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CLERK OF THE SUPREME COURT

KENT R. SPUHLER
DIRECTOR

DEBORAH SCHROTH
ATTORNEY

July 14, 2004

Thomas D. Hall, Clerk
Florida Supreme Court
500 South Duval Street
Tallahassee, FL 32399-1925

RE: *Fla. R. App. P. 2.071(d)*, Use of Communication Equipment

Dear Mr. Hall:

This letter is in response to your letter of August 13, 2003, requesting comments from each rules of procedure committee regarding proposed amendments to *Rule 2.071(d)*. As former Chair Jennifer Parker advised you in her recent letter, this request was overlooked by the Juvenile Court Rules Committee at the time it was received. However, it was discussed at our June 24, 2004, meeting, and the committee now offers the following comments for the Court's consideration.

The Juvenile Court Rules Committee proposes rules for several distinct areas of practice — delinquency, dependency, termination of parental rights, and families and children in need of services. Accordingly, different areas of concern were raised by practitioners and judges from these areas.

As was suggested in the Court's opinion, *Amendments to the Florida Rules of Judicial Administration (2-year cycle)*, 851 So. 2d 698 (Fla. 2003), members of the committee who practice delinquency are concerned that amendment of this rule to allow use of communications equipment would be in conflict with the Court's previous rulings on the use of audio-visual equipment for detention hearings. See *Amendment to Florida Rule of Juvenile Procedure 8.100(a)*, 667 So. 2d 195 (Fla. 1996); *Amendment to Florida Rule of Juvenile Procedure 8.100(a)*, 753 So. 2d (Fla. 1999); *Amendment to Florida Rule of Juvenile Procedure 8.100(a)*, 796 So. 2d 470 (Fla. 2001). As is apparent from the history of this case, the issue was thoroughly debated by the proponents and opponents of this use of communications equipment. The Court heard oral argument twice on this issue and received lengthy reports from circuit courts conducting the pilot projects and outside observers of these hearings. The Juvenile Court Rules Committee opposed adoption of this procedure throughout. Ultimately, the Court determined that the best interest of the child should prevail over convenience and efficiency of court proceedings. The committee continues to be concerned with this type of procedure.

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Those who practice in the dependency area raised two concerns. First, the current wording of the rule refers to "delinquency" proceedings. Changing it to read "juvenile," brings dependency and termination of parental rights under the rules provisions. The mere "conforming" of *Rule 2.071(c)* with *Rule 2.071(d)(4)* adds dependency proceedings to the rule and goes beyond the reason given for the change.

Although the committee is strongly in favor of allowing the use of electronic means for receiving testimony from some individuals, such as case workers, doctors, parents, and children who cannot otherwise be present at a hearing, it does not want to take away the right or authority of the trial judge in a dependency or termination of parental rights proceeding to require the personal and physical appearance of a parent or legal guardian at an arraignment, advisory, or adjudicatory hearing. Under §§ 39.506(3) and 39.801(3)(a), Fla. Stat., a parent or guardian's failure to "personally appear" at an arraignment, advisory, or adjudicatory hearing "constitutes consent to" adjudication of the child as dependent or termination of parental rights to the child. The proposed change would give a presumption of a parent's right to appear electronically and could lead to delay in achieving permanency for children in dependency proceedings.

Thank you for the opportunity to provide comments on these proposed changes. If I can provide further information, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "Deborah A. Schroth". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Deborah A. Schroth, Chair
Juvenile Court Rules Committee