

# Supreme Court of Florida

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No. 95,696

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## AMENDMENTS TO THE FLORIDA RULES OF JUVENILE PROCEDURE

[June 10, 1999]

PER CURIAM.

The 1999 Florida Legislature enacted several pieces of legislation (specifically, Chapters 99-168 and 99-193, Laws of Florida), effective July 1, 1999, that affect proceedings relating to children under chapter 39 of the Florida Statutes. Insofar as this new legislation impacts the Florida Rules of Juvenile Procedure (“the Juvenile Rules”), we sua sponte adopt on an emergency basis the attached amendments to the Juvenile Rules in an effort to ensure consistency between the Juvenile Rules and Chapter 39 of the Florida Statutes when the new legislation takes effect on July 1. We have jurisdiction. See art. V, § 2(a), Fla. Const.; see also Fla. R. Jud. Admin. 2.130(a).

Because the emergency nature of these amendments did not permit reference to the Juvenile Court Rules Committee for recommendations, we direct that the committee make such recommendations within thirty days from the publication of these amendments in The Florida Bar News. We further direct that any other interested parties may also file comments with this Court during that time period. We stress that all recommendations and comments should be strictly constrained to suggested amendments to the Juvenile Rules necessitated by the 1999 legislation. We invite recommendations and comments not only on the amendments that we adopt here, but on any of the Juvenile Rules that may require amendment under the new legislation.

We note that, for the sake of clarity and convenience, we have set forth the amendments in chart form, specifically indicating which section(s) of the new legislation necessitated each amendment. While not necessarily in chart form, we request that all recommendations and comments filed with this Court likewise specifically indicate which section(s) of the new legislation underlie any proposed amendment to the Juvenile Rules, including the Juvenile Rule amendments adopted here.

We accordingly adopt on an emergency basis the amendments to the Juvenile Rules set forth in the attached appendix. These amendments shall

become effective 12:01 a.m., July 1, 1999, to coincide with the new legislation that takes effect that date. Additions are indicated by underlining; deletions are indicated by strike-through type.

It is so ordered.

HARDING, C.J., and SHAW, WELLS, ANSTEAD, PARIENTE, LEWIS and QUINCE, JJ., concur.

THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER THE EFFECTIVE DATE OF THESE AMENDMENTS.

Original Proceeding - Florida Rules of Juvenile Procedure

# APPENDIX

RULE	SOURCE
<p><b>RULE 8.210. PARTIES AND PARTICIPANTS</b></p> <p>(a) <b>Parties Definitions.</b> For the purpose of these rules the terms "party" and "parties" shall include the petitioner, the child, the parent(s) or legal custodian of the child, the department, and the guardian ad litem or the representative of the guardian ad litem program, when the program has been appointed.</p> <p>(b) <b>Additional Participants.</b> "Participant" means any person who is not a party but who should receive notice of hearings involving the child. Participants include foster parents or <u>the legal custodian of the child caregivers</u>, identified prospective parents, actual custodians of the child, grandparents entitled to priority for adoption consideration as provided by law, the state attorney, and any other person whose participation may be in the best interest of the child. The court may add additional participants. Participants may be granted leave by the court to be heard without the necessity of filing a motion to intervene.</p>	<p>Chapter Law 99-193, § 4 (§ 39.01(52), F.S.)</p> <p>Chapter Law 99-193, § 4 (§ 39.01(51), F.S.)</p>
<p><b>RULE 8.225.</b></p> <p>(a) <b>Summons and Subpoenas.</b></p> <p>(2) <b>Subpoenas.</b> Upon the application of a party or the petitioner, the clerk shall issue, and the court on its own motion may issue, subpoenas requiring attendance and testimony of witnesses and production of records, documents, and other tangible objects at any hearing. Subpoenas may be served within the state by any person over 18 years of age who is not a party to the proceeding. In dependency proceedings, subpoenas also may be served by authorized agents of the department or <u>the guardian ad litem</u>.</p> <p>(b) <b>Diligent Search.</b></p> <p>(3) <b>Continuing Duty.</b> After filing an affidavit of diligent search in a dependency proceeding, the petitioner, and, if the court requires, the department, are under a continuing duty to search for and attempt to serve the parent or <u>legal custodian</u> whose identity or residence is unknown. The petitioner or the department shall report on the results of the continuing search at each court hearing until the person is identified or located or until further search is excused by the court.</p>	<p>Chapter Law 99-193, §§ 26 (§ 39.502(13), F.S.) &amp; 42 (§ 39.801(6), F.S.)</p> <p>Chapter Law 99-193, § 26 (§ 39.502(8), F.S.)</p>

RULE	SOURCE
<p><b>RULE 8.225.</b>  (c) <b>Notice and Service of Pleadings and Papers.</b>  (1) <b>Notice of Arraignment Hearings in Dependency Cases.</b> Notice of the arraignment hearing must be served on all parties with the summons and petition. The document containing the notice to respond or appear in a dependency arraignment hearing must contain, in type at least as large as the balance of the document, the following or substantially similar language: "<del>FAILURE TO RESPOND TO THIS NOTICE OR TO PERSONALLY APPEAR AT THE ARRAIGNMENT HEARING CONSTITUTES CONSENT TO THE ADJUDICATION OF THIS CHILD (OR CHILDREN) AS A DEPENDENT CHILD (OR CHILDREN) AND MAY ULTIMATELY RESULT IN LOSS OF CUSTODY OF THIS CHILD (OR CHILDREN).</del>"</p>	<p>Chapter Law 99-193,  § 29 (§ 39.506(3), F.S.)</p>
<p><b>RULE 8.235        MOTIONS</b></p> <p>(b) <b>Motion to Dismiss.</b> Any party may file a motion to dismiss any petition or other pleading, setting forth the grounds on which the motion is based. If a motion to dismiss is granted where a child is being <del>sheltered</del> <del>detained</del> under an order, the child may be continued in shelter under previous order of the court upon the representation that a new or amended petition will be filed.</p>	<p>Chapter Law 99-193,  § 29 (§ 39.506(1), F.S.)</p>
<p><b>RULE 8.275.        SUPERSEDEAS ON APPEAL</b></p> <p>(a) <b>Termination of Parental Rights.</b> The taking of an appeal shall operate as a supersedeas in cases involving a petition for termination of parental rights, but the child shall continue in <u>an out-of-home placement</u> <del>the custody of the agency</del> under the order until the appeal is decided.</p>	<p>Chapter Law 99-193,  § 50 (§ 39.815(3), F.S.)</p>

RULE	SOURCE
<p><b>RULE 8.305. SHELTER PETITION, HEARING, AND ORDER</b></p> <p>(b) <b>Shelter Hearing.</b></p> <p>(1) <u>The parents or legal custodians of the child, or the legal custodians of the child if there is no living parent with intact parental rights,</u> shall be given actual notice of the date, time, and location of the shelter hearing. If the parents are outside the jurisdiction of the court, are not known, cannot be located, or refuse or evade service, they shall be given such notice as best ensures their actual knowledge of the date, time, and location of the shelter hearing. If the parents or legal custodians are not present at the hearing, the person providing, or attempting to provide, notice to the parents or legal custodians shall advise the court in person or by sworn affidavit of the attempts made to provide notice and the results of those attempts.</p> <p>(2) The court shall conduct an informal hearing on the petition within the time limits as provided by law. The court shall determine at the hearing the existence of probable cause to believe the child is dependent and whether the other criteria provided by law for placement in a shelter have been met. <u>The shelter hearing may be continued for up to 72 hours with the child remaining in shelter care if either:</u></p> <p style="padding-left: 40px;">(A) <u>the parents or legal custodians appear for the shelter hearing without legal counsel and request a continuance in order to consult with legal counsel; or</u></p> <p style="padding-left: 40px;">(B) <u>the court determines that additional time is necessary to obtain and review documents pertaining to the family in order to appropriately determine the risk to the child.</u></p> <p>(6) The court shall advise the parent or <u>legal</u> custodian of:</p> <p style="padding-left: 40px;">(A) the right to be represented by counsel as provided by law;</p> <p style="padding-left: 40px;">(B) the reason for the child being in custody and why continued placement is requested;</p> <p style="padding-left: 40px;">(C) the right to present placement alternatives;</p> <p>and</p> <p style="padding-left: 40px;">(D) the time, date, and location of the next hearing and of the importance of the parents' or legal custodians' active participation in subsequent proceedings and hearings.</p> <p>(7) The court shall appoint:</p> <p style="padding-left: 40px;">(A) a guardian ad litem to represent the child unless the court finds such representation is unnecessary; and</p> <p style="padding-left: 40px;">(B) an attorney for indigent parents <del>or legal custodians</del> unless waived by the parent <del>or legal custodian</del>.</p>	<p>Chapter Law 99-193, § 4 (§§ 39.01(34) &amp; (50), F.S.)</p> <p>Chapter Law 99-193, § 23 (§ 39.402(5)(b)2, F.S.)</p> <p>Chapter Law 99-168, § 12 (§§ 39.402(8)(d)2 &amp; (h)4, F.S.)</p> <p>Chapter Law 99-193, § 4 (§§ 39.01(34) &amp; (50), F.S.)</p> <p>Chapter Law 99-193, § 7 (§ 39.013(8)(a), F.S.)</p>

RULE	SOURCE
<p><b>RULE 8.310. DEPENDENCY PETITIONS</b></p> <p>(a) <b>Contents.</b></p> <p>(2) The petition shall contain allegations as to the identity and residence of the parents, <del>caregivers</del>, or legal custodians, if known.</p>	<p>Chapter Law 99-193, § 25 (§ 39.501(3)(a), F.S.)</p>
<p><b>RULE 8.320. PROVIDING COUNSEL TO PARTIES</b></p> <p>(a) <b>Duty of the Court.</b></p> <p>(1) At each stage of the dependency proceeding the court shall advise the parent, <del>legal custodian</del>, or <del>caregiver</del> of the right to have counsel present.</p> <p>(2) The court shall appoint counsel to indigent parents or <del>legal custodians</del> or others who are so entitled as provided by law, unless appointment of counsel is waived by that person.</p>	<p>Chapter Law 99-193, § 7 (§ 39.013(8)(a), F.S.)</p>
<p><b>RULE 8.325. ANSWERS AND PLEADINGS</b></p> <p>(a) <b>No Answer Required.</b> No written answer to the petition need be filed by the parent, <del>caregiver</del>, or legal custodian. The parent, <del>caregiver</del>, or legal custodian of the child may enter an oral or written answer to the petition or remain silent.</p> <p>(b) <b>Denial of Allegations.</b> If the parent, <del>caregiver</del>, or legal custodian denies the allegations of the petition or remains silent or pleads evasively, the court shall enter a denial of dependency and shall set the case for an adjudicatory hearing.</p> <p>(c) <b>Admission of or Consent to Dependency.</b> The parent, <del>caregiver</del>, or legal custodian may admit or consent to a finding of dependency. The court shall determine that any admission or consent to a finding of dependency is made voluntarily and with a full understanding of the nature of the allegations and the possible consequences of such admission or consent, and that the parent, <del>caregiver</del>, or <del>legal custodian</del> has been advised of the right to be represented by counsel. The court shall incorporate these findings into its order in addition to findings of fact specifying the act or acts causing dependency, by whom committed, and facts upon which the findings are based. If the answer admits the allegations of the petition it shall constitute consent to a predisposition study.</p>	<p>Chapter Law 99-193, § 4 (§§ 39.01(34) &amp; (50), F.S.)</p> <p>Chapter Law 99-193, § 7 (§ 39.013(8)(a), F.S.)</p>

RULE	SOURCE
<p><b>RULE 8.330. ADJUDICATORY HEARINGS</b></p> <p>(c) <b>Presence of Parties.</b> All parties have the right to be present at all hearings. No party shall be excluded from any hearing unless so ordered by the court for disruptive behavior or as provided by law. However, the child and the parents, caregivers, or legal custodians of the child may be examined separately and apart from each other. <u>If a person appears for the arraignment hearing and the court orders that person to personally appear at the adjudicatory hearing for dependency, stating the date, time, and place of the adjudicatory hearing, then that person's failure to appear for the scheduled adjudicatory hearing constitutes consent to a dependency adjudication.</u></p>	<p>Chapter Law 99-193, § 29 (§ 39.506(3), F.S.)</p>
<p><b>RULE 8.345. POST-DISPOSITION RELIEF</b></p> <p>(b) <b>Motion for Termination of Supervision or Jurisdiction.</b> Any party requesting termination of agency supervision or the jurisdiction of the court or both shall do so by motion. The court shall hear all parties present and enter an order terminating supervision or terminating jurisdiction and supervision or continuing them as previously ordered. The court shall not terminate jurisdiction unless the child is returned to the parent or <u>is deemed by the court to have achieved permanency with a relative or other adult placed with a legal guardian</u> and the child has been in the placement <del>with the legal guardian or parent</del> for at least 6 months.</p>	<p>Chapter Law 99-193, § 31 (§§ 39.508(9) &amp; (15), F.S.)</p>



RULE	SOURCE
<p><b>RULE 8.400. CASE PLANS</b></p> <p>(a) <b>Department Responsibility.</b> At least 72 hours prior to the disposition hearing, but no later than 60 days after removal of a child from the home, the department or its agent must file with the court all case plans prepared before jurisdiction of the court attached and do one of the following:</p> <p>(1) File with the court a current case plan which was prepared in conference with the parents, <del>caregivers, or legal custodians</del>, any court appointed guardian ad litem and, if appropriate, the child, and signed by the parties involved. Such parties shall include but not be limited to the attorney representing the department, the department counselor, the parent(s), counsel for the parent, if represented, the guardian ad litem, and, when appropriate, the child.</p> <p>(2) File with the court a case plan prepared without the participation of the parents, <del>caregivers, or legal custodians</del>, if the parents, <del>caregivers, or legal custodians</del> are unable or unwilling to participate in the preparation of a case plan. The plan or supporting documents shall contain a full explanation of the circumstances preventing the parents from participating and the efforts made by the department to secure parental participation.</p> <p>(b) <b>Amendments.</b> The case plan may be amended by:</p> <p>(1) the parties at any time provided agreement is unanimous by all parties, <del>and the amendment is but any revised plan must be approved by the court;</del> or</p> <p>(2) the court upon motion of a party after notice to all other parties.</p> <p>(c) <b>Service.</b> Each party must be provided with a copy of the case plan at least 72 hours before the disposition hearing <del>or 72 hours before filing of a plan if they did not participate in the development of the plan.</del> If the location of a parent is unknown, this fact must be documented in writing and included in the plan.</p>	<p>Chapter Law 99-193, § 35 (§ 39.601(1)(a), F.S.)</p> <p>Chapter Law 99-193, § 35 (§ 39.601(4), F.S.)</p> <p>Chapter Law 99-193, § 35 (§ 39.601(9)(f), F.S.)</p> <p>Chapter Law 99-193, § 36 (§ 39.602(4)(a), F.S.)</p>

RULE	SOURCE
<p><b>RULE 8.410. APPROVAL OF CASE PLANS</b></p> <p>(b) <b>Determinations by Court.</b> At the hearing, the court shall determine if:</p> <p>(3) The parents, <del>caregivers, or legal custodians</del> were advised of their right to have counsel present at all prior hearings and the parents, <del>caregivers, or legal custodians</del> were advised of their right to participate in the preparation of the case plan and to have counsel or any other person assist in the preparation of the case plan.</p> <p>(c) <b>Amendment of Plan.</b> After the hearing, if the court determines that the requirements for the case plan have not been met, it shall order the parties to make amendments to the plan. The amended plan must be submitted to the court within 30 days for another hearing and approval. If the parties do not agree on the final terms, the court shall order those conditions and tasks it believes the parents, <del>caregivers, or legal custodians</del> must accomplish for the return of the child. In addition, the court may order the department to provide those services necessary to assist in achieving the goal of the case plan.</p>	<p>Chapter Law 99-193, §§ 7 (§ 39.013(8), F.S.) &amp; 35 (§ 39.601(1), F.S.)</p> <p>Chapter Law 99-193, § 35 (§§ 39.601(1) &amp; (4), F.S.)</p>

RULE	SOURCE
<p><b>RULE 8.415. JUDICIAL REVIEW OF DEPENDENCY CASES</b></p> <p>(b) <b>Scheduling Hearings.</b></p> <p>(1) <b>Initial Review Hearing.</b> <del>If the child is placed in out-of-home care pursuant to a court order, t</del> The court shall determine when the first review hearing shall be held and the clerk of the court shall immediately schedule the review hearing. In no case shall the hearing be scheduled for later than 6 months from the date of removal from the home or 90 days from the disposition or case plan approval hearing, <u>whichever comes first</u>. In every case, the court must conduct a judicial review at least every 6 months.</p> <p>(c) <b>Report.</b></p> <p>In all cases, the department or its agent shall prepare a report to the court. The report shall contain facts showing the court to have jurisdiction of the cause as a dependency case. It shall contain information as to the identity and residence of the parent and <u>legal</u> custodian, if known, the dates of the original dependency adjudication and any subsequent judicial review proceedings, and a request for one or more of the following forms of relief:</p> <p>(3) that the case plan be continued to permit the <del>parents, caregivers, or legal custodians</del>, or social service agency time to complete the tasks assigned to them in the agreement; or</p> <p>(4) that proceedings be instituted to terminate parental rights and legally free the child for adoption.</p> <p>(d) <b>Service.</b> A copy of the report containing recommendations and a notice of review hearing shall be served on all persons who are required by law to be served at least <u>72</u> <del>48</del> hours prior to the judicial review hearing.</p>	<p>Chapter Law 99-193, § 38 (§§ 39.701(1)-(3), F.S.)</p> <p>Chapter Law 99-193, § 4 (§§ 39.01(34) &amp; (50), F.S.)</p> <p>Chapter Law 99-193, § 38 (§ 39.701(6)(a)5, F.S.)</p> <p>Chapter Law 99-193, § 38 (§ 39.701(6)(b), F.S.)</p>

RULE	SOURCE
<p><b>RULE 8.415.-continued</b></p> <p>(e) <b>Court Action.</b></p> <p>(2) If the court finds that the parents, <del>caregivers, or legal custodians</del> have substantially complied with the case plan, the court shall return the child to the custody of the parents, <del>caregivers, or legal custodians</del> if the court is satisfied that reunification will not be detrimental to the child's safety, well-being, or physical, mental, or emotional health.</p> <p>(3) If the court finds the social service agency has not complied with its obligations, the court may find the social service agency to be in contempt, shall order the social service agency to submit its plan for compliance with the plan, and shall require the social service agency to show why the child could not safely be returned to the home of the parents, <del>caregivers, or legal custodians</del>. If the court finds that the child could not be safely returned to the parents, <del>caregivers, or legal custodians</del>; it shall extend the case plan for a period of not more than 6 months to allow the social service agency to comply with its obligations under the case plan.</p> <p>(5) When a child is returned to the parents, <del>caregivers, or legal custodians</del> the court shall not terminate its jurisdiction over the child until 6 months after the return. Based on a report of the department and any other relevant factors, the court shall then determine whether the jurisdiction should be continued or terminated; if its jurisdiction is to be terminated, it shall enter an order to that effect.</p> <p>(6) When a child has not been returned to the parent, <del>caregiver, or legal custodian</del>, but has been permanently committed to the department or to a licensed child-placing agency willing to receive the child for subsequent adoption, the court shall continue to hold judicial review hearings on the status of the child at least every 6 months <u>until the adoption is finalized</u>. Such hearings shall be held in accordance with these rules.</p>	<p>Chapter Law 99-193, § 38 (§ 39.701(8)(b), F.S.)</p> <p>Chapter Law 99-193, § 38 (§ 39.701(8)(c), F.S.)</p> <p>Chapter Law 99-193, § 38 (§ 39.701(1)(b), F.S.)</p> <p>Chapter Law 99-193, § 38 (§ 39.701(3)(c), F.S.)</p>
<b>E. TERMINATION OF PARENTAL RIGHTS</b>	
<p><b>RULE 8.500. PETITION</b></p> <p>(b) <b>Contents.</b></p> <p>(1) The petition shall contain allegations as to the identity and residence of the parents and <u>legal custodians</u>, if known.</p>	<p>Chapter Law 99-193, § 4 (§§ 39.01(34) &amp; (50), F.S.)</p>

RULE	SOURCE
<p><b>RULE 8.505. PROCESS AND SERVICE</b></p> <p>(a) <b>Personal Service.</b> Upon the filing of a petition requesting the termination of parental rights a copy of the petition and notice of the date, time, and place of the advisory hearing must be personally served on</p> <p>(2) the legal custodians or caregivers of the child;</p>	<p>Chapter Law 99-193, § 42 (§ 39.801(3)(a)2, F.S.)</p>
<p><b>RULE 8.510. ADVISORY HEARING AND PRETRIAL STATUS CONFERENCES</b></p> <p>(b) <b>Pretrial Status Conference.</b> Not less than 10 days before the adjudicatory hearing <u>on a petition for involuntary termination of parental rights,</u> the court shall conduct a <u>pretrial prehearing</u> status conference to determine the order in which each party may present witnesses or evidence, the order in which cross-examination and argument shall occur, and any other matters that may aid in the conduct of the adjudicatory hearing.</p>	<p>Chapter Law 99-193, § 47 (§ 39.808(5), F.S.)</p>
<p><b>RULE 8.525. ADJUDICATORY HEARINGS</b></p> <p>(d) <b>Presence of Parties.</b> All parties have the right to be present at all termination hearings. No party shall be excluded from any hearing unless so ordered by the court for disruptive behavior or as provided by law. <u>If a parent appears for the advisory hearing and the court orders that parent to personally appear at the adjudicatory hearing for the petition for termination of parental rights, stating the date, time, and location of said hearing, then failure of that parent to personally appear at the adjudicatory hearing shall constitute consent for termination of parental rights.</u></p>	<p>Chapter Law 99-193, § 42 (§ 39.801(3)(d), F.S.)</p>