

FILED
DEBBIE CAUSSEAU

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AUG 13 1999

CLERK, SUPREME COURT
By _____

IN THE SUPREME COURT OF FLORIDA

**IN RE: AMENDMENT TO THE FLORIDA
RULES OF JUDICIAL ADMINISTRATION**

CASE NO.: 96,265

**EMERGENCY PETITION TO AMEND FLORIDA RULE OF
JUDICIAL ADMINISTRATION 2.052**

Frank A. Kreidler, a member of The Florida Bar, and John F. Harkness, Jr., Executive Director of The Florida Bar, pursuant to Florida Rule of Judicial Administration 2.130(b) and (d), propose the following amendment to the Florida Rules of Judicial Administration, Rule 2.052(a), Calendar Conflicts, and in support thereof state as follows:

1. This proposal for an amendment to the Rules of Judicial Administration was filed with the Supreme Court on May 18, 1998, and duly referred to the Rules of Judicial Administration Committee.
2. The Rules of Judicial Administration Committee in consideration of the initial proposal rejected any changes whatsoever to Rule of Judicial Administration 2.052(a) at its meeting on September 3, 1998. The objection raised by the Committee was that the Committee did not want to change the rule. The Committee suggested that the proponent should have a statute passed directing the courts to expedite these trials and that if termination of parental rights cases were expedited, there would be a flurry of other proposals seeking to expedite other types of trials. The proposers' responses

to the two specific objections the Committee made are: (1) A statute directing the court how to schedule cases (while there are some provisions similar to this in the statutes) is constitutionally infirm pursuant to the separation of powers doctrine contained in the Florida Constitution, Art. II, § 3, Fla. Const.; and (2) Children are not public records, eminent domain proceedings, etc. Children are different.

3. The Florida Bar Board of Governors endorsed the proposed rule amendment unanimously at their meeting on April 9, 1999, by a vote of 35-0. See Fla. R. Jud. Admin. 2.130(d).

4. Fla. R. Jud. Admin. 2.052(a), Calendar Conflicts, currently sets the priorities for consideration to resolve calendar conflicts between state courts of Florida or between state and federal courts in Florida.

5. Pursuant to current and new state and federal laws for expediting trials in cases involving the termination of parental rights due to the alleged abuse, neglect, abandonment, etc., of children by their parents, these trials should be specifically given the highest priority in Rule 2.052(a). More and more of these cases are being filed in each circuit of this state so this is not a temporary phenomenon. Also see the settlement on *Children A, B, C, D, E, and F v. Lawton Chiles, and Dept. of Health and Rehabilitative Services*, Case No. 90-2416, CIV - KEHOE, in which the State agreed to reduce the time children languished in foster care.

6. Practitioners, such as petitioner Kreidler, who practice in state courts, in the criminal and civil courts, and in juvenile court representing parties in termination of parental rights cases, and who practice in federal civil court as a member of the Southern District Trial Bar, have scheduling concerns because termination of parental rights proceedings do not fit neatly into paragraphs (a)(1) or (2) of current Fla. R. Jud. Admin. 2.052.

7. Because termination of parental rights cases are considered as civil, non-jury proceeding, these vital and most important cases currently are considered *last* in resolving conflicts.

8. Termination of parental rights trials often include numerous parties and lawyers and a number of expert witnesses, such as medical doctors testifying to abuse and psychiatrists and/or psychologists testifying on the mental state of the parents and/or children. Resetting these cases when one lawyer is called to trial on a “higher priority” case means the child's or children's status is delayed many months while everyone finds a mutually available trial period.

9. Everyone says that child abuse must be stopped. Parental rights must be terminated when the evidence warrants termination or parents must be given their day in court to disprove the allegations. Children must not stay in foster care for years while their cases languish in the system, while they “grow up” in foster care and/or they

become unadoptable due to their advanced age.

10. To effectuate the rhetoric in the preceding paragraphs, the following amendment to Fla. R. Jud. Admin. 2.052(a) is submitted to this court as Attachment "A" in three-column format. Also attached is the proposed amendment in legislative format as Attachment "B". This petition is submitted in 14 point Times New Roman type with proportional spacing, pursuant to this Court's Administrative Order dated July 13, 1998.

11. By instituting this proposed amendment, the judiciary will have additional guidance for judicial efficiency and economy and be able to duly expedite these cases involving the rights of children.

12. Due to the foregoing reasons, this rules amendment should be immediately considered by the Supreme Court pursuant to Fla. R. Jud. Admin. 2.130(f). A referral of this proposed amendment to the "four year cycle" will adversely impact hundreds of termination of parental rights cases in the system currently, keep children in foster care that much longer and prevent these fragile children from having a real family.

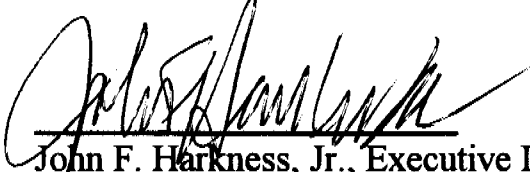
13. Each day a child spends in foster care awaiting a termination of parental rights trial keeps the child from a permanent home and family that much longer.

14. Florida's children deserve no less than immediate consideration of this proposed amendment.

Respectfully submitted,



Frank A. Kreidler
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Lake Worth, FL 33460
(561) 586-6226
Florida Bar No. 163092



John F. Harkness, Jr., Executive Director
The Florida Bar
650 Apalachee Parkway
Tallahassee, FL 32399-2300
(850) 561-5758
Florida Bar No. 123390

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished to:

The Honorable Jeb Bush, Governor of the State of Florida, The Capitol, Tallahassee, FL 32399-0001; Robert Butterworth, Attorney General of the State of Florida, The Capitol, Tallahassee, FL 32399-1050; The Honorable Scott Silverman, Chair, Judicial Administration Rules Committee, 1351 N.W. 12th St., Suite 712, Miami, FL 32399-2300; Sarah H. Bohr, Chair, Juvenile Court Rules Committee, Jacksonville Area Legal Aid, 126 W. Adams St., Suite 700, Jacksonville, FL 32202-3874; and The Honorable Kathleen Kearney, Secretary of the Department of Children and Families, 1317

Winewood Blvd., Tallahassee, FL 32399-0700, on this 13th day of August, 1999.

A handwritten signature in black ink, appearing to read "Frank A. Kreidler". The signature is fluid and cursive, with a long horizontal stroke at the end.

Frank A. Kreidler
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Lake Worth, FL 33460-5244
Tele: (561) 586-6226
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Florida Bar No: 163092

Current Rule

Proposed Rule

Reason for Proposed Change

**RULE 2.052. CALENDAR
CONFLICTS**

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(a) **Priorities.** In resolving calendar conflicts between the state courts of Florida or between a state court and a federal court in Florida, the following case priorities must be considered:

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Subdivision (a) changed to give highest priority to cases involving the termination of parental rights. Currently, termination of parental rights cases are considered as civil, non-jury proceedings and are given lowest priority in resolving calendar conflicts. Giving such cases highest priority will expedite resolution of termination proceedings and significantly reduce the time children must spend in foster care.

(1) Criminal cases should prevail over civil cases.

(1) Termination of parental rights cases should prevail over jury and non-jury criminal and civil cases.

RULES OF JUDICIAL
ADMINISTRATION COMMITTEE
VOTE: Rejected 7-11

(2) Jury trials should prevail over non-jury trials.

(~~2~~) Criminal cases should prevail over civil cases.

BOARD OF GOVERNORS
RECOMMENDATION: Approved 35-0

(3) Appellate arguments, hearings, and conferences should prevail over trial court proceedings.

(~~2~~) Jury trials should prevail over non-jury trials.

(4) The case in which the trial date has been first set should take precedence.

(~~3~~) Appellate arguments, hearings, and conferences should prevail over trial court proceedings.

(b) **A d d i t i o n a l Circumstances.** Factors such as cost, numbers of witnesses and attorneys involved, travel, length of trial, age of case, and other relevant matters may warrant deviation from these case

(~~4~~) The case in which the trial date has been first set should take precedence.

(b) **A d d i t i o n a l Circumstances.** Factors such as cost,

priorities.

(c) **Notice and Agreement; Resolution by Judges.** When an attorney is scheduled to appear in 2 courts at the same time and cannot arrange for other counsel to represent the clients' interests, the attorney shall give prompt written notice of the conflict to opposing counsel, the clerk of each court, and the presiding judge of each case, if known. If the presiding judge of the case cannot be identified, written notice of the conflict shall be given to the chief judge of the court having jurisdiction over the case, or to the chief judge's designee. The judges or their designees shall confer and undertake to avoid the conflict by agreement among themselves. Absent agreement, conflicts should be promptly resolved by the judges or their designees in accordance with the above case priorities.

Committee Notes

1996 Adoption. The adoption of this rule was prompted by the Resolution of the Florida State-Federal Judicial Council Regarding Calendar Conflicts Between State and Federal Courts, which states as follows:

numbers of witnesses and attorneys involved, travel, length of trial, age of case, and other relevant matters may warrant deviation from these case priorities.

(c) **Notice and Agreement; Resolution by Judges.** When an attorney is scheduled to appear in 2 courts at the same time and cannot arrange for other counsel to represent the clients' interests, the attorney shall give prompt written notice of the conflict to opposing counsel, the clerk of each court, and the presiding judge of each case, if known. If the presiding judge of the case cannot be identified, written notice of the conflict shall be given to the chief judge of the court having jurisdiction over the case, or to the chief judge's designee. The judges or their designees shall confer and undertake to avoid the conflict by agreement among themselves. Absent agreement, conflicts should be promptly resolved by the judges or their designees in accordance with the above case priorities.

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WHEREAS, the great volume of cases filed in the state and federal courts of Florida creates calendar conflicts between the state and federal courts of Florida which should be resolved in a fair, efficient and orderly manner to allow for judicial efficiency and economy; and

WHEREAS, the Florida State-Federal Judicial Council which represents the Bench and Bar of the State of Florida believes that it would be beneficial to formally agree upon and publish recommended procedures and priorities for resolving calendar conflicts between the state and federal courts of Florida;

N O W ,
THEREFORE, BE IT
RESOLVED

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calendar conflicts between the state and federal courts of Florida, the following case priorities should be considered:

1. Criminal cases should prevail over civil cases.

2. Jury trials should prevail over non-jury trials.

3. Appellate arguments, hearings, and conferences should prevail over trials.

4. The case in which the trial date has been first set should take precedence.

5. Circumstances such as cost, numbers of witnesses and attorneys involved, travel, length of trial, age of case and other relevant matters may warrant deviation

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3. Appellate arguments, hearings, and conferences should prevail over trials.

4. The case in which the trial date has been first set should take precedence.

5. Circumstances such as cost, numbers of witnesses and attorneys

from this policy. Such matters are encouraged to be resolved through communication between the courts involved.

Where an attorney is scheduled to appear in two courts— trial or appellate, state or federal—at the same time and cannot arrange for other counsel in his or her firm or in the case to represent his or her client's interest, the attorney shall give prompt written notice to opposing counsel, the clerk of each court, and the presiding judge of each case, if known, of the conflict. If the presiding judge of a case cannot be identified, written notice of the conflict shall be given to the chief judge of the court having jurisdiction over the case, or to his or her designee. The judges or their designees shall confer and undertake to

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avoid the conflict by agreement among themselves. Absent agreement, conflicts should be promptly resolved by the judges or their designees in accordance with the above case priorities.

In jurisdictions where calendar conflicts arise with frequency, it is recommended that each court involved consider appointing a calendar conflict coordinator to assist the judges in resolving calendar conflicts by obtaining information regarding the conflicts and performing such other ministerial duties as directed by the judges.

REVISED AND
READOPTED at Miami,
Florida, this 13th day of
January, 1995.

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ATTACHMENT B

Proposed Rule (proposed additional language underscored)

RULE 2.052. CALENDAR CONFLICTS

(a) **Priorities.** In resolving calendar conflicts between the state courts of Florida or between a state court and a federal court in Florida, the following case priorities must be considered:

(1) Termination of parental rights cases should prevail over jury and non-jury criminal and civil cases.

(12) Criminal cases should prevail over civil cases.

(23) Jury trials should prevail over non-jury trials.

(34) Appellate arguments, hearings, and conferences should prevail over trial court proceedings.

(45) The case in which the trial date has been first set should take precedence.

(b) **Additional Circumstances.** Factors such as cost, numbers of witnesses and attorneys involved, travel, length of trial, age of case, and other relevant matters may warrant deviation from these case priorities.

(c) **Notice and Agreement; Resolution by Judges.** When an attorney is scheduled to appear in 2 courts at the same time and cannot arrange for other counsel to represent the clients' interests, the attorney shall give prompt written notice of the conflict to opposing counsel, the clerk of each court, and the presiding judge of each case, if known. If the presiding judge of the case cannot be identified, written notice of the conflict shall be given to the chief judge of the court having jurisdiction over the case, or to the chief judge's designee. The judges or their designees shall confer and undertake to avoid the conflict by agreement among themselves. Absent agreement, conflicts should be promptly resolved by the judges or their designees in accordance with the above case priorities.

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WHEREAS, the Florida State-Federal Judicial Council which represents the Bench and Bar of the State of Florida believes that it would be beneficial to formally agree upon and publish recommended procedures and priorities for resolving calendar conflicts between the state and federal courts of Florida;

NOW, THEREFORE, BE IT RESOLVED

In resolving calendar conflicts between the state and federal courts of Florida, the following case priorities should be considered:

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RULES OF JUDICIAL ADMINISTRATION COMMITTEE VOTE: Rejected 7-11

BOARD OF GOVERNORS RECOMMENDATION: Approved 35-0