

In M.W. v. Davis, 756 So. 2d 90, 109 (Fla. 2000), the Florida Supreme Court directed the Juvenile Court Rules Committee (“the committee”) to submit proposed rules “that will set forth the procedures to be followed by the dependency court when the Department of Children and Families seeks an order committing a dependent child to a residential facility for mental health treatment.” The Court instructed the committee to “give due regard to both the rights of the child and the child’s best interest”; urged the committee “to look at proposed rules filed by the Guardian Ad Litem amicus in this case, the rules in other states and in particular New Jersey’s procedural rules addressing this issue”; and, in light of the disagreement as to what procedures should be followed when the case plan is amended, further requested that the committee “review rule 8.410(c), governing the amendment of case plans, to determine if clarification is required.” Id. In response, the committee has proposed to the Court new Rule of Juvenile Procedure 8.350 (“Placement of Child Into Residential Treatment Center After Adjudication of Dependency”).

The Court invites all interested persons to comment on the committee’s proposed new rule 8.350, which is reproduced in full below, as well as online at www.flcourts.org. The Court additionally invites comment on the committee’s minority recommendation that subdivision (a)(4) of the proposed rule provide that the court “shall” (instead of “may”) appoint an attorney to represent a child upon notification that the child has been placed into a residential treatment center. An original and seven copies of all comments must be filed with the Court on or before December 1, 2000, with a certificate of service verifying that a copy has been served on the committee chair (The Honorable John M. Alexander, St. Johns County Courthouse, P.O. Box 300, St. Augustine, Florida 32085-0300), as well as a separate request for oral argument if the person filing the comment wishes to participate in oral argument, which may be scheduled in this case.

IN THE SUPREME COURT OF FLORIDA
AMENDMENT TO THE RULES OF JUVENILE PROCEDURE, CASE NO.
SC00-2044

RULE 8.350. **PLACEMENT OF CHILD INTO RESIDENTIAL**
TREATMENT CENTER AFTER ADJUDICATION OF
DEPENDENCY

(a) **Placement.**

(1) The placement of any child who has been adjudicated dependent into a residential treatment center licensed under section 394.875, Florida Statutes, or a hospital licensed under chapter 395, Florida Statutes, for residential mental health treatment shall be as provided by law.

(2) The court and all parties shall be notified of the placement within 72 hours of the child's placement in the facility. This notification shall include a statement as to why the child is suitable for placement in a residential treatment center and why less restrictive alternatives are not appropriate and also shall include the written findings of the qualified evaluator.

(3) If a guardian ad litem is not currently appointed in the case, the court immediately shall appoint a guardian ad litem for the child. The guardian ad litem must be represented by an attorney at all proceedings under this rule, unless the guardian ad litem is acting as an attorney. The guardian ad litem shall file a report with the court within 14 days of the placement that shall include a recommendation regarding the placement and a statement of the child's wishes.

(4) On notification that a child has been placed into a residential treatment center, the court may appoint an attorney to represent the child. [Note: A minority of the committee recommends that the word "may" in this subdivision be replaced with the word "shall." The Court invites comments on this minority recommendation.]

(5) On notification that a child has been placed into a residential treatment center, the court shall set the matter for a status hearing within 5 working days, excluding weekends and holidays. The clerk of court shall timely provide written notice of the date, time, and place of the hearing to all parties and participants.

(6) The child's attorney and/or guardian ad litem shall notify the child of the date, time and place of the hearing and shall attempt to ascertain whether the child consents or refuses to consent to the placement. No hearing shall proceed without the presence of the child's guardian ad litem and/or attorney.

(b) Initial Placement Review.

(1) **Motion.** Any party to the dependency proceeding may file a motion for placement review with the court that has jurisdiction over the child.

(2) **Setting Hearing.** On receipt of a motion for placement review, or if the guardian ad litem's report indicates that the child objects to the placement, the court shall set the matter for hearing. The initial placement review hearing must be conducted within the time period requested by the moving party or within 14 days of the filing of the motion or the guardian ad litem's report.

(3) **Notice of Hearing.**

(A) **Parties and Participants.** The moving party shall provide timely written notice of the filing of the motion and of the date, time, and place of the hearing to all the parties and participants.

(B) **Child.** The child's guardian ad litem, or attorney if one has been appointed, shall notify the child of the date, time, and place of the hearing and shall attempt to ascertain whether the child consents or objects to the placement.

(4) **Hearing.**

(A) At the hearing, the court shall consider, at a minimum, all of the following:

(i) Based on an independent assessment of the child, the recommendation of a department representative or authorized agent that the residential treatment or hospitalization is in the child's best interest and a showing that the placement is the least restrictive available alternative.

(ii) The recommendation of the guardian ad litem.

(iii) A case review committee recommendation, if there has been one.

(iv) The written findings of the evaluation and suitability assessment prepared by a qualified evaluator.

(B) All parties shall be permitted to present evidence concerning the suitability of the placement.

(5) **Order.** If the court determines that the child is not suitable for

continued residential treatment, the court shall order the department to place the child in the least restrictive setting that is best suited to meet the child's needs.

(c) Continuing Residential Placement Reviews.

(1) The court shall conduct a hearing to review the status of the child's residential treatment plan no later than 3 months after the child's admission to the residential treatment program. An independent review of the child's progress towards achieving the goals and objectives of the treatment plan must be completed by a qualified evaluator and submitted to the court and all parties in writing at least 72 hours before the 3-month review hearing.

(2) Review hearings shall be conducted every 3 months thereafter, until the child is placed in a less restrictive setting,

(3) If the court determines at any hearing that the child is not suitable for continued residential treatment, the court shall order the department to place the child in the least restrictive setting that is best suited to meet the child's needs.

(d) **Presence of Child.** The child shall be present at all court hearings, except the initial 5-day status hearing, unless the court finds that the child's mental or physical condition is such that a court appearance is not in the child's best interest. In such circumstances, the child shall be provided the opportunity to express his or her views to the court by a method deemed appropriate by the court.