

IN THE SUPREME COURT OF FLORIDA  
CASE NO.: SC00-2044

In Re:

AMENDMENT TO THE RULES  
OF JUVENILE PROCEDURE

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CHILDREN'S ADVOCACY FOUNDATION COMMENTS ON THE  
PROPOSED RULE 8.350, AND ON THE NEED OF FOSTER CHILDREN TO  
HAVE AN ATTORNEY AD LITEM REPRESENT THEM

CHILDREN'S ADVOCACY FOUNDATION

1. The Children's Advocacy Foundation, Inc. (CAF) was formed to help children by directly and indirectly assisting them, advocating for and protecting their rights through litigation and by educating others about the needs of children in the legal system. Established in response to an ongoing crisis in foster care, CAF is set up as a nonprofit foundation with its principal office located in Tallahassee, Florida. CAF is currently involved in activities on behalf of the more than 10,000 children presently in Florida's foster care system. Historically, the abused and neglected children taken into Florida's foster care system are at risk of being subjected to tortious injuries and damages as a result of unlawful conduct inherent in the operation of Florida's foster care system.

BACKGROUND

2. Earlier this year, in declining to address the issue of whether termination of parental rights cases should be given priority over all other civil matters, the court indicated its preference that it deal only with foster children issues in a cohesive whole, rather than piecemeal. The Court further indicated its intention to wait at least until the Karlan Commission completes its work and submits its report sometime in 2001. Meanwhile, each day that goes by is a day that can never be returned to the children stuck in the morass that is Florida's foster care system. The foster care system in Florida is in a state of crisis, speaking systemically. From the standpoint of each individual child, it is impossible bureaucratic tangle which too often denies children a normal life with a real, loving, permanent family. Currently the statewide average length of stay for children in foster care is approximately 36 months, with several districts having even longer average lengths of stay.

3. The latest information available suggests that fewer than 50% of the children have a volunteer guardian ad litem, and that virtually no children have attorneys ad litem.

4. As proposed, Rule 8.350 would provide the Department of Children and Families with even more power over the children already subject to its every whim, oftentimes with little or no effective protection from the judicial branch. This,

despite the Department's longstanding history of ignoring federal and Florida law requiring that children be moved to permanency as expeditiously as possible, rather than growing up in the limbo that is foster care. Many of the children placed in residential treatment centers are put there by the department only after years of multiple placement changes, separation from siblings, interference with access to a meaningful education and in-system abuse and neglect compounding harm that the child may have suffered as a result of the alleged parental abuse and neglect which resulted in the child becoming dependent in the first place.

4. Advocates for children in the foster care system are frequently denied access to their client's records because of the Department's position that children have no right to retain their own attorney.

5. It is also clear that unless or until this Court leads Florida's judicial branch into a less passive role when it comes to protecting the rights of foster children, the foster children will continue to have their rights trampled on. Within the past year, in court proceedings in which the undersigned has been involved, DCAF has taken the position that a child is not a party to a dependency proceeding [despite the statute and rule making it clear that the child is a party, DCAF's own regulations and the provisions in the Florida Administrative Code do not include the child], DCAF has taken the position that even children old enough to understand

their situation and request help from an outside attorney have no right to retain counsel, and most recently have taken the position that the DCAF operating procedure that provides each child with a right to a free copy of his or her entire chart<sup>1</sup> only applies where the child personally request records, not where a child's attorney asks for the records. The statement was made even though it was the child who had signed the record request, and the department has thus far not backed down from its insistence upon being paid \$3,600.00 for attorney time spent by department attorneys looking at the child's records in addition to the \$600.00 already paid by the attorney for the child to obtain a copy of those records.

6. Experience has shown it essential for the protection of the rights of the child in the foster care system to have both a guardian ad litem as well as an attorney ad litem to advocate for the child and insist upon the Department's proper performance of its duties. Although all caseworkers serving as foster care counselors should be professional social workers, very few of them are. Even those who are are prevented from doing a competent job because of excessive paperwork demands imposed upon them by their superiors, excessive caseloads and foster homes that are overcrowded to the point where neglect if not abuse become a certainty. Many of the children in foster care for long periods of time

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<sup>1</sup> DCAF Operating Procedure 175-37.

who are labeled by DCAF workers as engaging in "acting out" behavior [what this means is whatever the person who uses the expression wants it to mean and can encompass introverted children who do not communicate to children who engage in temper tantrums to children who engage in repetition of the same sexual acts upon others that they themselves were subjected to by still others in the foster care system].

7. The importance of both a guardian ad litem and an attorney ad litem simply cannot be overstated. The guardian ad litem is generally a volunteer who has frequent contact directly with the child and is in a position to make sure that caseworkers follow up on providing for whatever services the child needs while the child is theoretically moving toward permanency. Even if the case worker is not moving the child toward permanency, the guardian ad litem can at least be involved in as a stable constant adult in the child's life and may, in fact, be the only constant as a child's years in foster care drag on. Generally, attorneys do not have the time to be proactive guardians ad litem as needed by the children. However, attorneys serve the essential role of advocating in court so that the child is represented by an attorney as are all of the other parties. Guardians frequently express concern that, because they are not attorneys, their input is not regarded in the same way by the court as the input of attorneys for the parents and the department.

## KARINA

8. In a recent case in Dade County, Karina<sup>2</sup> was told by DCAF that they wanted to move her from a foster home placement and put her in a locked residential treatment center. Karina has been in foster care since 1986, when she was found with her 4-year-old sister wandering in a park. To this day, DCAF has yet to file a petition to terminate parental rights. Despite early recommendations that parental rights be terminated and the child be placed for adoption, the recommendations since 1992 have been that her permanency goal be “long-term foster care”. Karina has been sexually and otherwise physically abused in several placements. She has been in more than 30 placements during her 14 years as a foster child. She has already spent several years in locked and restrictive residential treatment centers. According to department personnel, these placements were necessary so that she would become stabilized mentally and emotionally. DCAF workers have testified that it is their practice not to pursue termination of parental rights and placement with an adoptive family until children are emotionally stable. No explanation has ever been given how a child who is subjected to a series of ever changing placements, with frequent disruptions in education, denial of access to relatives and being subjected to abuse and neglect can possibly result in the child

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<sup>2</sup> Not her real name.

becoming psychologically stable, when what the child really needs is a good, permanent loving family.

Turning back to the present for Karina, she was able to let her attorney ad litem know of the department's plans to put her in a locked facility in another county even though that placement – in addition to being needlessly restrictive – would have completely prevented her from having contact with her sister or with her two year old child conceived in 1998 during a gang rape. There has been no allegation of abuse or neglect against Karina and no professionally licensed psychologists or psychiatrist with knowledge of her circumstances felt that a locked facility was necessary. Nevertheless, the department has tried to put her in a locked facility on several occasions. At a staffing involving Dade County DCAF personnel, the District Administrator acknowledged that although she had never abused or neglected her child, that he was afraid that might change sometime and he was not going to let that happen and wanted her locked up. In three separate meetings including the staffing with the district administrator and several other senior DCAF personnel, a treatment team meeting and a case review committee meeting, the child's guardian ad litem and attorney ad litem participated proactively on behalf of the child and were finally able to have DCAF be forced to agree to an independent competent evaluation. When that evaluation was completed, the

recommendation was that the child be placed in a therapeutic foster home and that a locked residential treatment center would not be inconsistent with her best interest. Had the child been without a guardian ad litem or an attorney ad litem, it is a certainty that the child would have been locked up by now, for no proper reason.

8. It is imperative that this Court proceed carefully before adopting a rule such as the one proposed here. Inevitably, DCAF will argue that the rule merely confirms its virtually unfettered discretion in controlling the lives of the nearly 15,000 children currently in the foster care system. When viewed against its traditional objection to any judicial involvement as a violation of the separation of powers, this Court must recognize that the judicial branch is an independent and equal branch of government which itself has been given specific duties by the Florida Legislature in order to protect the rights of the children in foster care from bureaucratic snafus that can result from untempered exercise of discretionary power by Florida's Executive Branch of Government.

9. If the Court must adopt a rule to implement the statutory changes, the rule should be of the sort suggested by the University of Miami Children and Youth Law Clinic, recognizing the importance of protecting the rights of the child in advance, not increasing the power of DCAF to have the children locked up for days or even weeks before meaningful judicial review might even take place.

Whatever additional steps the Court can take to immediately convey to the dependency courts and all circuit judges throughout the state of the urgency of the situation of these children so that sufficient court personnel can address the issues necessary to either return the child to biological relatives or have the child in a permanent home with adoptive parents consistent with the mandates of the adoption and safe families act is essential. Additionally, because this Court cannot monitor what is happening to every child in foster care on a day by day basis, it is essential that the Court do everything possible to see that each child has a volunteer guardian ad litem as well as requiring the appointment of an attorney ad litem.

10. The vast majority of the dependent children come in to this system “merely” as dependents, not as delinquent children. Once they are delinquent, the children are clearly entitled to court appointed counsel. Before any more of their liberty should be taken from a dependent child already in state custody through no fault of the child’s, the Court should adopt the minority recommendation of the juvenile court rules committee and require that the child have an attorney throughout the proceedings. Such advocacy can only help to protect the child while in the system and will serve to shorten the child’s length of stay in the system. It is time for the court to step forward, without waiting any longer, because each day that

goes by is another day that cannot be given back to a child who is growing up with no real family of his or her own.

Respectfully submitted,

GIEVERS, P.A.

Attorney for Children's  
Advocacy Foundation, Inc.  
524 East College Avenue  
Suite 2  
Tallahassee, Florida 32301  
850/222-1961

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KAREN GIEVERS  
Fla. Bar No.: 262005

CERTIFICATE OF FONT SIZE

This document is in 14 Times New Roman with not more than 10 characters per inch and not more than 27 lines per page.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed to Committee Chair Judge John M. Anderson, Saint Johns County Courthouse, Post Office Box 300, St. Augustine, Florida 32085-0300 on this \_\_\_\_\_ day of December, 2000.

GIEVERS. P.A.  
Attorney for CAF  
524 East College Avenue  
Suite 2  
Tallahassee, Florida 32301  
850/222-1961

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KAREN GIEVERS  
Fla. Bar No.: 262005