

Summary of Ineffective Assistance of Counsel Interim Procedures

FOR CASES GRANTING TPR WHEN PARENT HAS COURT-APPOINTED COUNSEL, the Supreme Court in *J.B. v. DCF*, 170 So. 3d 780 (Fla. 2015), established the following interim procedures until it adopts rules of procedure to formally outline the process in SC16-553:

AT THE END OF THE TPR TRIAL THE COURT MUST ORALLY INFORM THE PARENTS:

- they have a right to appeal the TPR order to the DCA;
- they have **20 days** to file a motion alleging counsel provided constitutionally ineffective assistance of counsel, but that there is no right to appointed counsel for the motion; and
- the parent has a right to court-appointed counsel to appeal both the TPR and denial of the motion.

THE ORDER GRANTING TPR SHALL INCLUDE a brief statement of the parent's right to effective assistance and explain how to file the motion.

THE MOTION must be filed within 20 days of the TPR order and contain:

- case name and number;
- the date of the TPR order;
- the **specific acts or omissions** of counsel that constitute a failure to provide reasonable, professional assistance; and
- an explanation of how the errors or omissions prejudiced the case to the extent that **the result would have been different** absent the deficient performance.

Required showing to grant motion

There is a strong presumption the attorney provided reasonable, professional assistance and the parent must make a showing of prejudice that **goes beyond** the *Strickland v. Washington* requirement that confidence in the outcome is undermined.

AFTER A MOTION IS FILED:

- The court has 25 days to rule or the motion is deemed denied.
- The court must order an expedited compilation of the record.
- The court should schedule any necessary evidentiary hearings.
- The time for appeal is tolled until entry of the order on the motion.

RULING ON THE MOTION:

If the parent establishes the result of the TPR proceeding would have been different absent the attorney's deficient performance, the TPR order is vacated and a new adjudicatory hearing is scheduled. If the parent does not establish that the result of the TPR proceeding would have been different absent the attorney's deficient performance, the court shall enter an order denying the motion, which is the final order for purposes of appeal.

EFFECT OF MOTION ON APPOINTMENT OF COUNSEL:

- If the parent announces an intent to appeal, the court must appoint appellate counsel.
- If parent wants to appeal, the attorney must ask if parent intends to file a motion claiming ineffective assistance of counsel. If yes, the attorney must immediately withdraw as counsel.
- If parent originally said no motion was going to be filed, and then does so, counsel of record (including appellate counsel) must withdraw and new counsel is appointed.
- Once the motion is filed, the parent is pro se for purposes of the motion, but is entitled to appointed counsel for purposes of appeal.

