Reg. 2850, 2855-2856 (April 28, 2000). ***Second***, the scope of proposed new DCApp Rule 4(c)(1) ("Expedited Appeals") should be expanded to cover appeals from decisions in legal guardianship and custody disputes where, absent expedited review, the appeal would not be completed before a permanency hearing. Expedited appeals in these very narrowly defined categories of child neglect cases will minimize the possible injury to children from disruption of the trial court's "permanency" decisions. This will help to bring finality to children's cases and sped the time to their ultimate resolution and closing.

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[1] The views expressed herein represent only those of the Section and the Committee, and not those of the District of Columbia Bar or of its Board of Governors.

[2] The 2002-03 Courts, Lawyers and the Administration of Justice Section Steering Committee are: Laura A. Foggan, Co-Chair; Bonnie I. Robin-Vergeer, Co-Chair; Peter Buscemi; Steven G. Gallagher; Teresa A. Howie; Edwin Huddleson III; John Moustakas; Frederick V. Mulhauser; and David A. Reiser.

August 14, 2002

Honorable Garland Pinkston, Jr.
Clerk of the District of Columbia Court of Appeals
H. Carl Moultrie I Courthouse
500 Indiana Avenue, N.W., Sixth Floor
Washington, D.C. 20001- 2131

Re: Court of Appeals' proposed new amendments to DCApp Rule 4(c)

Dear Mr. Pinkston:

These comments are submitted by the Courts Lawyers and Administration of Justice Section ("Section") and its Court Rules and Legislation Committee ("Committee") to comment on the Court of Appeals' proposed new amendments to DCApp Rule 4(c) ("Expedited and Emergency Appeals") (attached).[1]

SUMMARY

The Committee and the Section strongly support the Court's proposal, which clarifies current practice by distinguishing between "emergency appeals" (which must be decided within a matter of days) and "expedited appeals" (which must be decided promptly, but not on a time frame that is defined in "days"). The Court's proposal also complies with the District of Columbia Family Court Act of 2001 (Pub.L. 107-114, 115 Stat. 2100), which requires expedited appellate review in termination of parental rights (TPR) cases and cases "granting or denying a petition to adopt" (115 Stat. at 2111).

Our basic recommendation is that DCApp Rule 4(c) also should provide for expedited appeal in two very narrowly defined categories of child neglect cases. The vast bulk of child abuse appeals should continue to be examined, on a case-by-case basis, in the context of motions for fully expedited appellate treatment of calendaring and oral argument. But two special categories of child abuse appeals should receive full expedited treatment by rule. ***First***, "emergency appeal" status under proposed new DCApp Rule 4(c)(2)A ("Emergency Appeals") should be accorded to the special category of appeals where "reasonable efforts" at original-family-reunification are dispensed with and a "permanency hearing" is statutorily required within 30 days from the critical Superior Court finding under review, dispensing with efforts at original-family-reunification. *See* DC Code §4-1301.09a(d)(2001); DC Code §16-2323(a)(3)(2001) and DC Code §4-

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1301.09a(e)(2001); Adoption and Safe Families Amendment Act of 2000 (Law 13-136, DC Act 13-315, 47 DC Reg. 2850, 2855-2856 (April 28, 2000). ***Second***, the scope of proposed new DCApp Rule 4(c)(1) ("Expedited Appeals") should be expanded to cover appeals from decisions in legal guardianship and custody disputes where, absent expedited review, the appeal would not be completed before a permanency hearing.

Together these two types of child neglect appeals (the 30-day cases, and the guardianship/custody cases) will amount to only a very small number of appeals that are expedited by rule each year. Trial court rulings in these types of matters, however, come closest in time to "permanency" resolution, when the trial court selects a safe new permanent home for an abused or neglected child. Expedited appeals in these very narrowly defined categories of cases will minimize the possible injury to children from disruption of the trial court's "permanency" decisions. This will help to bring finality to children's cases and speed the time to their ultimate resolution and closing.

BACKGROUND

The Court of Appeals has issued a proposed set of amendments to DCApp Rule 4(c) ("Expedited Appeals") for public comment. There is a clear need to update Rule 4(c) to comply with recently-enacted Congressional legislation, the District of Columbia Family Court Act of 2001 (Pub.L. 107-114, 115 Stat. 2100), that requires expedited appellate review in termination of parental rights (TPR) cases and cases "granting or denying a petition to adopt" (115 Stat. at 2111).

The Committee received a wide variety of comments on whether (and to what extent) child neglect cases also should qualify for expedited appellate review under DCApp Rule 4(c). This issue elicited comments from Superior Court Judges and Clerk's Office personnel, family law practitioners, the Children's Law Center, the Council on Court Excellence, and the Corporation Counsel's Office that handles child neglect cases and appeals for the District of Columbia.

DISCUSSION

The options considered by the Committee included ***(A)*** extending expedited appellate treatment to all child neglect cases under DCApp Rule 4(c); ***(B)*** adopting a case-by-case approach to deciding what child neglect cases (if any) should be expedited on appeal; and ***(C)*** extending expedited appellate treatment by rule only to two narrowly defined categories of neglect appeals, where expedited review seems necessary to avoid interference with the Superior Court's "permanency" decision selecting a safe new permanent home for an abused or neglected child: (a) where the critical trial court ruling (dispensing with "reasonable efforts" at original-family-reunification) triggers statutorily-required "permanency hearings" within 30 days; and (b) where the trial court resolves legal guardianship or custody disputes, close-in-time to its "permanency" decision and, absent expedited review, the appeal would not be completed before a permanency hearing.

A. The Statutory Scheme. The "crisis of abused and neglected children has challenged the District of Columbia for many years" since at least the early 1990s. Senate Report 107-108 at pp.1-2 (107th Cong.1st Sess.2001). The statutes recently enacted by Congress and the Council contain specific time limits for ***the trial courts*** both to start "permanency" hearings,[2] and to complete them,[3] to ensure the permanent placement of abused and neglected children into safe new homes. [4] These statutes clearly direct expedited "permanency" decisions whenever possible, in the best interests of children who have been abused or neglected.

These statutes have a bearing on the Court of Appeals' management of its docket. It would frustrate the purpose of the statutory deadlines if permanency decisions were delayed by appeals.[5] It would be equally undesirable for the Superior Court to render a "permanency" decision while predicate neglect and abuse findings remain subject to reversal on appeal, casting doubt on the finality of the permanency placements. Timely appellate review should be available to ensure that the goal of finding children a permanent home within statutory deadlines can be accomplished.

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[2] *See* DC Code §4-1301.09a(d)(2001); DC Code §16-2323(a)(3)(2001) and DC Code §4-1301.09a(e) (2001); Adoption and Safe Families Amendment Act of 2000 (Law 13-136, DC Act 13-315, 47 DC Reg. 2850, 2855-2856 (April 28, 2000) (statutory requirement for "permanency" hearings within 30 days after Superior Court finds that "reasonable efforts" at original-family-reunification are dispensed with); DC Code §16-2316.01, §§16-2323(c) and 2354(b) (2001) (statutory requirement for "permanency" hearings within 12 months after Superior Court finding of neglect).

[3] "The Adoption and Safe Families Act (ASFA) requires that, with certain exceptions, cases of children in foster care or other temporary placement must reach permanency within a certain time frame, which is less than 2 years." Senate Report 107-108 at pp.2-3 (107th Cong., 1st Sess. 2001).

[4] There are statutory time limits for "permanency hearings" in the federal Adoption and Safe Families Act, 42 U.S.C. §675(5)(c), §675(5)(F)(ii). *See also* State of Vermont v. United States HHS, 798 F.2d 57 (2d Cir. 1986), cert. denied, 479 U.S. 1064 (1987) (court upholds HHS denial of reimbursement for Vermont's foster care program on grounds that Vermont failed to comply with procedural requirements for periodic dispositional hearings for foster children). The statutes of the District of Columbia also set specific time limits for fact finding and dispositional hearings for a child found to be neglected. *See, e.g.,* D.C.Code §16-2316.01 (2001). But there appear to be no specific statutory time limits for the completion of appeals in child neglect cases. Moreover, D.C.Code §16-2329(d) (2001) provides: "An appeal does not operate to stay the order, judgment, or decree appealed from, but on application and hearing whenever the case is properly before the appellate court, that court may order otherwise if suitable provision is made for the care and custody of the child." There appears to be no direct statutory command to expedite the appeal of child neglect cases.

[5] Traditional tools of statutory construction include examination of the statute's text, structure, and legislative history, as well as consideration of the statute's object and policy and the need to construe the statute to avoid absurd or bizarre results. *See, e.g.,* Gondelman v. DCRA, 789 A.2d 1238, 1245 (D.C. 2002); District of Columbia v. Gallagher, 734 A.2d 1087, 1092 (D.C.1999); Peoples Drug Stores, Inc. v. DC, 470 A.2d 751, 753-754 & n.4 (D.C. 1983) (*en banc*); Gunther, Learned Hand pp.470-473 (Knopf 1994); Henry J. Friendly, Mr. Justice Frankfurter and the Reading of Statutes, in BENCHMARKS 206 (1967); Randolph, Dictionaries, Plain Meaning, and Context in Statutory Interpretation, 17 Harv.J.L. & Pub.Pol 71 (1994). *See generally* The Case of the Speluncean Explorers: A Fiftieth Anniversary Symposium, 112 Harv.L.Rev. 1851-1923 (1999).

B. Expedited Child Neglect Appeals. Two narrow categories of child neglect appeals should be expedited to avoid interference with trial court "permanency" decisions, and the injury to children that results from a delayed appellate decision overturning "permanency" decisions.

(1) One special set of cases is covered by statutes requiring a "permanency hearing" within 30 days of certain critical trial court findings that dispense with "reasonable efforts" at original-family-reunification. Typically, a so-called 30-day case involves an earlier court determination that a parent has murdered, tortured, abandoned, or abused a sibling or another child. *See* DC Code § 4-1301.09a(d)(2001) (dispensing with "reasonable efforts" to reunify the original family in these circumstances); DC Code §16-2323(a)(3)(2001) and DC Code §4-1301.09a(e)(2001) (requiring a "permanency hearing" within 30 days where "reasonable efforts" at reunification are dispensed with). *See* Adoption and Safe Families Amendment Act of 2000 (Law 13-136, DC Act 13-315, 47 DC Reg. 2850, 2855-2856 (April 28, 2000).[6] The Committee believes that the triggering trial court finding, dispensing with "reasonable efforts" at reunification in these specially expedited cases, should be given "emergency" appellate review under proposed new DCApp Rule 4(c)(2)(within a matter of "days"). This would allow the critical abuse issue to be settled before the trial court starts its "permanency hearing" (within 30 days of the triggering trial court finding) to arrive at a permanent, sound placement of a child in a safe home.[7]

The statutory policy of promptly achieving permanency for abused and neglected children, and the strong policy of avoiding harm to children from "delayed reversals" after their placement and bonding in a new home, justify granting "emergency appeal" status under DCApp Rule 4(c)(2) to those cases where the Superior Court's

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[6] Thus the Adoption and Safe Families Amendment Act of 2000 provides, in pertinent part, that:

"(d) The Division and the Child Abuse Unit of the Social Services Division of the Superior Court shall not be required to make reasonable efforts with respect to a parent if:

"(1) A court of competent jurisdiction has determined that the parent:

(A) Subjected a sibling or another child to cruelty, abandonment, torture, chronic abuse, or sexual abuse;

(B) Committed the murder or voluntary manslaughter of a sibling or another child;

(C) Aided, abetted, attempted, conspired, or solicited to commit the murder or voluntary manslaughter of a sibling or another child; or

(D) Committed an assault that constitutes a felony against the child who is the subject of a petition before the Family Division of the Superior Court, a sibling of such a child, or another child; or

"(2) The parent's parental rights have been terminated involuntarily with respect to a sibling."

47 DC Reg. at 2856 (April 28, 2000).

[7] As one experienced child abuse practitioner commented, it "makes sense to try to expedite the cases in which a pre-adjudication 'no reasonable efforts finding' was made, given that the intention of the legislation is, it appears, to put non-reunification permanency planning for these children on a fast track. While, absent a stay, there's nothing preventing that process from going forward, it might still make sense to put the issue to rest as quickly as possible if a parent in fact appeals. That way, if the trial court was wrong, the parent will not have lost all meaningful opportunity for reunification by virtue of the passage of time."

finding triggers a statutory requirement of "permanency hearings" within 30 days. Such cases, involving earlier court determinations of extreme child abuse, or the termination of parental rights with respect to another child, hinge on readily-ascertainable facts about prior court determinations, and would seem to be appropriate for summary Court of Appeals disposition. There appear to be no statistics on the number of such 30-day cases coming before our courts. But the Corporation Counsel's Office, and family law practitioners, predicted that the number of such emergency 30-day cases on appeal would be quite small.

The short of it is that there are likely to be few emergency 30-day neglect cases on appeal. These special cases will turn on prior civil or criminal judgments that should be readily discernable from the record. *See* statute in n.6 *supra*. Appeals in these cases should be expedited by rule.

(2) Turning to other types of child abuse appeals, the Committee was advised by the Corporation Counsel's Office that it was prepared to expedite all child neglect appeals, if need be.[8]

> We are in agreement with expedited appeals for TPR and adoptions, and for neglect determinations. Based upon experience, we are a bit concerned that there are delays in getting the record to the Court of Appeals, thereby making "expedited" appeals not all that expedited, so some time obligation on the Superior Court in preparing and transmitting the record could be considered. We think the proposed rule's provision in 1A that gives the right to seek expedited appeals in any case should be sufficient to bring other cases/issues to the Court on an expedited basis.

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[8] The Committee received several comments recommending that all child abuse and neglect appeals be expedited. These comments argued that an appeal from a finding of neglect for a particular child may delay the timely completion of that same child's trial court TPR and adoption proceedings that are subject to statutory time limits. *See* D.C.Code §16-2323(c) and §16-2354(b) (2001) (imposing explicit or de facto time frames for filing TPRs and adoption proceedings); D.C.Code §16-2316.01 (2001) (time limits for factfinding and disposition hearings in neglect cases). "[I]f there is an appeal from a finding of abuse or neglect, that appeal will likely slow down the TPR or adoption. The 14 month rule applies to the filing of a TPR or adoption, not to all appeals of the case, but as a practical matter it is difficult to move the TPR or adoption forward if there are still issues from the original finding of abuse or neglect on appeal. An example would be as follows: A parent is found to have neglected a child but appeals that finding. Meanwhile, the disposition plan calls for reunification and all parties are moving toward that goal pending the appeal. The parent does not do what he/she is supposed to do to reunify with the child and a TPR is filed. As long as the finding of neglect is affirmed on appeal, there is no problem. But if the finding of neglect is reversed on appeal, what happens to the TPR? Does the parent get to start all over? It leaves the case in a very awkward posture. In all likelihood, all parties would request that the TPR proceeding wait until the underlying procedural issues are resolved – thus delaying permanency for the child. The best result clearly would be for the appeal of the neglect finding to be resolved prior to the 14 month deadline for filing the TPR."

The Corporation Counsel's Office commented that the issue about whether to expedite child neglect appeals is in major part an issue about how properly to allocate the resources of the Court of Appeals and the Corporation Counsel's Office.

The Court of Appeals' Clerk's Office advised that there are 100 or more neglect appeals each year in the Court of Appeals.[9] Family Court practitioners advised that it would be rare for the Corporation Counsel to appeal from a trial court finding of "no neglect." The overwhelming majority of appeals in neglect cases are appeals by parents seeking to overturn a trial court finding of neglect. Thus we were advised that a rule fully expediting only "appeals from a trial court finding of neglect" (as opposed to all neglect appeals) might cover well over 90% of all neglect appeals. According fully expedited appellate treatment to 90 or more additional cases (neglect appeals from a trial court finding of neglect) might well have a significant impact on the calendaring of cases coming before the Court of Appeals.

The Court of Appeals' Clerk's Office also supplied the following additional comments and information:

> 1. We identify the family sealed cases by the lower court number – neglect, adoption, TPR. Last year we had 20 adoption appeals, 3 TPR appeals, and 95 neglect appeals. In 2000, we had 19 adoption, 13 TPR, and 104 neglect appeals. We would have to inspect each neglect appeal to categorize them [further]. * * * In 2001, the Court of Appeals resolved 45 neglect/adoption/ TPR cases after argument or submission without argument – 60% were neglect cases (8 adoption, 13 TPR, and 27 neglect). The court resolved an additional 6 cases by judgment (all neglect) and 76 cases by order (13 adoption, 5 TPR, and 58 neglect).
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> 2. We have some confusion about what people mean when they say we expedite. We "partially expedite" ALL neglect cases now. That is, we "lean on" record preparation and briefing. But these cases are not automatically advanced on the calendar. We don't receive many motions to expedite calendaring in neglect cases. Perhaps because the volume of such motions is low, the court tends to grant them. [We] cannot recall any neglect case where the court has denied a motion to expedite calendaring.

These comments indicate that, while nearly all ***motions*** to expedite calendaring are granted, it is ***not*** the case that all (or even most) child neglect appeals are expedited for

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[9] The Court of Appeals Clerk's Office also reported the following statistics for case disposition by the Court of Appeals: "Overall time, including all dispositions by order, 522 days; overall time for disposition on the merits (*i.e.*, opinion, MOJ, judgments)- 726 days; time from argument or submission to decision- 118 days. All these numbers are averages, based on appeals decided or otherwise disposed of in 2001." The implication of these statistics is that the time for disposing of an ordinary appeal is far longer than 14 months from the time notice of appeal is filed. But this set of statistics reflects only averages. It does not separately address child neglect cases, which are "partially expedited" on appeal under the Court of Appeals' current system. *See* p.7 *infra.*

calendaring and oral argument. The Court of Appeals' current system – "partially expediting" all neglect cases (for record preparation)[10] – apparently does not produce that many motions for expedited appellate calendaring and oral argument. There were views that the case-by-case system was working and should not be altered.

One Superior Court commentator suggested that there are only three categories of cases where a delayed appeal is likely to interfere with the trial court's "permanency" decision. They are: (1) TPR and adoption cases, where expedited appeals are required by federal statute (115 Stat. at 2111). (2) Emergency cases where trial court "permanency" hearings must start within 30 days of a Superior Court finding dispensing with "reasonable efforts" at original-family-reunification. (3) The small number of cases involving guardianship or custody disputes,[11] where the trial court's decision comes close in time to its ultimate "permanency" decision.

Given these comments from the Superior Court and the Court of Appeals Clerk's Office, the Committee determined that, as a practical matter, it is unnecessary for DCApp Rule 4(c) to expedite all child neglect appeals. It should suffice if DCApp Rule 4(c) accords expedited or emergency appeal status to the three categories of cases identified by the Superior Court commentator. Thus we recommend that (in addition to TPR and adoption cases, and the emergency 30-day cases) the scope of proposed new DCApp Rule 4(c)(1) ("Expedited Appeals") also should be expanded to cover the very narrowly defined category of appeals from trial court rulings on guardianship or custody disputes where, absent expedited review, the appeal would not be completed before a permanency hearing. These custody and guardianship cases, involving decisions close in time to the trial court's "permancy" decision, warrant expedited appeal to avoid injury to children from interference with the trial court's "permanency" decision. This outcome reflects the statutory policy judgment of the legislative branches that "permanency" decisions (selecting a new, safe, permanent home) should be expedited to the extent practicable in the best interests of abused and neglected children.

Other child neglect cases, outside the three categories of appeals that should be expedited by rule, can be fully expedited on appeal by motion made on a case-by-case basis, if need be. The implication of information provided by the Court of Appeals' Clerk's Office is that, under current practice, few motions to expedite calendaring and oral argument are necessary to avoid interference with imminent trial court "permanency" decisions in child neglect cases. The current system of "partial expedition"

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[10] The Court of Appeals' Clerk's MEMORANDUM TO COUNSEL IN FAMILY-SEALED (FS) APPEALS (April 2001) gives expedition – not only to TPR cases, and cases "granting or denying a petition to adopt" (115 Stat. at 2111)—but also to neglect cases as well. Yet under the current practice "[e]xpedition in neglect appeals will cover record preparation only; a party may seek expedition of other stages of the appeals process (*e.g.*, briefing and calendaring) by motion."

[11] One of the City's most experienced child neglect practitioners noted: "As for custody cases arising out of neglect cases, I would guess that there are probably very few appeals. Those cases are usually resolved by consent, or the parent is MIA, or the case is straightforward and compelling and there is little room for trial court error. The guardianship statute is too new for many cases to have been generated, but my guess is that this will be true for those cases as well."

– covering record preparation in child abuse cases – appears to be working swiftly enough so that appellate decisions in the vast majority of child abuse cases are not unduly delayed. Where an unusual situation develops, and delayed appellate proceedings threaten to interfere with the trial court's "permanency" decision, counsel for an abused or neglected child should file an appropriate motion to expedite the appeal.

C. Other issues. Some commentators suggested that new DCApp Rule 4(c) should set specific time limits for the prompt preparation of transcripts in expedited appeal cases. The proposal was that the Superior Court would be required to issue an order *sua sponte* requiring prompt preparation of counsel-designated transcripts, generally within 30 days after notice of appeal is filed.

Trial transcript delays have been a persistent problem for all cases on appeal in this jurisdiction.[12] The statement of the Corporation Counsel's Office (quoted above) underlines the seriousness of the problem. Together with new management reforms instituted by the Superior Court, the Court of Appeals proposed new DCApp Rule 4(c)(1)(B)(ii) & (iii) should expedite the preparation and transmission of the record to the appellate court in expedited appeals. *See also* proposed new DCAppRule 4(c)(2)(B)(ii) & (iii).

The Committee considered, and rejected, a proposal to insert a subparagraph into DCApp Rule 4(c) that read: "In [Expedited] Family Law Appeals, decision of an appeal shall be announced within 30 days of oral argument, with an opinion to follow if necessary." The Committee agreed with the comment that this subparagraph was inappropriate, since (1) the Court of Appeals can be expected to issue a prompt decision, without being "ordered" to do so by one of its own rules; (2) we know of no court rule (as opposed to a statute) that purports to set time limits for issuance of a Court of Appeals decision; and (3) the proposed 30-day time limit for issuing an appellate opinion seems too long for the cases requiring a "permanency hearing" within 30-days and too short for the other Expedited Family Law Appeals.

The Committee also rebuffed the suggestion that DCApp Rule 4(c) should include a reference to the Adoption and Safe Families Act, Pub.L. 105-89 (November 19, 1997), 111 Stat. 2115. The Court of Appeals can be expected to follow federal law without being "reminded" to do so by a court rule.

Thank you for considering our suggestion to expand the scope of DCApp Rule 4(c) ("Expedited and Emergency Appeals") to cover two narrowly defined categories of

[12] The Committee was advised that, in the normal course of business, court reporters have 60 days to prepare the record on appeal. They simultaneously must prepare transcripts requested for CJA purposes, the Corporation Counsel, Assistant United States Attorneys, the Public Defender Service, private requests, and judicial transcript orders. They also must deal with expedited orders (7 day delivery) and daily copy orders that are requested. To accommodate all these requests is sometimes impossible, and at best a major juggling act. It will be challenging for the Superior Court's Reporting Division to produce transcripts in all expedited appeals within 30 days (or less), while still complying with its other workload deadlines.

child neglect appeals, in addition to the TPR and adoption appeals where expedited appellate review is explicitly required by statute (115 Stat. at 2111). The vast bulk of child abuse appeals will continue to be examined, on a case-by-case basis, in the context of motions for fully expedited appellate treatment of calendaring and oral argument. We look forward to the Court of Appeals' issuance of its final version of the Rule.

COURTS, LAWYERS AND THE ADMINISTRATION OF JUSTICE SECTION

COURT RULES AND LEGISLATION COMMITTEE

August 14, 2002

ATTACHMENT

COURT OF APPEALS' EXPLANATION OF ITS PROPOSED AMENDMENTS TO DCApp Rule 4(c) ("Expedited and Emergency Appeals"):

"The District of Columbia Court of Appeals is considering the adoption of amendments to D.C. App. R. 4 (c)—Expedited Appeals. The current rule, although denoted "expedited appeals," establishes procedures that are necessary and appropriate for appeals that must be decided in a matter of days ("emergency appeals"). The amendments will implement the provision of the "District of Columbia Family Court Act of 2001," P.L. 107-114, 115 Stat. 2100, providing for expedited review in appeals from orders terminating parental rights (TPR) and adoptions, thereby conforming the rule to the court's internal policy, in effect since 2000, which accords expedited treatment to these appeals court's internal policy, in effect since 2000, which accords expedited treatment to these appeals. The amendments would also establish a separate subsection that defines a litigant's procedural obligations in "emergency appeals."

"The District of Columbia Family Court Act of 2001, P.L. 107-114, 115 Stat. 2100, requires the Court of Appeals to give "expedited review" to any TPR or adoption appeal from an order of the Family court for the District of Columbia. The Court of Appeals has accorded expedited treatment for appeals from final orders and judgments of the Superior Court pertaining to the termination of parental rights (TPR appeals) and adoptions (adoption appeals) for more than 2 years pursuant to internal policy. The current Court of Appeals' rule regarding "expedited appeals" does not adequately reflect the court's practice, in particular the differences in practice regarding appeals which must be decided within a matter of days, which have been characterized internally as "emergency appeals," (e.g. Juvenile Interlocutory Appeals under D.C. Code § 16-2328; and Government Appeals of Intra-trial orders, under D.C. Code § 23-104) and those which must be decided promptly or expeditiously, but not on a time frame that is defined in "days" (e.g. Public Service Commission Appeals under D.C. Code § 43-905; § 34-605, 2001 Ed.) The amendments to D.C. App. R. 4 (c) establish separate procedural requirements for appeals which must be "expedited" and those which must be decided on an "emergency" basis. The primary distinction between those two types of appeals is that emergency appeals must, typically by statute, be decided by the Court of Appeals within a matter of days; therefore the rule provides that consideration of the appeal proceed on the basis of motions which have been filed with the court and hand-served on the opposing party. Expedited appeals, however, although given priority treatment by the court, proceed on the more typical basis, with briefing and scheduling of the appeal on the court's calendar for argument or submission. The proposed new Rule 4 (c)(2) (Emergency Appeals) tracks closely the court's current Rule 4 (c), whereas the proposed new Rule 4 (c)(1) (Expedited Appeals) reflects the court's current practice with regard to appeals expedited by law or court policy. The proposed D.C. App. R. 4 (c) as amended would read as follows:

TEXT OF NEW DCAPP RULE 4(c) PROPOSED BY THE COURT OF APPEALS

Rule 4 (c) Expedited and Emergency Appeals

1. Expedited Appeals.
   - A. These appeals include, but are not limited to: Public Service Commission appeals, D.C. Code § 34-604 (2001), government appeals from pre-trial orders, D.C. Code § 23-104 (a)(1) (2001), and appeals of orders from the Family Court either terminating parental rights or granting or denying petitions for adoption, D.C. Code § 11-721 (g) (2002). Additionally, any party may file a motion with this court requesting that an appeal be expedited.
   - B. The appellant or counsel for appellant must:
     - i. Timely file a notice of appeal in the Superior Court and file a stamped copy of the notice with the clerk of this court.
     - ii. Within 10 days, designate the documents necessary for inclusion in the record on appeal and order, or file an appropriate motion for, preparation of the necessary transcript on an expedited basis. The record must include the notice of appeal and a copy of the order appealed from or the related docket entry if there is no written order. Any written opinion, findings of fact, or conclusions of law must also be included in the record.
     - iii. Upon notice that the record is complete and is awaiting the payment of fees, immediately make the payments and necessary arrangements to have the record transmitted to this court.
   - C. Upon notice that the record is complete, the clerk will issue a briefing order and the case will be given priority in calendaring.
2. Emergency Appeals.
   - A. These appeals include, but are not limited to: pre-trial bail or detention appeals, D.C. Code § 23-1324 (2001), juvenile interlocutory appeals, D.C. Code § 16-2328 (2001), government appeals from intra-trial orders, D.C. Code § 23-104 (b) & (d) (2001), and extradition appeals, D.C. Code § 23-704 (2001).
   - B. The appellant or counsel for appellant must:
     - i. Review the applicable statute to assure compliance with the controlling time requirements.
     - ii. Timely file a notice of appeal in the Superior Court and notify the clerk of this court in person or by telephone of: the filing of the notice of appeal, the nature of the emergency appeal, the names and telephone numbers of all parties or their attorneys, and any transcript needed for the appeal.
     - iii. Immediately order the necessary transcript or have necessary vouchers prepared and submitted to the trial judge. Any order or voucher for transcript must request overnight preparation. If transcript is ordered, the appellant must pay for it promptly upon completion.

iv. Submit a written motion setting forth the relief sought and the grounds therefor, and personally serve a copy on the other parties. The motion must be accompanied by a copy of the order being appealed from and any other documents filed in the Superior Court which counsel believes essential for the court's consideration.

C. Opposing counsel must submit and personally serve a written response or cross-motion in compliance with paragraph (2)(B)(iv).

D. The clerk will advise the assigned division of this court of the pendency of the emergency appeal so that the case may be promptly decided or scheduled for argument where appropriate.

E. In the case of a juvenile interlocutory appeal, the motion must be filed no later than 4:00 pm on the next calendar day after the filing of the notice of appeal. Any opposition must be filed with the clerk of this court by noon on the following calendar day, unless these times are shortened by court order.