

**IN THE SUPREME COURT OF FLORIDA**

**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**

Case No. SC05-950

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**COMMENTS OF DAVID A. DEMERS  
CHIEF JUDGE OF THE SIXTH JUDICIAL CIRCUIT  
IN SUPPORT OF  
AMENDING RULE OF JUVENILE PROCEDURE 8.820(d)(3)**

Pursuant to the Florida Supreme Court’s invitation for comments on the newly-promulgated Rules of Juvenile Procedure regarding judicial waiver of parental notice of termination of pregnancy, The Honorable David A. Demers, Chief Judge of the Sixth Judicial Circuit, files this memorandum in support of amending Rule 8.820(d)(3) of the Florida Rules of Juvenile Procedure.

I. Factual Background

On July 1, 2005, the Parental Notice of Abortion Act (“Act”), codified at section 390.01114, Florida Statutes, went into effect. Of particular importance to circuit courts, the Act authorizes minors to petition the court for a judicial waiver of the requirement that a minor’s parents be notified prior to a termination of pregnancy. Consistent with the statute’s requirement that courts accord these petitions the highest possible priority, the waiver provision also mandates that if a

court is unable to rule on the petition for waiver within 48 hours of its filing, the petition is automatically granted (“automatic grant”).

Regarding the automatic grant, section 390.01114(4)(b) of the Act provides that “[i]f the court fails to rule [on a petition] within the 48-hour period and an extension has not been requested, the petition is granted, and the notice requirement is waived.” This language leaves no discretion to the court or any other entity; instead, the statute provides for the petition to be granted by operation of law. Thus, it appears that a Notice could be issued by the Clerk of Court in such circumstances, rather than an order of the court.

However, Rule 8.820(d)(3) provides that once the 48-hour period expires, “the petition shall be deemed granted *and an order shall be issued*” (emphasis added). In contrast to the statutory language, the rule requires that a judge issue an order even though no judge was able to conduct a hearing within 48 hours.

In light of the inconsistency between the statute and the rule concerning automatic grants, Judge Demers respectfully recommends that Rule 8.820(d)(3) be amended to (1) eliminate the requirement that an automatic grant be issued by court order; and (2) provide that when a petition is granted by operation of law, a Notice from the Clerk of Court may be issued without further intervention by the court. Such an amendment would bring the language of the rule into compliance

with the statute and would help to eliminate unnecessary delays in the resolution of waiver petitions.

## II. Factors in Support of Amending Rule 8.820(d)(3)

A. Since the Act provides that a waiver petition shall automatically be granted if the court fails to rule on the petition within 48 hours of its filing, Rule 8.820(d)(3) should be amended to eliminate the requirement that an automatic grant be issued by court order and to instead authorize the Clerk of Court to issue a Notice.

Upon the expiration of the 48-hour hearing period for a petition for waiver of judicial notice, section 390.01114(4)(b) provides that if “an extension has not been requested [by the minor], the petition is granted, and the notice requirement is waived.” This language is significant in two respects: (1) it leaves no discretion in the court or any other entity to deny the petition; and (2) it does not require that the automatic granting of the petition be done by court order.

As such, the statute renders the entry of an automatic grant a purely ministerial function well within the authority of the Clerk of Court to issue. In practice, the procedure under subsection (4)(b) would be very similar to the entry of default authorized to be performed by the Clerk under Florida Rule of Civil Procedure 1.500. Further, this Court could issue a required form for the entry of such grants to assure that a proper format is followed. A suggested form is included in Appendix A.

Consequently, authorizing the Clerk of Court to enter automatic grants would in no way constitute improper delegation of a judicial function. Therefore, Rule 8.820(b)(3) should be amended to eliminate the court order requirement and to authorize the Clerk to enter a Notice, thus harmonizing the rule and the statutory language. Suggested language is as follows:

If the court fails to rule within the 48-hour period and an extension has not been requested by the minor, the petition shall be deemed granted by operation of law. As soon as practically possible, the Clerk of Court shall issue a Notice of Granting of Petition by Operation of Law in accordance with Rule of Juvenile Procedure Form [Appendix A].

B. Requiring the court to enter an order automatically granting when the court has already been unable to rule on the petition within the 48-hour period is not logical and could lead to unwarranted delays.

Since the automatic grant of a petition for judicial waiver occurs only where a court has been unable to entertain the petition within the statutorily-mandated 48-hour period, it makes little sense to require that the automatic grant be issued by that same court. While the 48-hour period should rarely expire given the priority with which courts must treat these petitions, the factors that would most likely lead to an expiration of this period—such as holidays or weather emergencies—would most likely also lead to difficulty in locating a judge to issue an order.

Thus, unwarranted delays could result that would run contrary to the intent of the statute to expedite these petitions to the fullest extent possible. Instead, the

Clerk of Court should be given the authority to enter a Notice of the automatic granting of these petitions to ensure that these petitions are promptly resolved.

**CONCLUSION**

For the reasons stated above, Judge Demers respectfully requests that the Court amend Rule 8.820(d)(3) of the Florida Rules of Juvenile Procedure to (1) eliminate the necessity of a court order for entry of an automatic grant; and (2) authorize the Clerk of Court to enter a Notice of the automatic grant. Such an amendment would bring the rule into compliance with the language of section 390.01114(4)(b), Florida Statutes. Further, the entry of a Notice by the Clerk would be purely ministerial, particularly if this Court issues a required form, and would provide the most prompt resolution of such petitions.

Respectfully submitted this \_\_\_\_\_ day of August, 2005.

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David A. Demers  
Chief Judge  
Sixth Judicial Circuit  
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**“Appendix A”**

**IN THE CIRCUIT COURT OF THE \_\_\_\_\_ JUDICIAL CIRCUIT**

**IN THE INTEREST(S) OF**

Ref No: \_\_\_\_\_

UCN: \_\_\_\_\_

\_\_\_\_\_  
Petitioner, a minor

**NOTICE OF GRANTING PETITION PURSUANT TO THE PROVISIONS  
OF SECTION 390.01114(4)(b), FLORIDA STATUTES**

The Petitioner in this cause filed his/her Petition for Judicial Waiver of Parental Notice on \_\_\_\_\_ at \_\_\_\_\_. Petitioner has not  
(month/day/year) (time)  
requested an extension of time. As of \_\_\_\_\_ at \_\_\_\_\_, the  
(month/day/year) (time)  
Court has not entered an order on this petition and thus 48 hours have passed.  
Section 390.01114(4)(b), Fla.Stat., provides: “If the court fails to rule within the 48-hour period and an extension has not been requested, the petition is granted, and the notice requirement is waived.”

Clerk of the Circuit Court

BY: \_\_\_\_\_  
(Deputy Clerk)

cc: Petitioner  
Petitioner’s Attorney

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of **COMMENTS OF DAVID A. DEMERS, CHIEF JUDGE OF THE SIXTH JUDICIAL CIRCUIT IN SUPPORT OF AMENDING RULE OF JUVENILE PROCEDURE 8.820(d)(3)** has been furnished to Alan Abramowitz, Chair, Juvenile Court Rules Committee, 210 North Palmetto Avenue, Suite 440, Daytona Beach, Florida 32114-3269, by U.S. Mail, postage prepaid, this \_\_\_\_\_ day of August, 2005.

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B. Elaine New  
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**CERTIFICATE OF COMPLIANCE**

I hereby certify that this memorandum was prepared using Times New Roman 14-point font in compliance with Florida Rule of Appellate Procedure 9.210(a)(2).

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B. Elaine New