

Big Changes to Appeals of A/N/D – TPR Orders Designated in G.S. 7B-1001

On January 1, 2019, the process to appeal abuse, neglect, dependency (A/N/D) and termination of parental rights (TPR) orders designated in G.S. 7B-1001 changed significantly. Amendments to G.S. 7B-1001 now require that some orders be appealed directly to the NC Supreme Court, bypassing the Court of Appeals (COA). Other orders have new notice of appeal and timing requirements. Amendments to the North Carolina Rules of Appellate Procedure (Rules) also became effective on January 1st and impact appeals of all orders including those designated in G.S. 7B-1001.

Last week, I attended the Supreme Court's CLE program, "Information about Termination of Parental Rights Cases and the Rules of Appellate Procedure." As I listened to the justices and other speakers, I started to hear David Bowie singing "ch-ch-ch-changes." There are a lot of changes and procedures that you need to know.

The Statute: [G.S. 7B-1001](#)

Through G.S. 7B-1001, the Juvenile Code specifies 6 types of final orders entered in A/N/D and TPR cases that are subject to appeal. There are no changes to the types of orders that may be appealed. But, the procedural requirements for two types of those designated appealable orders have changed.

1. Termination of Parental Rights (G.S. 7B-1001(a1)(1))

An order that grants or denies a TPR must be appealed directly to the Supreme Court.

2. Elimination of Reunification with a Parent as a Permanent Plan (G.S. 7B-1001(a)(5)a., (a1)(2)), (a2)

A parent may appeal a permanency planning order entered under [G.S. 7B-906.2\(b\)](#) that eliminates reunification with him or her as a permanent plan ("906.2(b) order"). Because a TPR may be necessary when reunification is eliminated as a permanent plan, there is a delay in when a parent may appeal a 906.2(b) order. That delay is 65 days from when the 906.2(b) order has been entered and served. This 65-day time period replaces the pre-January 1st time period of 180 days from the -906.2(b) order.

Missing this shortened appellate time period to initiate the TPR could have a significant impact on the underlying A/N/D action. When there is a pending appeal, the district court retains jurisdiction but cannot proceed with a TPR. [G.S. 7B-1003\(b\)\(1\)](#). Stay tuned for my next blog post to learn more about the trial court's jurisdiction when an appeal under G.S. 7B-1001 is pending.

If a TPR is not initiated in that 65-day time period, the parent may appeal the 906.2(b) order within 30 days from the expiration of that 65-day time period. The notice of appeal must be filed between 66 and 95 days after the 906.2(b) order is entered and served. A notice of appeal filed before that time period expires is likely to result in dismissal without prejudice (see [In re D.K.H.](#), 184 N.C. App. 289 (2007)) and after that time period is likely to result in dismissal with prejudice due to untimeliness (G.S. 7B-1001(a)(5)a.3.; see [In re A.R.](#), 238 N.C. App. 302 (2014)). The appeal is heard by the COA.

If a TPR petition or motion is filed within that 65-day time period, the appeal of the 906.2(b) order is delayed until after the TPR is heard and granted. The 906.2(b) and TPR orders are then appealed together, before the Supreme Court, when the notice requirements for both appeals have been properly met. It appears that a 906.2(b) order is not an appealable order when a TPR is denied unless it meets the criteria of another order designated in G.S. 7B-1001. See [In re E.G.M.](#), 230 N.C. App. 196 (2013). However, it is unclear as to whether a delayed appeal in that circumstance would be permitted or dismissed as untimely and which appellate court, if any, has jurisdiction to hear the appeal.

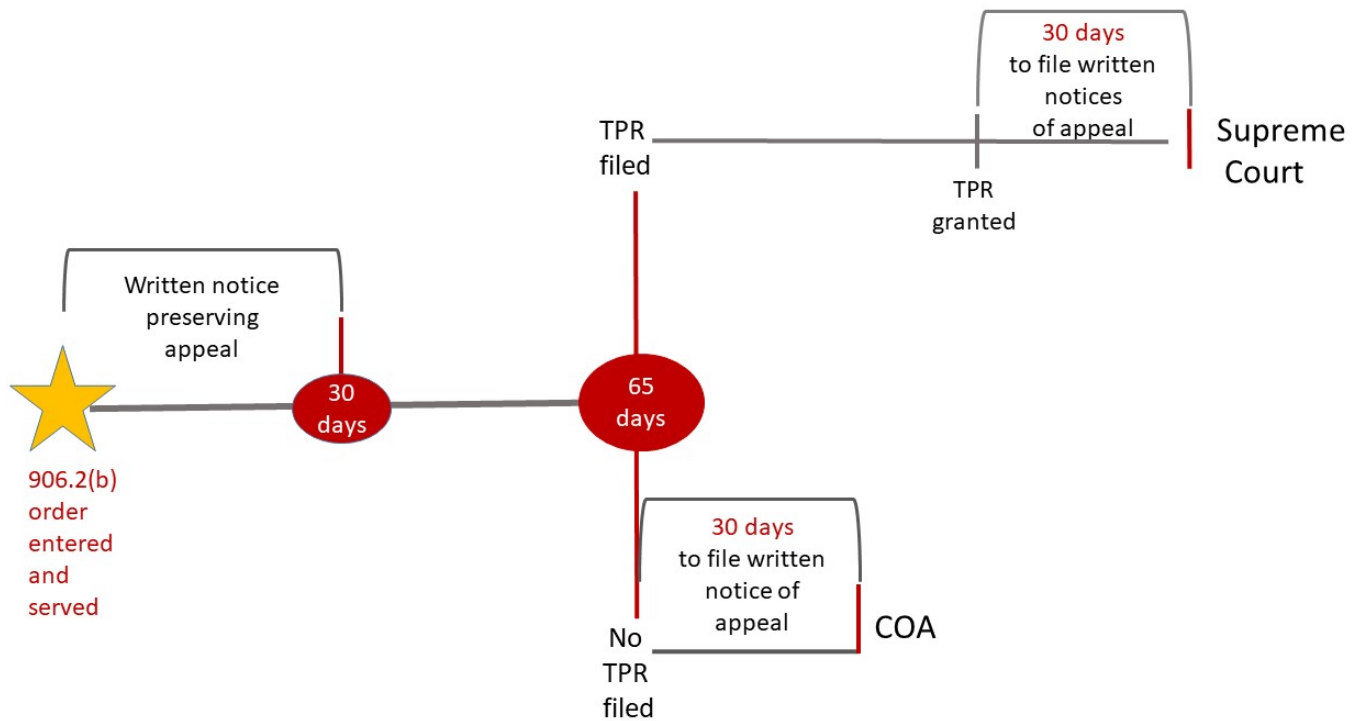
Additional amendments involve notice requirements.

First, a parent must preserve his or her right to appeal the 906.2(b) order in writing within 30 days after the order is entered and served. The statute does not identify who must sign the notice: the parent and/or his or her GAL (if any), the parent's attorney (if any), or both the parent and attorney.

Second, a written notice of appeal of the 906.2(b) order must be timely filed. Of special note is the new requirement that in a combined 906.2(b) and TPR appeal, there must now be two separate written notices of appeal - one for each order. Simply identifying the 906.2(b) order as an issue in the record of the TPR appeal is no longer sufficient to appeal the 906.2(b) order. Both notices of appeal must be signed by the appealing party and their attorney unless the appellant is the juvenile, in which case the GAL attorney advocate signs.

These new written notice requirements are significant changes for the appellant. The NC Office of the Parent Defender at IDS has created forms for a notice to preserve the appeal of a 906.2(b) order and notices of appeal that you can access [here](#).

[For Visual Learners: The new 906.2\(b\) appeal procedures](#)



The North Carolina Rules of Appellate Procedure (Rules)

Effective January 1st, through a 58-page order, the Supreme Court amended 13 of the Rules and created a new one, Rule 42. You can access the order [here](#). You'll notice it's color coded so that you can easily see the changes, and Appendix A is a helpful timetable summary. Although the Rules impact all appeals, there are significant changes that apply to appeals of A/N/D and TPR orders. Here are some highlights.

Rule 3.1, Review of Cases Governed by Subchapter I of the Juvenile Code, has been reorganized into different subsections and completely rewritten, starting with the title. Redundancies with other Rules have been eliminated such that provisions of the general Rules also apply to Rule 3.1 appeals. These appeals are expedited, but some of the timing requirements are different because the number of days or the triggering event to start counting changed. The transcriptionist now must electronically deliver the transcript to each party in the appeal. If there is no agreement on the proposed record, Rule 11(c) applies, which is the method for settling records on appeal in other types of cases. Four new subsections (1) impose a word limit on briefs in these cases including those filed in the Supreme Court, (2) explicitly disfavor motions for extensions of any time requirements in these cases due to the need to expeditiously resolve these appeals, (3) require electronic filing (even in the COA) absent good cause, and (4) address the role of trial counsel in assisting appellant counsel with the record.

Rule 42, Protecting Identities – Sealed Items and Identification Numbers, is new. It replaces all the references to protecting identities and sealing information that was scattered throughout the various Rules, so you will no longer see any redundancies. Rule 42 is composed of 5 subsections. Items that are sealed in the trial tribunal will remain sealed in the appellate courts. Four types of appeals are sealed by operation of Rule 42(b), including appeals under G.S. 7B-1001 and appeals filed under G.S. 7A-27 that involve a sexual offense committed against a minor. This latter appeal would apply to an order entered pursuant to G.S. 7B-323 regarding placement on the Responsible Individuals List (RIL) when sexual abuse is alleged. Counsel may move to have the appellate court seal an item that is not sealed in the trial tribunal or by operation of Rule (e.g., RIL grounds of “serious neglect” or abuse other than sexual abuse). The item will be sealed pending the appellate court’s determination of the motion. Notice and labeling requirements of sealed items and documents are imposed. In cases that are not sealed, certain identification numbers (e.g., social security, driver’s license) must be excluded or redacted from documents filed with the appellate court unless necessary for the disposition of the appeal. This may arise with a separate civil custody order that is entered via G.S. 7B-911 and is appealed.

Other Rules, specifically Rules 3, 4, 9, 11, 12, 13, 18, 26, 28, 30, 37, and 41, were also amended. One potential pitfall identified in the CLE was the amendment to Rule 13(a). Now, an appellant must file and serve his/her brief within 30 days after the record of appeal has been filed with the appellate court, and no longer includes when the record is mailed to the parties. Rule 30(a)(2) makes it clear that counsel must use the juvenile’s initials or pseudonym and not the juvenile’s name during oral argument.

BEWARE: If you have the 2019 North Carolina Rules of Court book, it has the Rules that were in effect before January 1, 2019. You can access the most current Rules on the Supreme Court page of the North Carolina Judicial Branch website, [here](#).

Inviting Feedback: At the CLE, Justices Hudson and Ervin explained the long process the court undertook to prepare for its new responsibility for hearing TPR and certain 906.2(b) appeals, including the need to amend the Rules. Input from various stakeholders that are internal and external to the court was sought and obtained. They recognized that as these cases are heard, there may be a need for future Rules amendments. The court encourages feedback on how the Rules are working from those who are involved with these cases. You can

- email rules@sc.nccourts.org,
- contact the [Appellate Rules Committee](#), or
- contact the [Appellate Practice Section](#) of the NC Bar Association.

Demystifying the Internal Supreme Court Process

Justice Ervin explained the decision-making process of the Supreme Court, which differs from the COA given that there are more decision-makers involved – 7 justices rather than 3-judge panels in

the COA. There are internal circulating deadlines and conferences of the justices.

Oral argument

Rule 3.1 cases will have a different process than other Supreme Court appeals regarding oral argument, which will not occur in every Rule 3.1 case. After the record and briefs are filed, each Rule 3.1 case will be assigned to a justice who is responsible for reviewing the case, determining if oral argument is needed, and making a recommendation for conference regarding oral argument. A party may request oral argument on the Appeal Information Statement but must explain why the case merits oral argument (it should not be done as a matter of course in every case). There is no set criteria for determining whether oral argument will be permitted and no benchmark for how many cases should be orally argued. The decision will be made on a case-by-case basis given the facts and circumstances. If oral argument is granted, it will be calendared. The Rules regarding oral argument apply, including the requirement that the child's name not be used.

Decision-Making

If there is an oral argument, that afternoon the justices conference to discuss the case. A justice is assigned for writing and circulating a draft opinion. If there was no oral argument, the case is assigned to a member of the court who circulates a draft opinion. In either situation, after a draft opinion is circulated, a conference of all the members of the court is held. There, the justices have an opportunity to discuss and comment on the draft opinion. If recommended, opinions can be recirculated. If there is a dissent or concurrence, internal circulating deadlines are set before the next conference.

Publication

All the Rule 3.1 opinions will be published. It's not yet known what the opinions will look like. It is anticipated that the opinions will be published on the same release date of other Supreme Court opinions, which is not the routine first and third Tuesday of each month used by the COA. The intent is to not have the length of the appeal be materially different from the timing of an appeal heard in the COA.

Take Aways

If you have an appeal, make sure you read the amended statute and Rules. Do not rely on your 2019 Rules of Court book or this blog post. Accept the Supreme Court's invitation to provide feedback on how the Rules are working in these cases.