

From: Matty Branch
To: Gregory, Katie; Johnson, Brent
Date: 8/14/06 2:20PM
Subject: Fwd: Issue for Rules Committee review

Mary Westby, a staff attorney in the Utah Court of Appeals, raises an issue that should be considered by the Appellate Rules Committee, and perhaps with comment/recommendation from the Juvenile Rules Committee. Please forward Mary's email as may be appropriate. Thank you.

Matty

>>> Mary Westby 08/11/06 12:47PM >>>

Matty

There is an issue about the interaction of appellate rules that I think is worth consideration by the appropriate rules committees. Under the new appellate rules for child welfare proceedings, the untimely filing of a petition on appeal will result in the dismissal of the appeal. Rule 55 provides that if the petition is not timely, "the appeal **shall** be dismissed." This is a final determination of the appeal.

Rule 23A provides for a motion for reinstatement of an appeal for the failure to take any step other than the timely filing of a notice of appeal. My understanding is that the intent of this rule is to provide for relief for more routine default dismissals, such as for failure to file a docketing statement or a brief. Dismissals for those reasons are permitted under rule 3. I doubt that it is intended for this rule to apply to child welfare appeals, as it is arguably inconsistent.

Although where appellate rules are inconsistent, they will not apply to child welfare appeals, see rule 1(f), the clash between these rules is more of a gray area. I think it would be worthwhile for committee consideration to determine whether an amendment may be needed to clarify if rule 23A applies to child welfare proceedings.

Thanks, Mary

CC: Westby, Mary