APPEALABLE ORDERS[1]

(a) DISMISSAL ORDER

In re Lauren P. (1996) 44 Cal.App.4th 763, 767-768. A "judgment" in a juvenile dependency proceeding "may be appealed from in the same manner as any final judgment . . . ." (§ 395.) If the juvenile court dismisses a dependency petition based on insufficiency of the evidence, the dismissal is a final judgment and hence appealable. An order of dismissal constitutes a judgment for all purposes and, as such, is generally appealable. Also, such a dismissal is with prejudice, and a final judgement for res judicata purposes. On the other hand, if the juvenile court dismisses a dependency petition without prejudice and without ruling on the merits, the dismissal is not an appealable order. Juvenile court's characterization of its order dismissing dependency petition following a trial on issue of fact as a dismissal "without prejudice" is not controlling and does not preclude review of an otherwise appealable order.

In re Sheila B. (1993) 19 Cal.App.4th 187, 197. An order dismissing a dependency petition after a contested hearing on the petition allegations is a dismissal with prejudice and is appealable.

In re Tomi C. (1990) 218 Cal.App.3d 694, 698. Section 390 dismissal of petition without prejudice is not a final, appealable judgment. Such dismissals do not involve the merits of the allegations; hence, another section 300 petition could be filed alleging the same acts. Further, where petitioner requests dismissal of the petition, the voluntary dismissal is not appealable unless the objector is aggrieved thereby.

(b) DISPOSITIONAL ORDER

In re Meranda P. (1997) 56 Cal.App.4th 1143, 1150; In re Eli F. (1989) 212 Cal.App.3d 228, 233. In a dependency proceeding, the dispositional order constitutes the judgment for purposes of section 395.

Wanda B. v. Superior Court (1996) 41 Cal.App.4th 1391, 1395-1396. A dispositional order denying reunification services, unaccompanied by a simultaneous order setting a section 366.26 hearing, is immediately appealable and, therefore, not reviewable on appeal from the judgment at the section 366.26 hearing.

In re Daniel Z. (1992) 10 Cal.App.4th 1009, 1017. Where a timely notice of appeal specifies the jurisdictional finding instead of the dispositional order, liberal construction of the notice of appeal as properly specifying the dispositional order is appropriate.

In re Tracy Z. (1987) 195 Cal.App.3d 107, 112. Jurisdictional findings are not appealable

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[1] Appellate courts have called upon the Legislature to authorize writ review of orders other than referrals to a section 366.26. (See, e.g., In re Tania R. (1995) 32 Cal.App.4th 447, 451.)

orders. They are only reviewable on a timely appeal from the dispositional orders.

(c) LONG TERM FOSTER CARE

In re Cicely L. (1994) 28 Cal.App.4th 1697. Any portion of a subsequent order, i.e., after the final judgment at the disposition hearing, which is challenged on grounds designed to overturn the setting of the section 366.26 hearing is not appealable; any portion of the order which is challenged on grounds not designed to overturn the setting of the section 366.26 hearing is appealable. (Id., at p. 1704.) A finding at 12-month review hearing that reasonable reunification efforts had been made and order terminating reunification services are immediately appealable where permanent plan of long-term foster care is selected at that hearing and cannot be challenged on appeal from a later order terminating parental rights. (Id., at p. 1705.)

In re John F. (1994) 27 Cal.App.4th 1365, 1374, fn. 4. To be distinguished are orders contemporaneous to an order setting a section 366.26 hearing, and orders, that bypass the section 366.26 hearing and select long-term foster care as the minor's permanent plan. The latter are final and appealable under section 395 as orders subsequent to a judgment of dependency because nothing further is required to establish the permanent plan. (See also, In re Dustin R. (1997) 54 Cal.App.4th 1131, 1138.)

(d) REFERRAL ORDERS

(1) Former Section 366.26, subdivision (k)

In re Matthew C. (1993) 6 Cal.4th 386, 401. Within section 366.26, subdivision (k), no express or implied legislative intent to abrogate appellate review of the issues subsumed within an order terminating reunification services and setting a selection and implementation hearing is discernible. While subdivision (k) abrogates "interim appeals" from orders terminating reunification services and setting a section 366.26 hearing, findings subsumed within such orders remain reviewable on appeal from the final order made at the section 366.26 hearing.

In re Precious J. (1996) 42 Cal.App.4th 1463, 1473-1474. With respect to orders terminating reunification services and setting the 366.26 hearing entered prior to January 1, 1995, under the authority of Matthew C., both orders and the findings which resulted in those orders, including all review hearing findings on the adequacy of the reunification services, are cognizable on appeal from order terminating parental rights.

(2) Section 366.26, subdivision (l)(1): Referral orders entered after January 1, 1995, are not appealable unless a timely writ petition has been filed and either summarily denied or otherwise not decided on the merits.[2]

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[2] Section 366.26, subdivision (l)(1) effectively abrogated the holding in In re Matthew C. (1993) 6 Cal.4th 386, 401, which

a. Writ Procedure Under Section 366.26 (l)(1) and Rule 39.1B

In re DeJohn B. (2000) 84 Cal.App.4th 100, 109. Where notice is not attempted of section 366.21, subdivision (e) review hearing at which case is referred to section 366.26 hearing, rule 39.1B writ advisement is mailed to an invalid address, and notice defect is raised at section 366.26 hearing, notice defect is cognizable on appeal from order terminating parental rights.

In re Maria S. (2000) 82 Cal.App.4th 1032, 1038. Claims of error relating to reunification services are cognizable on appeal from order terminating parental rights where juvenile court failed to advise parent of her right to writ review to challenge termination of reunification services and setting of the section 366.26 hearing.

Glen C. v. Superior Court (2000) 78 Cal.App.4th 570, 577-584. Inadequacies in a rule 39.1B petition may affect not only the resolution of the petition itself but also the parent's right to appeal from the order following the section 366.26 hearing. Section 366.26, subdivision (l), provides: "(1) An order by the court that a hearing pursuant to this section be held is not appealable at any time unless all of the following applies: [¶](A) A petition for extraordinary writ review was filed in a timely manner. [¶](B) The petition substantively addressed the specific issues to be challenged and supported that challenge by an adequate record. [¶](C) The petition for extraordinary writ review was summarily denied or otherwise not decided on the merits. [¶](2) Failure to file a petition for extraordinary writ review within the period specified by rule, to substantively address the specific issues challenged, or to support that challenge by an adequate record shall preclude subsequent review by appeal of the findings and orders made pursuant to this section." Rule 39.1B(d) similarly provides that "[t]he findings and orders of the juvenile court in setting a hearing" under section 366.26 may be reviewed on appeal only if (1) a timely writ petition was filed, and (2) the petition was "summarily denied or otherwise not decided on the merits." Additionally, this subdivision of the rule states that "[r]eview on appeal of the order setting a hearing under section 366.26 is limited to issues raised in a previous petition for extraordinary writ that were supported by an adequate record."

Bare-bones petitions present the reviewing court with several options, each problematic for different reasons. Some courts have taken the view that a procedurally inadequate petition — one that does not comply with the requirements of rule 39.1B(j) — should be dismissed or summarily denied. Some courts have further opted for summary denial on the merits of petitions that are procedurally adequate but fail to present meaningful argument, if the reviewing court does not find that the issue raised by the petition is arguable. That often would allow a subsequent appeal. Another alternative open to a reviewing court is to require or offer the option to counsel to correct deficient petitions by

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interpreted former section 366.26, subdivision (k) to permit, on appeal from a section 366.26 hearing, review of findings subsumed within the decision to set a section 366.26 hearing.

filing amended petitions. Finally, a reviewing court might overlook the deficiencies in a petition and independently review the record. However, independent review would impose an extraordinary burden on the courts and is not required by either constitutional principle or policy for appeals from orders adversely affecting child custody or parental status.

Summary denial or dismissal of a procedurally inadequate petition punishes the parent for the failure of counsel to adequately perform his or her professional responsibilities. Neither section 366.26 nor rule 39.1B, however, ***require*** that all petitions be decided on the merits. On the contrary, both expressly recognize the possibility of summary denial in their provision that the trial court's orders in setting the section 366.26 hearing may be reviewed on appeal after that hearing only if, among other things, the "petition for extraordinary writ review was summarily denied or otherwise not decided on the merits." (§ 366.26, subd. (l)(1)(C); rule 39.1B(d)(2).)

It is incumbent upon counsel who participate in dependency cases to advocate their clients' positions fully and effectively. This does not mean that counsel should file a rule 39.1B petition in every case, or in every case in which the client has filed a notice of intent to file such a petition. To the contrary, an attorney is required to maintain only such actions or proceedings "as appear to him or her legal or just." (Bus. & Prof. Code, § 6068, subd. (c); see Rules Prof. Conduct, rule 3-200.) When a rule 39.1B petition is filed, however, it is the obligation of the attorney to comply with section 366.26, rule 39.1B and case law describing the requirements for an adequate petition.

Although the parent, him or herself, files a petition for extraordinary writ, counsel is not required to follow through with the petition itself if counsel believes the petition has no arguable merit. In light of the obligation imposed upon attorneys by Business and Professions Code section 6068, subdivision (c), not to maintain actions that do not appear "legal or just," the filing of a rule 39.1B petition by counsel informs this court that counsel believes the issues presented ***are*** "legal or just." A petition that the attorney did not believe to be "legal or just" would violate the attorney's professional obligation and would be frivolous.

Strong measures are necessary to assure parents in dependency cases receive proper representation in rule 39.1B writ proceedings. As has been stated, when an attorney evaluates a case and determines there is no potentially meritorious issue to be raised, a petition for extraordinary writ simply should not be filed. In order to impress upon counsel the importance of adequate presentation of writ petitions that are filed, the First Appellate District will, in the future, summarily deny petitions that fail to comply with the requirements of section 366.26 and rule 39.1B as well as to take appropriate steps (e.g., report the conduct to the trial court or State Bar or initiate sanction proceedings, if appropriate) to deter violations.

In re Rashad B. (1999) 76 Cal.App.4th 442. Contentions designed to overturn a referral order are not cognizable on appeal unless writ review was sought, even if the contention

relates only to contemporaneous orders which would otherwise be appealable. For example, if a parent is denied reunification services pursuant to section 361.5, subdivision (b)(10)(A) and the cause is referred for a section 366.26 hearing, at disposition, claims (1) that the referee's dispositional order removing the children from parental custody is invalid for lack of a judge's signature; (2) that the petition failed to state a cause of action; (3) that the jurisdictional and dispositional findings were not supported by substantial evidence; and (4) that removal of appointed trial counsel at the conclusion of the disposition hearing was error, as well as the referral order itself, are not cognizable on appeal unless rule 39.1B writ review has been sought. However, where the court fails to give a party notice of writ review, the party's claims are not limited by the provisions of the court rules or statutes. (Id., at pp. 447-448.)

Where a parent is not present at the hearing where the juvenile court entered the referral order, the court is required to mail notice to the party's last known address. Pursuant to section 316.1, the court is required to order the parent to provide a permanent mailing address and to admonish the parent that the permanent mailing address will be used for notice purposes unless the parent notifies the court or social services agency in writing of new mailing address. The court's admonishment of the parent's duty to notify his or her attorney and social worker of any change in address and that the failure to do so can result in the failure to receive important notices does not constitute substantial compliance with section 316.1 and rule 1412(l). (Id., at pp. 448-450.)

Where it has not complied with section 316.1 and rule 1412(l) the court's failure to sent written notice of the referral order to the parent is not excused by the fact that the parent is homeless. A permanent mailing address, designated for purposes of receiving notices, need not be the address at which a parent is actually residing. (Id., at p. 450.)

In re Anthony B. (1999) 72 Cal.App.4th 1017, 1021-1024. Any order, regardless of its nature, made at the hearing at which the juvenile court enters an order setting a section 366.26 hearing is a nonappealable order, subject to writ review only under section 366.26, subdivision (l)(1). Specifically, order denying parent's 388 petition for visitation issued contemporaneously with setting order is subject to writ review only.

In re Casey D. (1999) 70 Cal.App.4th 38, 46-47. Arguments previously raised by parents in a rule 39.1B writ petition and denied on the merits may not be raised again on appeal from order terminating parental rights.

In re Cathina W. (1998) 68 Cal.App.4th 716. Juvenile court's failure to discharge its duty to give parent timely, correct notice of the entry of the order setting the 366.26 hearing constitutes good cause for parent's failure to file a notice of intent and request for record and a writ petition pursuant to section 366.26, subdivision (l) and rule 39.1B. (Id., at p. 722.)

All of the time standards in rule 39.1B are mandatory. (Id., at pp. 724-725.) Depending upon the circumstances of the individual case, isolated or infrequent failures by the

juvenile court to meet the requirements of rule 39.1B will simply require the appellate court to dispose of the case as promptly as possible or permit the parent to raise the propriety of the setting order on appeal from the termination order. However, persistent or repeated violations by the juvenile court of the duties imposed upon it by the statute and the rule might call for sterner measures calculated to compel the juvenile court to discharge its mandatory duties under the statute and the rule. (Id., at p. 726.)

Parent's right to appellate review of the merits of the setting order is not conditioned upon a showing he or she was prejudiced by the juvenile court's failure to serve a correct and timely rule 39.1B(f) notice. No purpose would be served by imposing such a condition because a determination that the setting order was prejudicial error obviously requires an evaluation of the merits of the order. (Id., at p. 724.)

In re Charmice G. (1998) 66 Cal.App.4th 659. Although section 366.26, subdivision (l) sets forth the conditions which permit a party to contest by appeal an order setting a .26 hearing, it does not specify when a party should appeal if those enabling conditions have been met. (Id., at p. 666.) However, the legislative history demonstrates the Legislature's intent to prohibit interim appeals from referral orders or orders setting a .26 hearing, even if all the conditions for review by appeal specified in subdivision (l) have been satisfied. In other words, a party must wait to attack the referral order on a later appeal from the order entered at the .26 hearing. (Id., at pp. 666-668.) Further, subdivision (l) also applies to collateral orders which are "integrally related" to the referral order and issued contemporaneously with that order. (Id., at pp. 669-670.)

In re Baby Boy H. (1998) 63 Cal.App.4th 470, 474. Dispositional order denying reunification services which is not accompanied by a simultaneous order setting a section 366.26 hearing is appealable.

Anthony D. v. Superior Court (1998) 63 Cal.App.4th 149.
[1] When services are denied to both parents at the dispositional hearing, all challenges to the dispositional judgement and underlying jurisdictional findings must be brought by writ because all such challenges, with one possible exception, are designed to overturn the referral order. Because all orders denying services require jurisdiction and out of home placement, any successful attack on jurisdiction or the finding of detriment to return the child to his or her home would result in reversal of the denial of services, which, in turn, would result in the reversal of the order setting the section 366.26 hearing. (Id., at p. 156.)

The one possible exception is an appeal from a dispositional judgment where services were denied to both parents and the matter was referred to a permanency hearing, but the only issue on appeal is an attack on the visitation order. (Ibid.)

[2] Section 366.26, subdivision (l) sets out three conditions for the appealability of a referral order: a petition challenging the order must be timely filed, it must be summarily denied, and it must "substantively address the specified issues to be challenged and

support that challenge by an adequate record." The last-mentioned condition is amplified in rule 39.1B(j): "The petition for extraordinary writ shall summarize the factual basis for the petition. Petitioner need not repeat facts as they appear in any attached or submitted record, provided, however, that references to specific portions of the record, their significance to the grounds alleged, and disputed aspects of the record will assist the reviewing court and shall be noted. Petitioner shall attach applicable points and authorities . . ." (Id., at p. 157.)

Timely filed writ petition which contains no specific legal or factual support for the allegations is appropriately denied summarily foreclosing subsequent appeal of referral order. (Ibid.)

Maribel M. v. Superior Court (1998) 61 Cal.App.4th 1469. Effective January 1, 1998, the Judicial Council amended rule 39.1B to modify subdivisions (l) and (o) to provide, in pertinent part:

> "In all cases in which the court intends to issue a determination on the merits, the court shall issue an Order to Show Cause or an Alternative Writ[,]" and "[a]bsent exceptional circumstances the appellate court shall review the petition for extraordinary writ and decide it on the merits by written opinion."

The purpose of these amendments is to preclude summary denial on the merits by courts of appeal of rule 39.1B writ petitions. That purpose conflicts with section 366.26, which permits summary denial of certain substantively deficient rule 39.1B writ petitions. (Id., at pp. 1473-1476.)

The Judicial Counsel may only make rules which are consistent with statutes. Because they are inconsistent with section 366.26, subdivision (l), the amendments to rule 39.1B (l) and (o) are unconstitutional. However, they are severable from the remainder of rule 39.1B. (Id., at pp. 1476-1477.)

Sue E. v. Superior Court (Los Angeles County) (1997) 54 Cal.App.4th 399. There is no requirement that a party must file a writ petition challenging the juvenile court's decision to set a section 366.26 hearing in order to preserve the right to appeal from matters which may later occur during, or in connection with, the 366.26 hearing.

A literal reading of section 366.26, subdivision (l)(2) is susceptible to interpretation a parent must petition for an extraordinary writ prior to a section 366.26 hearing, or will be denied subsequent review by appeal of any irregularities which may occur during, or in connection with, the section 366.26 hearing.

Section 366.26, subdivision (l)(2), properly construed, precludes subsequent review on appeal only of the decision to set a section 366.26 hearing, unless a writ petition challenging the order setting such hearing is timely filed. (Id., at p. 405.)

Where record clearly shows the reunification services were sufficient and return of a child to the parent would be detrimental, counsel is not required to file a writ petition in providing adequate representation to a parent. (Id., at p. 404.)

Cheryl S. v. Superior Court (1996) 51 Cal.App.4th 1000, 1003-1005. Appellate court's duty to closely review a rule 39.1B petition and its supporting record for reversible error does not relieve the petitioner's attorney from meeting his obligation to present an adequate record, argument, and points and authorities. D.C.F.S. is under no obligation to do the petitioner's work. The fact that the attorney is appointed by the court and paid a flat fee is, of course, irrelevant -- if he deems the fee inadequate, he need not accept the appointment. Henceforth, Division One of the Second District Court of Appeal will dismiss as inadequate any rule 39.1B petition that does not (1) summarize the particular factual bases supporting the petition, (2) refer to specific portions of the record, (3) relate the facts to the grounds alleged as error, (4) note disputed aspects of the record, and (5) have attached to it a particularized memorandum of points and authorities.

Cresse S. v. Superior Court (1996) 50 Cal.App.4th 947, 955-956. Rule 39.1B does not permit an appellate court to deny a petition for writ of mandate on technical grounds. The rule's mandate, however, does not relieve an attorney from his or her obligation to provide the appellate court with (1) an adequate record and a petition containing citations to the record and (2) points and authorities in support of the arguments presented. When the case has any merit, the attorney is required, regardless of the compensation arrangement -- to prepare a sufficient petition. Failure to do so will result in the dismissal of the petition as abandoned in Division Two of the Second District Court of Appeal.

Some attorneys may believe that they will be accused of proving inadequate representation should they fail to file a petition for writ of mandate under rule 39.1B. However, where the record clearly indicates that the reunification services were adequate, counsel is not obligated to file a petition for writ of mandate.

In re Julie S. (1996) 48 Cal.App.4th 988. As a matter of statutory law, an appeal from an order setting a section 366.26 hearing is only available if a petition for an extraordinary writ challenging the order was filed and was summarily denied or otherwise not decided on the merits. (Id., at p. 990.)

Where (1) parent files a petition for an extraordinary writ pursuant to subdivision (l)(1) of section 366.26, and rule 39.1B, challenging the findings and order setting the hearing concerning the adoption; and (2) court issues an order to show cause, affords the parties an opportunity to fully brief and to orally argue the cause, and issues a written opinion on the merits, the order setting the section 366.26 hearing is not appealable following the order terminating parental rights pursuant to section 366.26. (Id., at p. 991.)

In re Edward H. (1996) 43 Cal.App.4th 584, 590-591. Order selecting adoption as permanent plan for minors but continuing section 366.26 hearing for identification of prospective adoptive family (§ 366.26, subd. (c)(3)) is an appealable, interlocutory order.

John F. v. Superior Court (1996) 43 Cal.App.4th 400, 406, fn. 3, citing Joyce G. v. Superior Court (1995) 38 Cal.App.4th 1501, 1507-1508, fn. 3. The failure to file a writ petition challenging the findings made at a hearing at which the matter is set for a section 366.26 hearing only precludes raising issues regarding those findings upon an appeal from the order at the section 366.26 hearing; it does not also preclude the appeal of an order terminating parental rights entered at the section 366.26 hearing.

In re Natasha A. (1996) 42 Cal.App.4th 28, 33-34. A visitation order is separately appealable even if issued in conjunction with the setting of a section 366.26 hearing.

Jonathan M. v. Superior Court (1995) 39 Cal.App.4th 1826, 1829-1830. A notice of intent to file a writ petition pursuant to rule 39.1B must be timely filed. Absent a showing of good cause, the reviewing court is obligated to dismiss the petition for untimeliness of the notice of intent. Where petitioner fails to timely initiate the writ proceedings, petitioner is barred in any subsequent appeal from making further challenges to the order terminating reunification services and setting a hearing under section 366.26.

However, a writ petitioner can hardly be subject to the sanction of dismissal, or any other sanction, for untimely filings over which he or she has no control.

Joyce G. v. Superior Court (1995) 38 Cal.App.4th 1501. The writ review created by section 366.26, subdivision (l) and implemented by rule 39.1B does not exclude summary denial as a dispositional option. The Legislature did not intend to require an alternative writ or order to show cause and a decision by written opinion in all rule 39.1B writ proceedings. Summary denial is appropriate in limited circumstances i.e., when the petition (1) is untimely filed, (2) fails to tender and substantively to address a material issue or issues, (3) is not supported by an adequate record, or (4) when full examination of the proceedings reveals that petitioner has not tendered an arguable issue. (Id., at p. 1506.)

Summary denial does not establish law of the case, and the petitioner, therefore, retains his or her appellate remedy (§ 366.26, subd. (l)(1)(C)) but is limited to the same issue on the same record (§ 366.26, subd. (l)(1)(B)) and thus is destined on appeal to receive the same result. (Id., at p. 1514.)

Roxanne H. v. Superior Court (1995) 35 Cal.App.4th 1008. The time deadline set out in rule 39.1B(k) for filing a writ petition is mandatory. Consequently, the filing of a petition within 10 days of the preparation of the record as mandated by rule 39.1B(k) is a clear requirement for the right to a review on the merits of an order setting a 366.26 hearing. (Id., at p. 1011.) Petitioner's failure to file the writ petition within the applicable time limit established by rule 39.1B requires dismissal of the petition. Further, petitioner is barred in any subsequent appeal from making further challenges to the order setting a hearing under section 366.26. (Id., at pp. 1012-1013.)

James B. v. Superior Court (1995) 35 Cal.App.4th 1014. Various procedural problems

are presented to the courts by rule 39.1B (hereafter, the Rule) which either should be authoritatively interpreted by the Supreme Court or substantially amended by the Judicial Counsel.

Pursuant to the Rule, the "respondent's brief" must be submitted within 10 days of the date the petition was filed. (Rule 39.1B(k).) The respondent, of course, is the superior court. It is the real party in interest who must file a brief in opposition to the petition. The use of the language "respondent's brief" is a misnomer, no doubt caused by the unfortunate hybridization of appeal and writ procedures by the drafters of the Rule. (Id., at p. 1017.)

When a writ proceeding under the Rule is fully briefed, the Court of Appeal is required to conduct oral argument absent a waiver thereof. The Rule provides that oral argument "shall" be held in each case within 30 days of the filing of the opposition to the petition, unless argument is waived or there is good cause for an extension of time. (Rule 39.1B(o).) The Rule also requires that the reviewing court determine the petition on its merits, absent exceptional circumstances. (Rule 39.1B(m).) The Rule, however, fails to provide for a mechanism analogous to an alternative writ or an order to show cause, so that a cause is created and a written opinion is filed and becomes law of the case. Our Supreme Court has made it clear that these are necessary conditions in writ cases for plenary review on the merits. (Id., at pp. 1017-1018.)

The Rule's failures place appellate courts in a procedural quandary. Supreme Court decisional law on the lore of writs requires an alternative writ or an order to show cause before there can be full-blown merit review of a writ proceeding. The Legislature clearly intended such plenary review of the merits in section 366.26 cases. Thus, the Rule's failure to provide for such a procedure violates the writ lore of this state as expressed in Supreme Court decisions. (Id., at p. 1018.)

Unfortunately, in most of these cases there simply is not time for the usual writ procedures -- another aspect of procedure apparently overlooked by the drafters of the Rule. The Rule does not appear to contemplate the amount of time usually required for the issuance of an alternative writ or order to show cause, a return thereto and review of the record by this court, all within the 30 days prior to oral argument. The Rule also does not contemplate that by issuing an alternative writ the appellate court can lose control of the proceedings. An alternative writ, which commands the trial court to change its ruling or in the alternative appear and argue why a peremptory writ should not issue, often is construed by the trial court as a command to reverse itself. An alternative writ is not a calendar notice for oral argument of an appeal. (Ibid.)

To add to the conundrum, these writ petitions are frequently not fully briefed until the section 366.26 hearing is almost upon the reviewing court. The trial court will set a section 366.26 hearing within only four months. During that time the writ record must be prepared and filed, and the matter must be briefed and argued. Moreover, the reviewing court's hands are effectively tied by the Rule's virtual prohibition of stays of section

366.26 hearings. (Rule 39.1B(n).) (Ibid.)

Steve J. v. Superior Court (1995) 35 Cal.App.4th 798. While the expedited process envisioned by section 366.26, subdivision (l)(1) is entitled an extraordinary writ proceeding, it is in reality a hybrid, an amalgam of writ and appellate procedures. Certainly, the most notable difference between rule 39.1B proceedings and original proceedings for writ of mandate, certiorari and prohibition which supports this view is the legislative encouragement, in section 366.26, subdivision (l), for a reviewing court to decide such petitions "on their merits" (§ 366.26, subd. (l)(4)(B)). By contrast, the Legislature has not urged on the merits review in original proceedings for writ of mandate, certiorari and prohibition. Instead, reviewing courts routinely employ discretionary grounds to deny relief sought in such original proceedings. The Legislature has mandated as well the juvenile court's advisement of rights under section 366.26, subdivision (l), akin to an advisement of appellate rights, and the implementation of time requirements for these proceedings, something which is required in matters of appellate review, but not writ proceedings. (Id., at pp. 806-807.)

Pursuant to its legislative mandate, the Judicial Council has drafted and adopted rule 39.1B to implement section 366.26, subdivision (l). The procedures set forth in rule 39.1B follow the Legislature's lead by adapting rules of both writ and appellate procedures for use in these cases. For example, the Judicial Council has adopted a "notice of intent" procedure, similar to that of a notice of appeal. Also, it has established a timetable, something which does not exist in other original proceedings, to ensure timely resolution of these matters before the juvenile court conducts its section 366.26 hearing.

The goal of section 366.26, subdivision (l) and rule 39.1B is for the reviewing court to avoid the use of discretionary grounds to deny relief, assuming specific conditions precedent are met, and decide cases "on their merits" as if it were a direct appeal. Those conditions precedent are that the petitioner: file in a timely manner the petition for extraordinary writ review; substantively address in the petition the specific issues to be challenged; and support that challenge by an adequate record. (§ 366.26, subd. (l)(1)(A) & (B).) (Id., at p. 807.)

The issuance of an alternative writ or order to show cause is not required in proceedings under rule 39.1B in order to reach the merits. (Id., at p. 810.)

A notice setting a case for oral argument is as effective, if not equivalent to, an alternative writ or order to show cause in terms of setting up a writ petition for a decision on its merits. (Id., at p. 808.) In traditional writs, an alternative writ or order to show cause and oral argument are conditions precedent to an opinion becoming law of the case. (Ibid.) However, by its enactment of section 366.26, subdivision (l), the Legislature has foreclosed the right to appeal from the findings and orders of the juvenile court in a section 366.26 hearing unless certain conditions are met. In so doing, the Legislature has rendered the "law of the case" doctrine relevant to dependency writ proceedings from

orders setting a section 366.26 hearing. (Id., at p. 809.) Further, the Legislature has the power to create new types of writ proceedings which have both procedural and substantive characteristics not found in traditional writs. The Legislature delegated that task to the Judicial Council which decided not to adopt the procedural formality of issuing alternative writs or orders to show cause. (Ibid.)

Ronald S. v. Superior Court (1995) 34 Cal.App.4th 1467, 1468-1469. Reviewing court is not required to conduct an independent review of the record when petition for writ relief from order scheduling a section 366.26 hearing raises no issues.[3]

Karl S. v. Superior Court (1995) 34 Cal.App.4th 1397. Rule 39.1B, which implements section 366.26, subd. (l) in particular, requires a party to file a notice of intent with the clerk of the juvenile court within seven days of the date of the order setting a hearing under section 366.26. (Rule 39.1B(f).) This period is extended five days if the party received notice of the order setting the section 366.26 hearing only by mail.

Section 366.26 subdivision (l) and rule 39.1B are intended to provide for the expeditious resolution of a challenge to an order for a section 366.26 hearing. (Rule 39.1B(a).) To carry out this goal, rule 39.1B prescribes numerous, successive time limits for completing the writ process described in rule 39.1B. For instance, within approximately 10 days of the filing of the notice of intent, the record must be prepared and filed with the reviewing court. (Rule 39.1B(g).) In turn, the petition must be filed within 10 days thereafter. (Rule 39.1B(k).) In other words, rule 39.1B envisions that the petition itself will be filed within about one month after the date of the order setting the section 366.26 hearing. (Id., at pp. 1402-1403.)

Accordingly, a parent's failure to file a notice of intent within the applicable time limit established by rule 39.1B requires the dismissal of the subsequently filed petition for extraordinary review and precludes parents from raising issues related to the order setting a section 366.26 hearing on appeal from a section 366.26 order (§ 366.26, subd. (l)(2)). (Id., at pp. 1403-1404.)

The time standards of rule 39.1B are mandatory rather than directory. Section 366.26, subdivision (l) and rule 39.1B encourage a review of the merits of a petitioner's arguments. (§ 366.26, subd. (l)(4)(A) & (B); rule 39.1B(a), (b) & (m).) However, such encouragement is neither a directive nor a license to ignore the deadlines established by

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[3] See, In re Sade C. (1996) 13 Cal.4th 952, 959 [court conducted independent review of the record is not required and need not nor should be extended to apply on review of judgments or orders adversely affecting a parent's custody of a child or status as the child's parent when appointed counsel concludes that the appeal lacks any basis in law or fact]; In re Sara H. (1997) 52 Cal.App.4th 198, 201 [nothing in Sade C. suggests that, in the absence of the applicability of the Wende procedure, there is a similar discretionary review procedure which is applicable to dependency appeals in which the appointed attorney makes no assertions of error in his or her opening brief].

the rule. In this respect, section 366.26, subdivisions (l)(1) and (2) require the filing of a timely petition as a condition precedent to review on the merits. Thus, an untimely petition, in the absence of some good cause showing to explain the delay, constitutes an exception, or in the words of rule 39.1B(m) "exceptional circumstances," to excuse the appellate court's responsibility to decide the petition on the merits. (Id., at p. 1404.)

Robin V. v. Superior Court (1995) 33 Cal.App.4th 1158, 1160-1161, fn. 1); Guillermo G. v. Superior Court (1995) 33 Cal.App.4th 1168, 1172-1173. Under In re Matthew C. (1993) 6 Cal.4th 386, a birth parent or other aggrieved party could wait until an appeal from a judgment terminating parental rights or adopting some other permanent plan to seek review of the juvenile court's referral order. The Legislature abrogated the Matthew C. holding with the enactment of section 366.26, subdivision (l), which provides that referral orders entered after January 1, 1995, may not be reviewed via appeal unless a timely writ petition has been filed and either "summarily denied or otherwise not decided on the merits." (See rules 39.1A(b)(2), 39.1B(d)(2), 39.2(b)(2) & 1436.5(c)(2).) The appellate courts are "[e]ncourage[d] . . . to determine all writ petitions filed pursuant to this subdivision on their merits." (§ 366.26, subd. (1)(4)(B).) To this end, the Judicial Council has promulgated rule 39.1B(m), which provides, "Absent exceptional circumstances the appellate court shall review the petition for extraordinary writ and decide it on the merits."

In re Shaundra L. (1995) 33 Cal.App.4th 303. In enacting the 1994 amendment to section 366.26, subdivision (l), the Legislature clearly intended that the writ proceeding reviewing an order setting an underlying dependency proceeding for a hearing be one which resolved the merits of the dispute. Accordingly, the parties must be given the opportunity to fully brief the cause. Absent an emergency, a concession of error, or a showing the petitioner's entitlement to relief is so obvious that no purpose would be served by full consideration of the petition, an alternative writ or order to show cause should issue, the parties should be afforded the opportunity to orally argue the cause, and the case should be resolved by a written opinion. (Id., at p. 314.) Although the procedures set forth in rule 39.1B are slightly different from that envisioned by the Legislature, the court rules are consistent with the Legislature's goal of resolution on the merits to the extent they afford the parties an opportunity to brief the issues and provide for oral argument. Although the court rules do not require the issuance of an order to show cause or the filing of an opinion, in deference to the clear legislative intent, the order to show cause procedure should be utilized and opinions should be issued. Second District, Division Five will utilize the order to show cause procedure and issue opinions. (Id., at pp. 315-316.)

In re Rebekah R. (1994) 27 Cal.App.4th 1638, 1646-1648. In dependency proceedings, the right to appeal does not accrue until the court orders a disposition. Ordinarily, on appeal from a disposition a parent may present issues which have arisen from the proceedings up to that point. However, this rule is not applicable when the disposition includes a blanket denial of all reunification services under section 361.5, subdivision (b) and an accompanying order for a section 366.26 hearing. Under such circumstances,

[former] section 366.26, subdivision (k) operates to displace section 395, and only writ review is available. Further, the expeditious review of such a disposition order is no less important when the claim of error pertains not to the denial of reunification but rather to the underlying jurisdictional finding or some other matter which goes to the validity of the order.

In re Moriah T. (1994) 23 Cal.App.4th 1367, 1371. Visitation order issued in conjunction with 18-month review hearing orders terminating family reunification services and referring the cause for a section 366.26 hearing is an appealable order.

Rayna R. v. Superior Court (1993) 20 Cal.App.4th 1398. Superior court appointment of counsel to represent indigent party in dependency proceedings encompasses writ petitions filed under sections 366.25, subdivision (j), and section 366.26, subdivision (k). (Id., at p. 1404.) The county must pay for transcripts supporting writ petitions under these sections. (Id., at p. 1406.) Litigants must submit a record adequate to permit review of the challenged ruling or present facts sufficient to excuse the failure to submit an adequate record. Additionally, litigants must present a comprehensive statement of the facts and procedures and points and authorities. Completion of Judicial Council Form No. JV-825 will not meet the well-established requirements for writ relief. (Id., at pp. 1406-1407.)

In re Diana G. (1992) 10 Cal.App.4th 1468, 1482. Order under section 366.26, subdivision (b)(2) for 60-day continuance of selection and implementation hearing after identification of adoption as the permanent plan for the minor is not a final and appealable order.

In re Jennilee T. (1992) 3 Cal.App.4th 212, 217-218; In re Rebecca H. (1991) 227 Cal.App.3d 825, 835-837; In re Catherine S. (1991) 230 Cal.App.3d 1253, 1256: Rule that order scheduling a section 366.26 hearing is not appealable but reviewable only by petition for extraordinary writ encompasses a dispositional order denying reunification services under section 361.5, subdivision (b)(2) because a challenge to the complete denial of reunification services constitutes a direct attack on the disposition order scheduling a section 366.26 hearing.

(e) SECTION 388 ORDER

In re Ronald V. (1993) 13 Cal.App.4th 1803, 1807, fn. 2. Order denying 388 petition to modify permanency planning orders terminating parental rights and freeing minor for adoption, although void (§ 366.26, subd. (h)), is appealable as an order after judgment. (§ 395.)

(f) TRANSFER ORDER

In re Christopher T. (1998) 60 Cal.App.4th 1282, 1287. Section 379 and rule 1425 confer the right to appeal a transfer order on either of the affected courts. Although there is no

similar statute or rule specifically granting a parent the right to appeal, section 395 confers the right to appeal a transfer order on the parent.

(g) POSTJUDGMENT ORDER

In re Daniel K. (1998) 61 Cal.App.4th 661. All post-dispositional orders in dependency matters are directly appealable except for post-1994 orders setting a section 366.26 hearing. Limitation applied to post judgment appeals in general civil proceedings brought under Code of Civil Procedure section 904.1 [only post judgment orders that either "affect" the judgment or relate to it by enforcing it or staying its execution are separately appealable] is a general statute which is superseded by the specific section 395 which controls. (Id., at p. 668.)

Assuming, without deciding, that the limitation on appeal of post judgment orders in delinquency proceedings brought under section 800 applies in dependency proceedings [post judgment order must affect the substantial rights of the juvenile to be appealable], post judgment order denying continuing discovery of minor's placement and all communication with respect thereto and all observations of minor's behavior by school, guardian and therapist meet that test. (Id., at p. 670.)