IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO THE FLORIDA RULES OF JUVENILE PROCEDURE. Etc. CASE NO: SC05-950

Appellate Court Rules Committee's Response to Amended Comments and Objections of Planned Parenthood of Southwest and Central Florida Regarding Florida Rule of Appellate Procedure 9.110(n)

The Florida Bar Appellate Court Rules Committee ("ACRC") submits the following response to the Amended Comments and Objections of Planned Parenthood of Southwest and Central Florida, etc., ("Comments") regarding the Court's *sua sponte* creation of Rule 9.110(n), Fla. R. App. P. and states:

1. On June 30, 2005, the Court *sua sponte* promulgated Rule 9.110(n) to outline appellate rights pertaining to a minor's right to seek a waiver of parental notification requirements in connection with a termination of pregnancy.

2. On September 8, 2005, Planned Parenthood filed its Comments and served a response upon the undersigned in his capacity as Chair of the Appellate Court Rules Committee.

3. Based on the breadth and significance of Planned Parenthood's Comments as they relate to the Rules of Appellate Procedure, the ACRC, through its Executive Subcommittee, concluded that the ACRC should analyze and submit

a response to Planned Parenthood's Comments and further review Rule 9.110(n) to determine whether any additional proposed revisions were warranted.

4. Pursuant to the Chair's request, the Supreme Court of Florida granted an extension of time through November 21, 2005 to submit a response.

5. Following its Executive Subcommittee meeting and at the discretion of the Chair, this issue was referred to the Family Law Subcommittee of the ACRC for full consideration of Rule 9.110(n) and Planned Parenthood's Comments. The Family Law Subcommittee has identified various issues within Planned Parenthood's Comments and in the Rule itself that warrant further consideration and analysis, as set forth in the memorandum prepared by the Family Law Subcommittee and presented to the Executive Subcommittee. See Exhibit A.

6. Because of the significance of this Rule and the issues identified by the Family Law Subcommittee, the Chair and Executive Subcommittee believe, unless otherwise requested by the Court, that any proposed revisions to Rule 9.110(n) should not be presented through the ACRC's fast-track procedure. Instead, the Court and the State of Florida will benefit from the full deliberative process of the ACRC, including input from its many valuable members, following review of the Family Law Subcommittee's proposed rule revisions at the upcoming January 2006 meeting.

7. Accordingly, the ACRC respectfully advises the Court that the issues identified by the Family Law Subcommittee as set forth in the attached memorandum, along with proposed rule revisions, will be presented to the full ACRC in January 2006, which will then provide its comments for the Court's consideration.

Respectfully submitted,

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Appellate Court Rules Committee
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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 November, 2005 upon:

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_____

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 derk ('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.