

IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO THE
FLORIDA RULES OF JUVENILE
PROCEDURE – FORM 8.933

CASE NO. SC21-585

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COMMENT
OF THE FLORIDA PUBLIC DEFENDER ASSOCIATION

The Florida Public Defender Association, Inc., (“FPDA”) respectfully offers the following comment in response to the proposal of the Juvenile Court Rules Committee to amend Form 8.933 (Waiver of Counsel). The FPDA consists of 19 elected public defenders, hundreds of assistant public defenders, and support staff. As appointed counsel for thousands of indigent juvenile defendants from all parts of Florida, FPDA members are attuned to issues surrounding the waiver of counsel by children accused of delinquent acts, providing insight FPDA believes will be useful to the Court in its consideration of the Committee’s proposal.

The FPDA has several concerns with the Committee’s proposed amendment. First, it is written in language that may be difficult for children to comprehend. A readability calculator reveals that the Committee proposal is written at a college reading level, making it

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inaccessible to the children up to age 18 who are defendants in juvenile delinquency proceedings. Second, the committee's form does not explain how a lawyer can assist the child in contesting the charges in an adjudicatory hearing. Third, the committee's form does not specify that the child has been able to obtain information whether and how the prosecution might have immigration consequences, an important consideration in deciding whether to waive counsel. Last, although the FPDA agrees with the requirement of a lawyer's signature, requiring counsel to aver that they "believe the child has waived counsel, knowingly, intelligently, and voluntarily" creates a conflict of interest for a lawyer who believes the child is waiving counsel inadvisedly and without a full appreciation of the consequences of its relinquishment.

As an alternative to the Committee's proposal, FPDA offers the following, created by the Twelfth Circuit Public Defender's Office. Beginning with the title, "I give up my right to have a lawyer," FPDA's form breaks the delinquency proceedings into pieces more easily understood by a child and explains how a lawyer will assist at each step along the way. Specifically, and in contrast to the Committee's form, FPDA's form informs the child that they may

challenge the charges in a hearing and ensures that the child has been able to ask questions and receive answers about immigration consequences. When subjected to the same readability calculator as the Committee's proposal, FPDA's form scored at a fifth-grade level, creating a greater likelihood that any child who signs the form understands the right to counsel and the consequences of its waiver.

Finally, the representation above the attorney signature in FPDA's form ensures that counsel has consulted with the child about the waiver while avoiding a conflict of interest by specifying only that the attorney discussed the form with the child and explained the rights being waived. Rule 8.615(a)(1) requires that the court ascertain whether the right to counsel is understood and, where appropriate, knowingly and intelligently waived, but does not mandate that counsel make any representation on these requirements.

FPDA proposal:

I GIVE UP MY RIGHT TO HAVE A LAWYER

1. **I understand** that a lawyer is a professional person who is trained in the law and whose job it is to help people who have legal problems.

2. **I understand** that if I have a lawyer, that person will do several things to help me, such as:

a. Explaining the charges which have been filed against me in the petition for delinquency.

b. Giving me advice on my rights and responsibilities in this case.

c. Advising me as to what legal defenses may be available to me.

d. Advising me as to whether or not I should challenge the charges.

e. Helping me prepare my case for hearing if I decide to challenge the charges.

f. Helping me get the proper witnesses to court.

g. Giving me advice and direction on what I should do regarding my case.

3. **I understand** that I have a right to be represented by a lawyer at any time and that if I cannot pay to hire a lawyer, the judge will give one to me. In signing this paper, I understand that I choose not to have a lawyer represent me at this time.

4. **I understand** that I keep the right to have a lawyer. I can ask the judge at any time to give me a lawyer even if I have not asked for one before.

5. **A lawyer has explained** to me my right to be represented in this case, the results of not having a lawyer and other factors that would help me to decide whether or not to have a lawyer in this matter. I have had time to ask questions and have my questions answered to my satisfaction, including questions about immigration and other consequences.

6. **I understand** all of the above statements regarding my rights to a lawyer but, I give up my right to be represented by a lawyer at this time.

CHILD

AGE

I am a juvenile delinquency attorney and/or assistant public defender. I have reviewed the above with the child and explained to the child his/her rights to an attorney at any stage of the delinquency proceedings.

ATTORNEY

CERTIFICATES

I certify that this comment complies with the font and word-count-limit requirements in Florida Rule of Appellate Procedure 9.045, and was filed, via the Florida Courts E-Filing Portal, with the Clerk of the Supreme Court of Florida, on July 28, 2021.

Comment respectfully submitted,

FLORIDA PUBLIC DEFENDER
ASSOCIATION, INC.

/s/ Jessica J. Yeary, B.C.S.

Public Defender
Second Judicial Circuit
Florida Bar #71262
301 S. Monroe St., Suite 401
Tallahassee, FL 32301
(850)606-1000
Jessica.yeary@flpd2.com