

IN THE SUPREME COURT OF FLORIDA

**IN RE: AMENDMENTS TO FLORIDA RULES
OF JUVENILE PROCEDURE**

Case No.:

**TWO-YEAR CYCLE REPORT OF THE
JUVENILE COURT RULES COMMITTEE**

Joel M. Silvershein, Chair, Juvenile Court Rules Committee, and John F. Harkness, Jr., Executive Director, The Florida Bar, submit this two-year cycle report of the Juvenile Court Rules Committee under *Fla. R. Jud. Admin.* 2.130(c). As required by *Fla. R. Jud. Admin.* 2.130(c)(3), these proposals were reviewed by the the Board of Governors of The Florida Bar. The voting records of the committee and Board of Governors are shown on the attached table of contents. The proposed amendments also are attached to this report.

The substantive reasons for the proposed amendments are as follows:

Rules 8.030: As part of the penalty phase of a delinquency disposition, the court may sanction the parent of a delinquent child by ordering the parent to perform community service, §§ 985.231(1)(a)5, (1)(a)9, Fla. Stat. (2001), or to pay restitution, §§ 985.231(1)(a)6, (1)(a)9, Fla. Stat. (2001). The court also may order the parent to perform other tasks to assist the child in the rehabilitation process, such as transporting the child to therapy. The original rule as written was overly broad. The rule has been amended to clarify that a petition for parental sanctions is required only when the sanctions of community service work or restitution are to be imposed on the parent.

Rule 8.031: Subdivision (c) has been amended for clarity. The deleted language is unnecessary.

Rules 8.085, 8.225, and 8.635: The “Service of Pleadings and Papers” section of each of these rules has been amended to provide a procedure for service by facsimile, in conformance with *Fla. R. Civ. P.* 1.080(b)(5). Many juvenile proceedings must take place within short periods of time. See, *e.g.*, § 39.402(8)(a), Fla. Stat. (2001) (child may not be held in shelter more than 24 hours unless order is entered following a shelter hearing); § 985.215(5)(c), Fla. Stat. (2001) (child may not be held in detention more than 21 days unless adjudicatory hearing has begun).

Service by facsimile allows expedited delivery and assures that other parties receive pleadings and papers before hearings.

Rule 8.110: Subdivision (j) has been amended to conform the juvenile rule to *Fla. R. Crim. P.* 3.510. The amendment clarifies the procedure for the court to find a child has committed a lesser included offense or an attempt to commit an offense.

Rule 8.185: Subdivision (a) has been amended to correct the statutory reference from chapter 39 to chapter 985, Florida Statutes (2001). Chapter 985 now governs delinquency proceedings.

Rule 8.201: Under section 39.013(2), Florida Statutes (2001), the jurisdiction of the court attaches when a shelter, dependency, or termination of parental rights petition is filed or when the child is taken into custody. However, under section 39.401, Florida Statutes (2001), a child may be taken into custody but then returned to the parents. If this occurs, the jurisdiction of the court is not invoked and there is, therefore, no “commencement of proceedings.” The Department of Children and Family Services is not required to notify the clerk that this removal and return has occurred. Requiring the clerk to open a file under such circumstances creates unnecessary work for the clerk’s office and is a waste of resources.

Rule 8.210: This amendment clarifies the difference between parties and participants in proceedings under chapter 39, Florida Statutes. See §§ 39.01(50) and (51), Fla. Stat. (2001). Case law is clear that only participants specifically permitted by statute can file pleadings such as a motion for a change of custody. See § 39.522(1), Fla. Stat. (2001) (“any other interested person” may petition for a change in the conditions of placement of a dependent child); *G.L. v. Dept. of Children & Families*, 767 So. 2d 584 (Fla. 5th DCA 2000).

Rule 8.225: Subdivision(a)(3) has been amended by adding the words “and other process” to conform to sections 39.502(12) & (13), Florida Statutes (2001), which permit process, orders, and subpoenas to be served by authorized agents of the Department of Children and Family Services or the guardian ad litem.

Subdivision (a)(3)(B) has been amended by adding the words “that failed to ascertain the identity or location of [a party]” to clarify that the diligent search must have been unsuccessful in identifying or locating the individual before failure to

serve is excused.

Subdivision (a)(4)(B) has been amended to add the word “last,” to clarify that notice must be last published 20 days before any hearing. This amendment conforms the rule to section 39.502(7), Florida Statutes (2001), which references section 61.1312, Florida Statutes (2001), which states: “Notice under this section shall be served, mailed, delivered, or last published at least 20 days before any hearing in this state.”

Subdivision (c)(3) has been amended to strike the words “and, if the parents are outside the state, in the manner prescribed by this rule” from the second sentence. This amendment conforms the rule to section 39.402(5), Florida Statutes (2001), which requires “such notice as best ensures [the parents] actual knowledge, ” regardless of whether the parents are in or out of the state.

Rule 8.245: Subdivision (b)(3) has been amended to allow 10, rather than 5, days from the receipt of the demand for production of discovery. Current dependency practice requires the Department of Children and Family Services to gather large amounts of information. This has caused an increase in the amount of time necessary to prepare a file for discovery. In addition, because the department also may initiate discovery, see *Fla. R. Juv. P.* 8.245(b)(1) (“any party” may demand discovery), attorneys for parents also are required to respond. In some instances, the 5-day requirement is difficult to meet because of problems in locating the parents. All parties are experiencing difficulty in properly responding to discovery requests within the 5 days mandated by the current rule. The current 5-day period is not statutorily mandated.

Rule 8.255: As authorized by subdivision (i), general masters are being used throughout the state to conduct dependency hearings. A subcommittee was appointed to review the use of masters and make recommendations to the full committee. Based on their work, see Appendix A, *Defining the Use of General Masters in Dependency Proceedings*, the committee has amended the rule to prohibit masters from conducting specific dependency hearings, which the committee believes should be conducted by a judge. The rule also has been amended to reiterate the requirement that all parties consent to referral to a general master. See *Fla. R. Civ. P.* 1.490(c), *Fla. Fam. L. R. P.* 12.490(b)(1).

Rule 8.265: Subdivision (c)(2) has been amended to delete “detention” and replace it with “shelter or out-of-home placement.” Detention is no longer used in the statutes or other rules for dependency proceedings. See, *e.g.*, §§ 39.01(64),

39.402, Fla. Stat. (2001); *Fla. R. Juv. P.* 8.305.

Rule 8.275: This rule has been deleted as unnecessary. Supersedeas on appeal is governed by section 39.815(3), Florida Statutes (2001), and *Fla. R. App. P.* 9.146(c).

Rule 8.345: Subdivision (b) has been amended to conform to section 39.622(9), Florida Statutes (2001), which requires that the court maintain jurisdiction over a child placed in long-term custody as permanency to ensure that the permanency is not disrupted. Jurisdiction is terminated in a dependency proceeding only when the child is returned and stabilized with the parent(s), § 39.521(7), Fla. Stat. (2001), is adopted, § 39.811(9), Fla. Stat. (2001), or reaches age 18, § 39.013(2), Fla. Stat. (2001).

Rule 8.525: Subdivision (i) has been amended to correct the designation of the subdivisions in accordance with the style adopted by the Court.

Form 8.929: This new form has been created for the convenience of practitioners. See *Editor's Note*, Part V, *Fla. R. Juv. P.* The form was created specifically to incorporate the requirements of section 985.215(6), Florida Statutes (2001) (payment of child support by parents or guardians when child has been placed into detention care).

Forms 8.959 and 8.979: These two forms are summonses for dependency and termination of parental rights proceedings. To ensure more adequate notice, and in conformance with *Fla. R. Civ. P. Form* 1.902(b) and *Fla. Fam. L. R. P. Form* 12.910(a), the text of the forms has been translated into Spanish and Creole.

Form 8.960: Two grammatical corrections have been made in the form.

Form 8.967: Item 7 in the order portion of this form, authorization for the legal custodian of a dependent child to authorize medical care and treatment, has been amended to conform to section 743.0645(1)(b), Florida Statutes (2001), which lists the types of medical care and treatment that the Department of Children and Family Services may authorize for a child in its custody or committed to it under section 743.0645(3), Florida Statutes (2001).

The committee respectfully requests that the court amend the Rules of Juvenile Procedure as proposed in this report.

Respectfully submitted _____, 2002.

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