

027

IN THE SUPREME COURT OF FLORIDA

CASE NO. 83,165

In Re: Amendments to the
Florida Rules of Juvenile
Procedure.

FILED
SID J. WHITE
MAR 16 1994
CLERK, SUPREME COURT
BY _____
Chief Deputy Clerk

COMMENTS

The undersigned counsel submits the following comments regarding the proposed Amendments to the Florida Rules of Juvenile Procedure:

These comments are submitted to point out an apparent inconsistency between the Florida Rules of Juvenile Procedure and the Florida Statutes. Fla.R.Juv.P. 8.035(e) provides as follows:

On motion by or in behalf of a child, a petition alleging delinquency shall be dismissed with prejudice if it was not filed within the time provided by law. However, the court may grant an extension of time as provided by law.

Florida law formerly provided, pursuant to §39.048, Fla. Stat. as follows:

Petition.

(6) On motion by or in behalf of a child, a petition alleging delinquency shall be dismissed with prejudice if it is not filed within forty-five (45) days after the date the child is taken into custody. The court may grant an extension of time not exceeding an additional fifteen (15) days for cause, upon motion by the State Attorney.

However, effective May 15, 1993, this subsection was repealed in its entirety by Chapter 93-230, Laws of Florida (C.S.H.B. No. 387). No new time period has been substituted for the repealed section. Accordingly, the rule requires that a petition be dismissed if not filed by the time provided by law, but Florida law does not provide a time period.

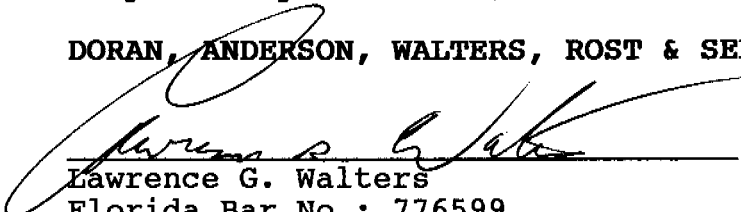
This apparent inconsistency can be viewed as a violation of

the child's right of due process to have the petition filed in a timely manner. Presumably, the State now has an unlimited time within which to file the petition subsequent to the child's being taken into custody. Previous decisions of this court have held that failure to file the petition within the time period allowed by law constitutes prejudice per se to the juvenile. M.F. v. State, 583 So.2d, 1383, 1388 (Fla. 1991). The Second District Court of Appeal has held that the statutory time period provides the child with substantive rights and supersedes the Rules of Juvenile Procedure. State v. M.M., 557 So.2d, 217 (Fla. 2d DCA 1990). Accordingly, the repeal of the law containing the original time period accompanied by the failure to substitute a new time period appears to deprive the juvenile of substantive due process rights.

The undersigned suggests that the rules committee and this court consider an amendment to Fla.R.Juv.P. 8.035(e) to reinstate the time periods eliminated by the repeal of §39.048, Fla. Stat., or the creation of new time periods consistent with the juvenile's right to substantive due process.

Respectfully submitted,

DORAN, ANDERSON, WALTERS, ROST & SELTER



Lawrence G. Walters
Florida Bar No.: 776599
444 Seabreeze Boulevard
Suite 820
Post Office Drawer 15110
Daytona Beach, Florida 32115
(904) 253-1111

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished, by U.S. Mail to John F. Harkness, Jr., Executive Director, Florida Bar, 650 Appalachee Parkway, Tallahassee, FL 32399-2300 and Daniel P. Dawson, Chairman, Florida Bar Juvenile Rules Committee, 65 E. Central Boulevard, Orlando, FL 32801, this 14th day of March, 1994.


Lawrence G. Walters

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