

IN THE SUPREME COURT OF FLORIDA

CASE NO: SC05-950

**IN RE: AMENDMENTS TO THE FLORIDA RULES OF JUVENILE
PROCEDURE; FORMS FOR USE WITH RULES OF JUVENILE
PROCEDURE; AND THE FLORIDA RULES OF APPELLATE
PROCEDURE — JUDICIAL WAIVER OF PARENTAL NOTICE OF
TERMINATION OF PREGNANCY**

COMMENTS OF THE JUVENILE COURT RULES COMMITTEE

Come now Alan Abramowitz, Chair, Juvenile Court Rules Committee, and John F. Harkness, Jr., Executive Director, The Florida Bar, and file these comments of the Juvenile Court Rules Committee as requested by the Court in its opinion of June 30, 2005.

The Juvenile Court Rules Committee initially addressed the issue of rules and forms to implement creation of section 390.01114, Florida Statutes, by Chapter 2005-52, Laws of Florida, at its June 23, 2005 meeting. Although both a rule and form had been drafted in advance of the meeting, the Committee voted 27-2-2 to submit the rule and form to the Court with a letter raising its concerns about placing this process in the Rules of Juvenile Procedure. Accordingly, a letter was sent to Clerk Tom Hall on June 27, 2005, by outgoing chairperson Deborah Schroth. (See Appendix A.)

On June 30, 2005, the Court issued its order amending the Rules of Juvenile Procedure to create a set of rules and forms for judicial waiver of parental notification for a minor wishing to terminate her pregnancy. The Court invited comments on the rules and forms. Accordingly, the Juvenile Court Rules Committee met on August 5, 2005, and submits the following

comments for the Court's consideration.

1. Issuance of "order." The Committee believed there were problems with the procedure in *Rule* 8.820(d)(3) regarding issuance of an order when no decision has been made after 48 hours. The Committee believed there may be a problem with a judge who chooses not to rule on the petition within 48 hours thereafter issuing an order to permit the minor to terminate the pregnancy. In addition, the rule is not clear regarding who issues the order – the judge or the clerk. The Committee also suggests that a form be provided for issuance of an order after expiration of the 48 hours. The Committee recommends that if the judge has not issued an order within 48 hours, the clerk be mandated to issue an order. The vote on this comment was 23-0-1.

2. Opening of Case. The Committee believes that *Rule* 8.805(d) needs to be clear that when the clerk opens a case that it is a new case, so that it is not combined with an existing delinquency, dependency, or CINS/FINS case, to which the parent might have access. We suggest that *Rule* 8.805(d)(1) be amended to state: "open a new file and assign a new case number." This procedure will also assure that if there is an appeal, the only material in the file will be that related to the waiver of notification case. This comment was adopted by a vote of 22-0-0.

3. Calculation of Time. The Committee continues to have concerns regarding interpretation of the 48-hour requirement. Both *Rule* 8.180 and 8.240 provide that when computing time the "last day of the period so computed shall be counted, unless it is Saturday, Sunday, or a legal holiday,

in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, nor a legal holiday.” Application of these rules to the 48-hour hearing requirement in *Rule* 8.820(d) could result in the hearing being held more than 48 actual hours from the filing of the petition. If this was not the Court’s intention, *Rule* 8.820(d) needs to be amended to so state. The vote on this comment was 17-6-0.

4. Placement in Juvenile Rules. The Committee also continues to believe that these rules should not be part of the Florida Rules of Juvenile Procedure. The Committee’s primary concern is confidentiality for the young woman seeking the judicial waiver. There is concern that if there is a preexisting dependency, delinquency, or CINS/FINS case, pleadings filed in the Juvenile court could be viewed by the parents (if their parental rights are still intact) and the staff of the Department of Juvenile Justice and Department of Children and Family Services or its community-based care agency. Further, if the case is heard by a dependency or delinquency judge, participants in the dependency or delinquency system including the parents, their attorneys, the departments, and the guardian ad litem could gain knowledge of the petition if the hearing is conducted in the same courtroom as dependency cases. We believe that placement of these proceedings in the family or civil division would provide greater privacy for the young woman. This comment was approved by a vote of 21-2-0.

WHEREFORE, the Committee respectfully submits these comments to the Court.

Respectfully submitted _____.

ALAN ABRAMOWITZ

Chair

Juvenile Court Rules Committee

210 N. Palmetto Ave., Ste. 440

Daytona Beach, FL 32114-3269

386/238-4750

FLORIDA BAR NO: 812889

JOHN F. HARKNESS, JR.

Executive Director

The Florida Bar

651 E. Jefferson St.

Tallahassee, FL 32399-2300

850/561-5600

FLORIDA BAR NO.: 123390