

047

IN THE SUPREME COURT OF FLORIDA

CASE NO: 96,265

FILED
DEBBIE CAUSSEAU
SEP 30 1999
CLERK, SUPREME COURT
By _____

IN RE:

**AMENDMENT TO THE FLORIDA RULES
OF JUDICIAL ADMINISTRATION**

**RESPONSE OF THE JUVENILE COURT RULES COMMITTEE
IN SUPPORT OF THE EMERGENCY PETITION TO AMEND
FLORIDA RULE OF JUDICIAL ADMINISTRATION 2.052**

SARAH H. BOHR
Chair, Juvenile Court Rules Committee
Sarah H. Bohr, P.A.
2337 Seminole Road
Atlantic Beach, FL 32233
Telephone: (904) 246-7603
Facsimile: (904) 246-8884
e-mail: sarahhbohr@aol.com
FLORIDA BAR NO: 264008

JOHN F. HARKNESS, JR.
Executive Director
The Florida Bar
650 Apalachee Parkway
Tallahassee, FL 32399-2300
Telephone: (850) 561-5600
Facsimile: (850) 561-5826
FLORIDA BAR NO: 123390

**RESPONSE OF THE JUVENILE COURT RULES COMMITTEE
IN SUPPORT OF THE EMERGENCY PETITION TO AMEND
FLORIDA RULE OF JUDICIAL ADMINISTRATION 2.052**

Sarah H. Bohr, Chair, Juvenile Court Rules Committee, and John F. Harkness, Jr., Executive Director, The Florida Bar, file this response of the Juvenile Court Rules Committee to Frank A. Kreidler's petition to amend *Fla. R. Jud. Admin.* 2.052. The committee adopted this position by a vote of 17-0-3 on June 18, 1998, and reaffirmed it by a vote of 14-0-0 on June 28, 1999.

The committee shares the petitioner's concerns regarding the needs of dependent children. As was stated in *In the Interest of K.H.*, 444 So. 2d 547, 549 (Fla. 1st DCA 1984): "A permanent status of dependency is not an option available under Chapter 39." See also *Ammons v. Hathaway*, 550 So. 2d 145 (Fla. 1st DCA 1989); *T.W.S. v. Dept. of Health & Rehabilitative Services*, 466 So. 2d (Fla. 1st DCA 1985). Permanency for dependent children is mandated by both state and federal law. Sections 39.001(h)–(j), Florida Statutes (1999), state that permanent placement for dependent children is one of the purposes of Chapter 39, Florida Statutes. This purpose is given effect by other statutes.

Section 39.701(8)(f), Florida Statutes (1999), provides that a case plan may be extended beyond the 12-month judicial review hearing only if "the court finds the situation of the child is so extraordinary that the plan should be extended" and

requires that the case plan “document steps the department is taking to find an adoptive parent or other permanent living arrangement for the child.”

Additionally, section 39.703(2), Florida Statutes (1999), requires the department to initiate termination of parental rights proceedings if the child is not returned to the custody of the parents at the 12-month judicial review hearing. Federal statutes governing foster care have similar provisions. For example, 42 *U.S.C.* §675(5)(c) requires that a “permanency hearing” be held within 12 months of placement of the child in foster care. The unfortunate reality is that these goals and requirements are not always met and that children remain in foster care and out-of-home placement for long periods of time.

The committee agrees with the petitioner that one method to address this situation is to expedite hearing of termination of parental rights cases whenever possible and to give priority to these proceedings in resolving calendar conflicts. Dependency hearings present unique scheduling difficulties. Chapter 39, Florida Statutes, and the Florida Rules of Juvenile Procedure create very specific time requirements for many of the hearings in a dependency case. For example, sections 39.401(3) and 39.402(8)(a), Florida Statutes (1999), and *Fla. R. Juv. P.* 8.305(a) mandate that a shelter hearing be held within 24 hours of the time a child is taken into custody. An arraignment hearing must be held within 28 days of the

shelter hearing or seven days from the filing of the dependency petition on demand of any party, § 39.506(1), Fla. Stat. (1999), the adjudicatory hearing must be held within 30 days of arraignment if the parents deny the allegations of the petition, § 39.507(1)(a), Fla. Stat. (1998), and the disposition hearing must be held within 15 days of the arraignment hearing if the parents consent to the allegations of the petition or within 30 days of the last day of the adjudicatory hearing if one is held, §§ 39.506(1), 39.507(7), Fla. Stat. (1999). In addition, the court is required to notify the parties of the next scheduled hearing at the conclusion of the arraignment, adjudicatory, and disposition hearings. §§ 39.506(9), 39.507(7), 39.508(9)(b)6 (1999).

Juvenile dependency court dockets do not have the same flexibility as other civil or criminal courts. Because hearings must occur on a rigid time schedule and be noticed and scheduled well in advance for a time certain, rescheduling is difficult if an attorney must cancel a hearing because of another pending matter. This is particularly true if a large block of time has been set aside for a contested termination of parental rights case. Rescheduling may require a considerable delay and mean that the child will remain in a nonpermanent placement longer. Although rescheduling is difficult for all dependency hearings, it is particularly so for a contested termination of parental rights proceeding. No other juvenile

proceeding takes the length of time required for a contested termination of parental rights hearing.

The committee, however, proposes a slightly different amendment to *Rule* 2.052 than that proposed by the petitioner. The committee recommends that the rule be amended to read as follows:

(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) Contested termination of parental rights trials should prevail over jury and nonjury civil and criminal trials, other than capital trials.

(2) Uncontested termination of parental rights cases should prevail over nonjury criminal and civil cases.

(~~3~~) Criminal cases should prevail over civil cases.

(~~4~~) Jury trials should prevail over non-jury trials.

(~~5~~) Appellate arguments, hearings, and conferences should prevail over trial court proceedings.

(~~6~~) The case in which the trial date has been first set should take precedence.

The committee first recommends that a distinction be made between contested and uncontested termination of parental rights proceedings. An uncontested proceeding generally is a short hearing. A contested termination of

parental rights proceeding, however, is similar to a civil nonjury trial with introduction of witness testimony and evidence. Such a proceeding may take from several hours up to a week. Because of the difficulties in scheduling and rescheduling these hearings, the committee recommends that first priority be given to contested termination of parental rights hearings. Uncontested hearings, however, still should prevail over most other nonjury civil and criminal cases.

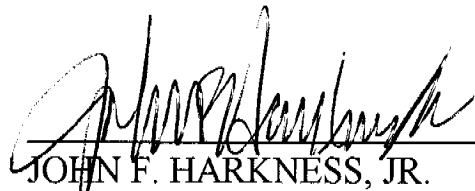
The committee also recommends that capital cases continue to receive first priority over all other trials because of the complexity of the cases, issues involved, and length of the proceedings.

The committee therefore respectfully requests that the Court amend *Fla. R. Jud. P. 2.052* as indicated on the attached copy.

Respectfully submitted September 30, 1999



SARAH H. BOHR
Chair, Juvenile Court Rules Committee
Sarah H. Bohr, P.A.
2337 Seminole Road
Atlantic Beach, FL 32233
Telephone: (904) 246-7603
Facsimile: (904) 246-8884
e-mail: sarahhbohr@aol.com
FLORIDA BAR NO: 264008



JOHN F. HARKNESS, JR.
Executive Director
The Florida Bar
650 Apalachee Parkway
Tallahassee, FL 32399-2300
Telephone: (850) 561-5600
Facsimile: (850) 561-5826
FLORIDA BAR NO: 123390

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to Frank A. Kreidler, 1124 South Federal Highway, Lake Worth, FL 33460-5244 and the Hon. Scott Jay Silverman, Chair, Rules of Judicial Administration Committee, 1351 N.W. 12th Street, Ste. 712, Miami, FL 33125-1627, by U.S. mail this 30~~th~~ day of September, 1999.

Ellen H. Stoye

-Attorney

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) Contested termination of parental rights trials should prevail over jury and nonjury civil and criminal trials, other than capital trials.

(2) Uncontested termination of parental rights cases should prevail over nonjury criminal and civil cases.

(3) Criminal cases should prevail over civil cases.

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

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

(6) 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.

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:

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;

NOW, THEREFORE, BE IT RESOLVED

In resolving 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 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 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.

Current rule	Proposed rule	Reason for change
<p>RULE 2.052. CALENDAR CONFLICTS</p>	<p>RULE 2.052. CALENDAR CONFLICTS</p>	
<p>(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:</p>	<p>(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:</p>	
<p>(1) Criminal cases should prevail over civil cases.</p>	<p>(1) <u>Contested termination of parental rights trials should prevail over jury and nonjury civil and criminal trials, other than capital trials.</u></p>	
<p>(2) Jury trials should prevail over non-jury trials.</p>	<p>(2) <u>Uncontested termination of parental rights cases should prevail over nonjury criminal and civil cases.</u></p>	
<p>(3) Appellate arguments, hearings, and conferences should prevail over trial court proceedings.</p>	<p>(+3) Criminal cases should prevail over civil cases.</p>	
<p>(4) The case in which the trial date has been first set should take precedence.</p>	<p>(24) Jury trials should prevail over non-jury trials.</p>	

(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

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

(46) 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

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:

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

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:

WHEREAS, the great volume

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:

1. Criminal cases should prevail over civil cases.
2. Jury trials should prevail over non-jury trials.
3. Appellate arguments, hearings, and conferences should

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;

NOW, THEREFORE, BE IT RESOLVED

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

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 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

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 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

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 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

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 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

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

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.