

**IN THE SUPREME COURT OF FLORIDA**

**IN RE: AMENDMENTS TO THE FLORIDA  
RULES OF JUVENILE PROCEDURE, etc.**

**CASE NO: SC05-950**

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**SUPPLEMENTAL MEMORANDUM OUTLINING FLORIDA  
BAR APPELLATE COURT RULES COMMITTEE'S COMMENTS  
AND SUGGESTIONS PERTAINING TO RULE 9.110(n)**

The Florida Bar Appellate Court Rules Committee (“ACRC”) submits this supplemental memorandum outlining proposed revisions to Rules 9.110(n) and 9.900(f), Fla.R.App.P., as indicated in the ACRC’s November 19, 2005 Response to Amended Comments and Objections of Planned Parenthood of Southwest and Central Florida Regarding Florida Rule of Appellate Procedure 9.110(n) (“Response”).<sup>1</sup> The Executive Committee of The Florida Bar Board of Governors voted in favor of these comments and suggestions, 10-0.

**INTRODUCTION**

At the January 20, 2006, meeting of the Appellate Court Rules Committee (“ACRC”), the Family Law Rules Subcommittee proposed three rule amendments addressing appeals in proceedings seeking waiver of parental notice of termination of a minor's pregnancy. The first two proposed amendments involved minor changes to Florida Rule of Appellate Procedure 9.110(n), which the Florida

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<sup>1</sup> In its Response, the ACRC indicated that it intended to provide the Court with the comments advanced by the full committee following the January 20, 2006 meeting.

Supreme Court promulgated on June 30, 2005. *In re Amendments to the Florida Rules of Juvenile Procedure*, 907 So. 2d 1161 (Fla. 2005). The third proposed amendment added a new form notice of appeal for these proceedings to Rule 9.900. The ACRC respectfully recommends the following revisions to Rule 9.110(n).

## DISCUSSION

### **I. PROPOSED AMENDMENT TO FLORIDA RULE OF APPELLATE PROCEDURE 9.110(n) CONCERNING THE USE OF THE TERM "CLERK."**

The ACRC proposes that two references to the "clerk" in Rule 9.110(n), Fla.R.App.P., be modified for clarity and consistency with the other rules. The first part of the amendment clarifies that the first reference to the "clerk" is to the clerk of the lower tribunal. The second part of the amendment makes clear that the last reference to the "clerk" in the rule refers to the clerk of the appellate court. The following proposed amendment passed unanimously after a short discussion:

If an unmarried minor or another person on her behalf appeals an order dismissing a petition for judicial waiver of parental notice of termination of pregnancy, the clerk of the lower tribunal shall prepare and transmit the record as described in rule 9.200(d) within 2 days from the filing of the notice of appeal.

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Should the dismissal of the petition be ~~granted~~ reversed on appeal, the clerk shall furnish the petitioner with a certified copy of the decision or the clerk's certificate for deliver to the minor's physician.

## II. MINOR'S RIGHT TO FILE A BRIEF OR REQUEST ORAL ARGUMENT.

Planned Parenthood suggested, and the ACRC agrees, that the minor should be permitted to seek leave to file a brief or to request oral argument. The rule, as promulgated, states that "[b]riefs or oral argument may be ordered at the discretion of the district court of appeal." The ACRC believes this language should be left in the rule, thereby allowing the district court to order the minor to file a brief, or to schedule oral argument, even if the minor did not do so. The ACRC recommends adding the sentence: "The minor may move for leave to file a brief and may request oral argument." after the sentence discussing the district court's discretion to require briefs or oral argument.<sup>2</sup>

Rule 9.110(n), with the amendments adopted by the committee by a vote of 33-9, reads:

**9.110(n) Exception, Appeal of Final Order Dismissing Petition for Judicial Waiver of Parental Notice of Termination of Pregnancy.**

If an unmarried minor or another person on her behalf appeals an order dismissing a petition for judicial waiver of parental notice of

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<sup>2</sup> A committee member voiced concern that such an amendment might slow the appellate process, which must be completed within ten days of the minor's filing of a notice of appeal. He suggested adopting a procedure similar to that found in rule 9.141. As such, he proposed the following amendment: "No briefs or oral argument shall be required, but any appellant's brief shall be filed within 3 days of the notice of appeal." The ACRC rejected this proposal.

termination of pregnancy, the clerk of the lower tribunal shall prepare and transmit the record as described in rule 9.200(d) within 2 days from the filing of the notice of appeal. The district court of appeal shall render its decision on the appeal as expeditiously as possible and no later than 10 days from the filing of the notice of appeal. Briefs or oral argument may be ordered at the discretion of the district court of appeal. The minor may move for leave to file a brief and may request oral argument. If no decision is rendered within the foregoing time period, the order shall be deemed reversed, the petition shall be deemed granted, and the clerk shall place a certificate to this effect in the file and provide the minor with a certified copy of the certificate. The appeal and all proceedings thereon shall be confidential so that the minor shall remain anonymous. The file shall remain sealed unless otherwise ordered by the court. Should the dismissal of the petition be granted reversed on appeal, the clerk shall furnish the petitioner with a certified copy of the decision or the clerk's certificate for deliver to the minor's physician. No filing fee shall be required for any part of an appeal of the dismissal of a petition for a waiver of parental notice of termination of pregnancy.

**2006 Amendment.** Rule 9.110(n) has been amended to clarify that the word "clerk" in the first sentence of the rule refers to the clerk of the lower tribunal. The amendment also permits the minor to ask for leave to file a brief or to request oral argument. The amendment clarifies that the district court does not grant the minor's petition, but rather may reverse the circuit court's dismissal of the petition.

### **III. NOTICE OF APPEAL SPECIFIC TO JUDICIAL WAIVER PROCEEDINGS.**

Planned Parenthood suggested, and the ACRC agrees, that a specific notice of appeal should be promulgated for the minor to use when seeking review of the circuit court's dismissal of her petition. The ACRC then adopted as new subdivision 9.900(f) (with renumbering of subsequent subdivisions) the proposed notice of appeal, as amended, by a 28 - 6 vote:

**Rule 9.900(f)**

**(f) Notice of Appeal of an Order Dismissing a Petition for a Judicial Waiver of Parental Notification of Termination of Pregnancy and Advisory Notice to Minor.**

IN THE CIRCUIT COURT FOR THE  
\_\_\_\_\_  
JUDICIAL CIRCUIT  
(NUMERICAL DESIGNATION OF THE  
CIRCUIT)  
IN AND FOR \_\_\_\_\_ COUNTY,  
FLORIDA

Case No. \_\_\_\_\_

In re: Petition for a Judicial Waiver )  
of Parental Notice of Termination of )  
Pregnancy. )  
\_\_\_\_\_) )  
\_\_\_\_\_) )  
\_\_\_\_\_) )  
(Your pseudonym or initials) )  
\_\_\_\_\_) )  
Appellant. )  
\_\_\_\_\_)

NOTICE IS GIVEN that \_\_\_\_\_ (your pseudonym or initials),  
appeals to the \_\_\_\_\_ (District Court with appellate jurisdiction),  
the order of this court rendered \_\_\_\_\_ (enter the date that the order was  
filed on the clerk's docket) [See rule 9.020(h)]. The nature of the order is a final  
order dismissing a petition for a judicial waiver of parental notice of termination of  
pregnancy.

Signature: \_\_\_\_\_

(As signed on your petition for judicial waiver if you are representing yourself)

Date: \_\_\_\_\_

OR

Attorney for \_\_\_\_\_ (pseudonym or initials of appellant)

(address and phone number of attorney)

Florida Bar No. \_\_\_\_\_

The Family Law Rules Subcommittee had also proposed adoption of an "Advisory Notice to the Minor" to be included as a subsection in Rule 9.110(n). This notice would provide the minor with information concerning the appeals process and would correspond with Florida Rule of Juvenile Procedure Form 8.989, which explains the procedure in circuit court. One Family Law Subcommittee member had dissented, believing that what was essentially a form should not be included in a substantive rule. The dissenting subcommittee member also believed the Advisory Notice should be given to the minor with the notice of appeal. After discussion, the Family Law Subcommittee Chair moved that the Advisory Notice be placed in the forms section of the appellate rules as an attachment to the Notice of Appeal form, which can be provided to the minor. The ACRC approved that amendment by a vote of 25-16, and recommended that the following Advisory Notice be included in the forms section of Rule 9.900:

YOU ARE NOTIFIED AS FOLLOWS:

1. You are entitled to appeal the order dismissing your petition for a judicial waiver of parental notice of termination of pregnancy. You do not have to pay a filing fee for the appeal.

2. If you wish to appeal, you must file a notice of appeal. A form for the notice of appeal (Fla. R. App. P. 9.900(f)) will be provided to you with the order denying your petition. You must fill in every blank on the form with the information requested. If you need assistance with the form, the clerk of the circuit court will help you complete it.

3. You must file the notice of appeal with the clerk of the circuit court where your case was heard. The notice of appeal must be filed within thirty (30) days of the date when the judge's written order dismissing your petition was filed with the clerk of the circuit court. If you do not file your notice of appeal within this time period your appeal will not be heard.

4. The notice of appeal is the only document you need to file in connection with your appeal. You may file a motion to seek permission to file a brief in your case, or to request oral argument of your case. These motions or any other motions or documents you file concerning your appeal, except the notice of appeal, must be mailed or delivered to the appellate court for filing. The appellate court that will be reviewing your case is:

The \_\_\_\_\_ District Court of Appeal

\_\_\_\_\_

(address of the District Court)

Telephone number: \_\_\_\_\_

(Note: The clerk of the circuit court will fill in the blanks above with the appropriate court information).

5. You are entitled to have a lawyer represent you in your appeal. You must tell the judge who heard your petition for a judicial waiver of parental notification of termination of pregnancy that you wish to have a lawyer appointed. The judge will appoint a lawyer to represent you.

**2006 Amendment.** This amendment is designed to provide a specific notice of appeal for use in appeals challenging the dismissal of a minor's petition for a judicial waiver of parental notice of termination of pregnancy under Rule 9.110(n) and to furnish the minor with information concerning the appeal process.

Finally, the ACRC voted to append the Advisory Notice to the Notice of Appeal form, so that both would become part of the form under proposed Rule 9.900(f). The ACRC voted 29-4 to make the foregoing Advisory Notice part of the form.

#### **IV. MISCELLANEOUS REVISIONS SUGGESTED BY PLANNED PARENTHOOD.**

The Family Law Subcommittee discussed other matters raised in Planned Parenthood's comments and objections to Rule 9.110(n), including allowing the minor to file electronically, and amendment of Rule 9.120 to provide for expedited filing in the Supreme Court. The Subcommittee found no merit in these suggestions and proposed no further revisions. The Family Law Subcommittee's full analysis is set forth in the memorandum provided to the Court as an attachment to the ACRC's November 19, 2005 Response, and is also attached hereto for the Court's convenience.



**CONCLUSION**

The ACRC requests the Court to adopt the foregoing proposed revisions to Rules 9.110(n) and 9.900(f).

Dated: \_\_\_\_\_

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was  
mailed on this \_\_\_\_ day of February, 2006 to:

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Chair, Juvenile Court Rules Committee  
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The Honorable Scott M. Bernstein  
Lawson E. Thomas Courthouse Center  
175 N.W. First Avenue  
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Miami, FL 33128

**EXHIBIT A**

To: Jack Reiter, Chair Appellate Court Rules Committee  
From: Family Law Rules Subcommittee, Fran Toomey, chair  
Re: Subcommittee Status Report concerning rule 9.110(n)  
Date: November 10, 2005

On June 30, 2005, the Florida Supreme Court promulgated Florida Rule of Appellate procedure 9.110(n), and numerous rules of juvenile procedure in response to the constitutional amendment (Art. X, § 22) and subsequent legislation (§ 390.01114, Fla. Stat. (2005)) providing for parental notice of termination of a minor's pregnancy and judicial waiver of that notice. In re Amendments to the Florida Rules of Juvenile Procedure, 907 So. 2d 1161 (Fla. 2005). The appellate rule states:

**(n) Exception, Appeal of Final Order Dismissing Petition for Judicial Waiver of Parental Notice of Termination of Pregnancy.**  
If an unmarried minor or another person on her behalf appeals an order dismissing a petition for judicial waiver of parental notice of termination of pregnancy, the clerk shall prepare and transmit the record as described in rule 9.200(d) within 2 days from the filing of the notice of appeal. The district court of appeal shall render its decision on the appeal as expeditiously as possible and no later than 10 days from the filing of the notice of appeal. Briefs or oral argument may be ordered at the discretion of the district court of appeal. If no decision is rendered within the foregoing time period, the order shall be deemed reversed, the petition shall be deemed granted, and the clerk shall place a certificate to this effect in the file and provide the minor with a certified copy of the certificate. The appeal and all proceedings thereon shall be confidential so that the minor shall remain anonymous. The file shall remain sealed unless otherwise ordered by the court. Should the petition be granted, the clerk shall furnish the petitioner with a certified copy of the decision

or the clerk's certificate for delivery to the minor's physician. No filing fee shall be required for any part of an appeal of the dismissal of a petition for a waiver of parental notice of termination of pregnancy.

On September 8, 2005, Planned Parenthood of Southwest and Central Florida filed comments and objections to both the new juvenile rules and rule 9.110(n). This pleading was served on the Appellate Court Rules Committee. Although the time for comments to Supreme Court had expired by the time the committee received Planned Parenthood's objections, the chair asked for an extension of time in which to respond and referred this matter to the Family Law Rules subcommittee. The Supreme Court issued an order extending the time for our response.

The subcommittee held a conference call and discussed both Planned Parenthood's comments and the members' thoughts concerning the proposed rule. A quorum of subcommittee members participated in the call. Following is a summary of the topics discussed and the subcommittee's comments.

### **I. Response to Planned Parenthood's objections.**

Planned Parenthood raised five comments or objections to rule 9.110(n).

#### A. Specific notice of appeal form for waiver of parental notice proceedings.

Planned Parenthood suggested that a specific form be promulgated for the notice of appeal in parental waiver matters because the rule 9.900(a) notice does not really fit this situation. In these appeals, there will be no appellee. The Family

Law Rules subcommittee thought this suggestion had merit. The subcommittee members are in the process of drafting a proposed notice of appeal for these cases, which we would suggest presenting to the full committee at the January meeting.

The subcommittee members also noted that the Supreme Court had promulgated an Advisory Notice to the Minor, Fla. R. Juv. P. 8.989, to assist the minor in filing a petition in circuit court. The subcommittee thought that such an advisory notice explaining the appellate procedure would be helpful as well. Again, we are in the process of drafting a notice, which we intend to present to for the full committee's review at the January meeting.

We further noted that if the committee adopts a new form notice of appeal for these proceedings, the reference to rule 9.990(a) in Florida Rule of Juvenile Procedure Form 8.991 should be changed to correspond with new form number.

B. Rule 9.100(n) should be amended to provide that the minor has the right to an attorney on appeal.

Planned Parenthood suggested that rule 9.110(n) should state that the minor has the right to counsel on appeal. The subcommittee members disagreed. Rule 8.989, Advisory Notice to Minor, already states that the minor is entitled to an attorney in connection with an appeal. We believed this information should be included in the proposed Advisory Notice for Appeal Proceedings rather than in

rule 9.110(n). However, our report for the January meeting will mention this proposal so that the full committee may discuss it.

C. Minor should be given the choice to file a brief or request Oral Argument.

Rule 9.110(n) states that "[b]riefs or oral argument may be ordered at the discretion of the district court of appeal." Planned Parenthood suggested that the minor should be given the opportunity to request permission to file a brief or request oral argument. The subcommittee members agreed with this suggestion. We intend to propose a rule revision on this point at the January meeting.

D. File brief at circuit court or allow fax or electronic transmittal.

Planned Parenthood suggested that the minor be permitted to file briefs in these alternative ways. The subcommittee members found no merit in this suggestion. Practically, if a brief is to be filed, the minor will most likely have an attorney, who will know how to file a brief and how to contact the appropriate district court to ask if alternative methods of filing are acceptable. If the minor is not represented, we will propose that she be provided with the name of the appropriate district court and its address in the form notice of appeal. Again, we look forward to discussing this matter at the January meeting.

### E. Rules for expedited filing in the Supreme Court.

Because it is unlikely the Supreme Court would have jurisdiction to review a district court's decision in these cases, see Art V., § (b)(3), (4), Fla. Const., the subcommittee believed such rules would be unnecessary. However we suggest that this proposal should be addressed by the full committee.

**II. Subcommittee's observations concerning rule 9.100(n).** The subcommittee examined rule 9.110(n) and has the following suggestions:

A. The use of the word "clerk" in rule 9.110(n). The term "clerk" is used three times in the rule. The first reference, in the first sentence, is clearly to the circuit court clerk ('the clerk shall prepare and transmit the record. . . .'). The subcommittee members think this reference should be amended to read "the clerk of the lower tribunal" for the sake of consistency and clarity. The second reference to the "clerk," in the fourth sentence is clearly a reference to the district court clerk and should remain as written. Fla. R. App. P. 9.020(b).

The third time the "clerk" is mentioned is in the penultimate sentence, which states: "Should the petition be granted, the clerk shall furnish the petitioner with a certified copy of the decision or the clerk's certificate for delivery to the minor's physician." The first part of the sentence, referring to the granting of the petition, implies that the word "clerk" refers to the circuit court clerk because that court, not the district court, grants a petition. The district court proceeding is an appeal, not a



petition. But the part of the sentence following the word clerk, stating that the clerk shall give the petitioner a copy of the "decision," implies that the reference is to the district court clerk, because that court would issue a "decision." We are inclined to believe that the reference is to the district court clerk. We suggest crafting a rule amendment, to be proposed at the January meeting, to clarify this reference.

B. Certificate for the minor's physician. If the rule in fact requires the district court clerk to furnish the petitioner with a certified copy of the decision or the clerk's certificate for delivery to the minor's physician (see previous point), no form of certificate is provided. The subcommittee members believed there should be consistency in the certificates among the district courts. The members thought that an order attached to the opinion might be the simplest way to handle this. But we question whether such a certificate properly belongs in the appellate rules. The individual district courts may wish to adopt their own forms for this requirement. We would like to open this discussion to the full committee at the January meeting.

Because of the time limitation on the committee's response to Planned Parenthood's objections and comments, the Family Law subcommittee reviewed the rule and the proposals, and met via conference call to discuss them, rather quickly. We will likely conduct another conference call before the January meeting so subcommittee members may voice any other suggestions. We note that

a very similar rule was promulgated in connection with the 1999 parental notice statute, section 390.01115, Florida Statutes (1999). Amendments to the Florida Rules of Civil Procedure, 756 So. 2d 27 (Fla. 1999). However this statute was quickly declared unconstitutional and was never enforced. See N. Fla. Women's Health Servs. v. State, 866 So. 2d 612, 615 (Fla. 2003). Thus, the Appellate Court Rules Committee probably never really addressed the 1999 rule. We look forward to discussing the 2005 rule with the full committee at the January meeting.