

**IT AIN'T OVER 'TIL IT'S OVER:**  
**JUVENILE APPELLATE PRACTICE**  
**AND EXTRAORDINARY WRITS**

**I. Appellate Matters –**

**A. Specific juvenile delinquency considerations- Governed by the same rules as other appeals with some exceptions**

1. Public Disclosure – Records maintained by the clerk are not subject to public disclosure. Rule 9.145(e).
2. Identity of appellant/petitioner—Child must be identified by initials only on the docket and throughout all the briefs and other filings as well as the decision of the court. Rule 9.146(d). Does not require the deletion of the name of the child from pleadings or other papers transmitted to the court from the lower tribunal.
3. Expedited review – “The court shall give priority to appeals under this rule.” Rule 9.145(h).
4. The Department of Legal Affairs represents the state on appeal. Sec. 985.534(2).
5. Supersedeas bonds. “The court in considering the welfare and best interest of the child and the interest of the public may grant a supersedeas in its discretion on such conditions as it may determine are appropriate.” Rule 8.145, Fla. R. Juv. P.

**B. What can be appealed – Rule 9.145 and sec. 985.534, Fla. Stat.**

1. Rule 9.145, Fla. R. App. P. Rule 9.140 applies except as modified by Rule 9.145.
2. Timing –
  - a. Child – must file notice of appeal within 30 days of order being appealed.
  - b. State -- must file notice of appeal within 15 days of order being appealed. State also has additional time limitation under 9.145(c) to file notice of appeal for dispositive motions 5 days before adjudicatory hearing.

3. Appeals by Child—(Note: 9.145 is more specific than 9.140 so it prevails) A Child may appeal
  - a. An order of adjudication of delinquency or withholding adjudication of delinquency, or any disposition order;
  - b. Orders entered after adjudication of delinquency or withholding adjudication, including orders revoking or modifying community control;
  - c. An illegal disposition;
  - d. Or any other final order as provided by law.
  - e. Note: Unlike adult cases, sentencing errors in juvenile do not need to be preserved by filing a 3.800(b) motion but nonetheless must be preserved for review.
4. Appeals by State – State may only take one appeal. Some are actually non-final orders but allowable under Art. V of the Fla. Const. and Rule 9.145(c(1)). The State may appeal an order
  - a. Dismissing a petition for delinquency or any part of it if the order is entered before the commencement of an adjudicatory hearing;
  - b. Suppressing confessions, admissions, or evidence obtained by search or seizure before the adjudicatory hearing;
  - c. Granting a new adjudicatory hearing;
  - d. Arresting judgment;
  - e. Discharging a Child under Rule 8.090 (speedy trial);
  - f. Ruling on a question of law if a child appeals an order of disposition;
  - g. Constituting an illegal disposition;
  - h. Discharging a child on habeas corpus; or
  - i. Finding a child incompetent pursuant to the Fla. R. Juv. P.;
  - j. Adjudicating a child insane. 985.534(1)(b).
5. Other appeals –
  - a. DJJ can appeal a disposition order in a juvenile delinquency case if the order violates the statutory commitment procedure. DJJ v. J.R., 710 So. 2d 211 (Fla. 1<sup>st</sup> DCA 1998); DJJ v. E.R., 724 So. 2d

129 (Fla. 3d DCA 1998). Proper remedy for DJJ may be petition for writ of certiorari. DJJ v. Soud, 685 So. 2d 1376 (Fla. 1<sup>st</sup> DCA 1997).

- b. Child's parent, legal guardian or custodian may appeal an order "to the extent adversely affected." 9.145(b). Limited to principles of standing.

### C. Initial Appellate Process

1. Notice of Appeal (within time limits filed above). Note: Forms for preliminary appellate documents found in Rule 9.900, Fla. R. App. P. For PD clients, include the order appointing the PD for appeal. Rule 9.110 lays out requirements of caption. Within 50 days of filing the notice, the clerk shall prepare the record. Within 70 days of filing the notice, the IB is due. (Note: common practice is that the IB is due 20 days after the record is filed although that is not specifically what the rule states.)
2. Designation to court reporter – Filed within 10 days . Appellant shall designate those portions of the proceedings not on file deemed necessary for transcriptions and inclusion in the record. Within 20 days of filing the notice, an appellee may designate additional portions of the proceedings. Rule 9.200(b).
3. Directions to the clerk – Filed within 10 days of notice of appeal, appellant may direct the clerk to include or exclude other documents. Note: Physical evidence is not automatically included under 9.200(a)(1) so if integral to appeal will need include it here and make arrangements with clerk (trial and DCA). PDRs also need to be specifically requested in the Directions.
4. Statement of judicial acts
5. Docketing Statement – Make sure to mark the box for child case for expedited review.
6. Contents of briefs – Outlined in Rule 9.210. (Otherwise will be sent back as "bad brief" –technical term.)
  - a. Printed on unglossed paper, 8 by 11 inches
  - b. Lettering black, double-spaced, margins 1 inch, Times New Roman 14 point or Courier New 12-

point font. Certificate of compliance certifying brief complies with font requirements.

- c. Table of contents, table of citations, statement of case and facts (must include nature of case, course of proceedings, disposition in LT), summary of argument, argument, conclusion (no more than one page), argument with authority, certificate of service, certificate of compliance. Answer briefs must be in same format but can omit statement of case and facts.
- d. Citations – Use citation system prescribed by Rule 9.800.

**D. Points for the Trial Attorney -- How to Make a Good Record to Preserve Error**

- 1. In general
  - a. Timely Objection, specific grounds, ruling by the court
  - b. Fundamental error—reach down to core of hearing
- 2. Pretrial Motions—Some issues must be preserved pretrial; some are just better suited to be handled pretrial.
  - a. Rule 8.085 outlines formal requirements of pretrial motions. In writing and signed by the party and party's attorney. May be waived. Rule 8.085(5) states motions to suppress, sever, or dismiss shall be made prior to the date of the adjudicatory hearing unless an opportunity to make such motion previously did not exist or the party making the motion was not aware of the grounds for the motion.
  - b. Motion to Dismiss – All defenses not raised by a plea of not guilty or denial of the allegations of the petition shall be made by a motion to dismiss (SOL, DJ, lack of jurisdiction).
    - i. A motion to dismiss on the ground of no material disputed facts and the undisputed facts do not establish a prima facie case of

guilt must be made before adjudicatory hearing

- a. facts shall be specifically alleged
- b .must be sworn by child
- c. filed within reasonable time before the date of the adjudicatory hearing
- d. State will traverse or demur.
- e Factual matters alleged shall be deemed admitted unless specifically denied by the state in a traverse.
- f. Court may receive evidence on any issue of fact necessary to decide motion

ii. Motion to Dismiss on Speedy Trial basis – 8.090. Child shall be brought to an adjudicatory hearing without demand within 90 days of the earlier of the date the child was taken into custody or the date of service of the summons that is issued when the petition is filed. Exceptions: child has voluntarily waived the right to ST, extension has been ordered , the failure to hold a hearing was the fault of the child, child was unavailable. Other procedural and substantive issues outlined in the rule.

- c. Motion to Sever – Rule 8.085(4)—Must be made pretrial. Deals with both severance of counts in a multi-count petition or for severance of cases of two or more children to be adjudicated in same hearing.
- d. Motion to Suppress – Rule 8.085(3). Any confession or admission illegally obtained or any evidence obtained by an unlawful search and seizure may be suppressed on motion by the child
  - i. Motion requirements – Must clearly state the particular evidence sought to be suppressed, the reason for the suppression,

and a general statement of the facts on which the motion is based.

ii. Court—Before hearing evidence, the court shall determine if the motion is legally sufficient. If not, shall be denied. If the court hears the motion on the merits, the moving party shall present evidence in support thereof and the state may offer rebuttal evidence.

iii. Motions to Suppress Evidence

a. Filed when property illegally seized.

b. Make sure any evidence presented (including audio or video recordings) is filed as an exhibit with the clerk so it can be included as part of the appellate record.

iv. Motion to Suppress

Confessions/Admissions

a. Miranda violations— triggered if child was in custody, was subjected to interrogation and a violation of Miranda requirements. False confessions, juvenile brain science, juvenile-specific issues.

b. Admissions/Confessions after illegal arrest. Move to suppress and exclude statements made after unlawful initial detention.

e. Motion for competency determination – Rule 8.095. “At any time prior to or during the adjudicatory hearing . . . court has reasonable grounds to believe the child . . . may be incompetent. . .” Court’s own motion or that of counsel for child.

i. Before proceedings continue (or plea entered) court must enter an order that the child is found competent.

- ii. Involuntary Commitment. Rule 8.095(4). Strict compliance. If disputing involuntary commitment and pursuing less restrictive community settings, can file petition for writ of cert within 30 days of order of involuntary commitment.

### 3. Pleas –8.075

- a. Dispositive Issue – To preserve an issue for appeal following a guilty or nolo contendere plea, must get it on the record that an issue was dispositive (typically pursuant to a motion to suppress or motion to dismiss) and that you are reserving the right to appeal that issue. Helpful if you can get the state to stipulate the issue was dispositive but must get court to rule that it was dispositive.
- b. Withdrawal – 8.075(e). Court may for good cause shown at any time prior to the beginning of a disposition hearing permit a plea of guilty of NC to be withdrawn. No juvenile equivalent of motion to withdraw plea after sentencing in juvenile. (Therefore, since a post-judgment motion to withdraw plea is not authorized under Rules of Juvenile Procedure, any such motion would not stay rendition of the disposition order in a juvenile case.)

### 4. Trial Issues

- a. Evidentiary Objections – must make a timely, contemporaneous objection, state a legal ground for the objection, and must get a ruling from the court. (Remember: objecting on the basis of hearsay does not preserve a Confrontation Clause issue so must object on both grounds.)

b. Discovery Violations – Rule 8.060(m) Sanctions for failure to comply with discovery rules may include an order to compel (pre-trial), mistrial, prohibition from calling a witness or introducing evidence, any other order the court deems proper. Rule 8.060(m)(2) also includes contempt sanctions.

c. Motion for Judgment of Dismissal– Rule 8.110(k) If at the close of the evidence for the petitioner, the court is of the opinion that the evidence is insufficient to establish a prima facie case of guilt against the child, it may or on the motion of the state attorney or the child shall, enter an order dismissing the petition for insufficiency of the evidence. Court must make ruling at time motion is made and cannot reserve until the end of the case or the issue will not be preserved. Hitchcock v. State, 413 So. 2d 741 (Fla. 1982). Boilerplate motions will not protect the record for sufficiency of the evidence appeals.

d. Improper Closing Arguments – Many reasons to object

- i. Comments on child’s right to remain silent
- ii. Improper burden shifting
- iii. Referring to facts not in evidence
- iv. Saying inappropriate things about the child, counsel, theory of defense.

II. **Extraordinary Writs** – Authority to petition DCA for extraordinary writ pursuant to Florida Constitution Art. I, section 13 and Article V, Section 4(b)(3) and Rule 9.030(b) and 9.100, Fla. R. App. P.

A. Procedure –

1. Determine if prudent. May be more expeditious to get the child’s case back on the calendar. However, if the

child will be in SD or HD for more than a week, can probably have a quick decision by the DCA. Also, may be worth it for edification purposes. Also, if there is a repeating issue on a legal interpretation (e.g. “absconding”), argue “capable of repetition yet evading review” to seek an opinion from the DCA. K.E. v. DJJ, 963 So. 2d 864 (Fla. 1<sup>st</sup> DCA 2007).

2. Contents – Rule 9.100 (g) outlines the content of the petition
    - a. Basis for invoking the jurisdiction of the court;
    - b. The facts on which the petitioner relies;
    - c. The nature of the relief sought and
    - d. Argument in support of the petition and appropriate citations of authority.
    - e. If necessary, appendix under rule 9.220. Petition shall contain references to the appropriate pages of the supporting appendix
    - f. No more than 50 pages.
  3. Filed with the DCA, typically clerk reviews for technical requirements, assigns it to that week’s Writs and Motions Panel. (3 judges)
  4. Writs and motions panel reviews. If petition is valid on its face, will issue an OTSC for a response to the AG and will usually designate if a reply to the response will be allowed. (If court does not set a time, may file a reply within 20 days, under 9.100(k)). Typically, very fast response time from court. Rule 9.100 (h)(j)(k).
- B. Habeas Corpus** –Seek for detention issues. Habeas corpus is the proper remedy to challenge an unlawful detention order. K.E. v. DJJ, 963 So. 2d 864 (Fla. 1<sup>st</sup> DCA 2007; M.A.M. v. Vurro, 2 So. 3d 388 (Fla. 2d DCA 2009). Common habeas petitions include
1. Improperly scored RAI. Some common scoring errors include separate, nonrelated charges (must be totally

separate, unrelated charges), illegal possession of firearm, scrutinize any aggravators.

2. Domestic exception without necessary written findings 985.255(2)
  3. Failure to appear – 985.255(1)(i)(j) –For trial, court must find failure to appear was willful and can only be 72 hours in advance of the NCD. For 2 or more court hearings, must find willful and detention can only be up to 72 in advance of NCD.
  4. Between plea/trial and sentencing time limitations under 985.26(3)
  5. Between sentencing and placement time limitations under 985.27
- C.** Certiorari – Can seek for some evidentiary orders. Must be filed within 30 days of the subject order. Also, involuntary commitment.
- D.** Prohibition – Restrain the unlawful exercise of jurisdiction by a lower tribunal. Speedy trial, jurisdictional issues. The issuance of an order directing the respondent to show cause shall stay further proceedings in the lower tribunal.
- E.** Mandamus –used to enforce an established legal right by compelling a party in an official position to perform a legal duty required of the office. Some older cases directed to HRS mandating placement in programs but not used much today.