

IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO THE
RULES OF JUVENILE PROCEDURE

Case No. 06-140

**COMMENTS OF THE GUARDIAN AD LITEM PROGRAM ON THE
TWO-YEAR CYCLE REPORT OF THE JUVENILE RULES COMMITTEE**

The Statewide Guardian ad Litem Office ("GAL") represents the best interests of abused, neglected and abandoned children in dependency proceedings. There are twenty-one local GAL Programs in Florida which are organized under the Statewide Guardian ad Litem Office. The GAL respectfully submits the following comments on the proposed changes to Rules 8.257 and 8.350 of the Florida Rules of Juvenile Procedure.

A. Rule 8.257 - General Magistrates

The Juvenile Rules Committee proposed amendments to Rule 8.257 to restrict the types of hearings that can be conducted by general magistrates. This list includes shelter hearings under section 39.402 and adjudicatory hearings under sections 39.507 and 39.809, Florida Statutes.

In its explanation regarding the prohibition on shelter hearing, the Committee states that the timeframes associated with conducting a shelter hearing (24 hours) do not allow for time for the consent/objection process required for referral to a magistrate under Rule 8.257(b)(1) and (b)(2). Two-Year Cycle

Report, p. 4. The GAL suggests that under this reasoning, general magistrates would also be unable to conduct certain hearings under section 39.407, Florida Statutes, such as hearings for placement of children in residential mental health treatment facilities and approval of orders for the administration of psychotropic medication.

Rule 8.350 of the Florida Rules of Juvenile Procedure specifies the procedural requirements for placement of children in residential mental health facilities, which is authorized by section 39.407(6), Florida Statutes. Subsection (7) of Rule 8.350 provides that "Upon the filing of a motion for placement, the court shall set the matter for a status hearing within 48 hours, excluding weekends and holidays." At the hearing on placement, if the court determines the child is not suitable for residential treatment, the court shall order the department to place the child in the least restrictive setting that is best suited to meet the child's needs. Rule 8.350(a)(11)(c), Fla. R. Juv. P. The requirement that the hearing take place within 48 hours is in conflict with the ten day period allotted for objections to referrals for general magistrates under Rule 8.257(b)(2). Therefore, it seems that the timeframes governing this hearing would necessitate the presence of a judge as opposed to a general magistrate.

Similarly, section 39.407(3) provides a procedure for the Department of Children and Families to seek approval to initiate or continue provision of

psychotropic medications for children in its custody. Section 39.407(3)(d)1. provides:

The department must notify all parties of the proposed action taken under paragraph (c) in writing or by whatever other method best ensures that all parties receive notification of the proposed action within 48 hours after the motion is filed. If any party objects to the department's motion, that party shall file the objection within 2 working days after being notified of the department's motion. If any party files an objection to the authorization of the proposed psychotropic medication, the court shall hold a hearing as soon as possible before authorizing the department to initially provide or to continue providing psychotropic medication to a child in the legal custody of the department.

Additionally, if psychotropic medications are administered in advance of a court order, and any party objects, the court must hold a hearing within 7 days. § 39.407(3)(e), Florida Statutes.

The 7 day time period, like the twenty-four hour time period associated with shelter hearings, does not allow sufficient time for individuals to make objections under Rule 8.257(b)(2). If the principle articulated by the Committee regarding shelter hearings is extended, it seems general magistrates would not be able to oversee proceedings brought under section 39.407(3)(e).

With respect to proceedings brought under section 39.407(3)(c), which provides that a hearing should be held "as soon as possible," the GAL suggests that the Court may need to clarify whether a general magistrate may conduct these

hearings as well. If a hearing is necessary under section 39.407(3)(c), the factual circumstances of the case would be that certain parties believe a child has a medical need for psychotropic medications and other parties disagree. Though it is possible that a hearing held "as soon as possible" may take 10 days or more, this is not desirable. It is in the best interests of dependent children that these hearings be held expeditiously. If it is possible for a general magistrate to conduct this proceeding, then "as soon as possible" would mean, as a practical matter, that there would be a ten day period between the filing of the objection and the hearing. The GAL Program suggests that this frustrates the legislative intent of holding the hearing "as soon as possible," and that such proceedings should truly be given the first available slot on a judge's calendar.

In its Two-Year Cycle Report, the Committee states that the restrictions on magistrates conducting adjudicatory hearings under section 39.507 and 39.809 are necessary because Florida law specifically requires that the proceedings be held by a judge. Two-Year Cycle Report, p.4. There are several other provisions in Chapter 39 which refer specifically to judge. For example, section 39.827, Hearing for Appointment of Guardian Advocate, specifies that the hearing should be conducted by a judge without a jury. Section 39.0132, Oaths, records, and confidential information, provides that "All orders of the court entered pursuant to this chapter shall be in writing and signed by the magistrate, except that the clerk

or deputy clerk may sign a summons or notice to appear." The GAL has attached a list of references to the term judge as Appendix A so that the Court might consider the implications of the new rule and its justification upon these provisions.

B. Rule 8.350 - Placement of Child into Residential Treatment Facilities After Adjudication of Dependency

The GAL is appointed in every case involving the state’s attempt to place a dependent child into a residential mental health treatment facility (“treatment facility”) pursuant to Florida Rule of Juvenile Procedure 8.350(3). Rule 8.350(6) requires that the GAL be represented by an attorney at all proceedings under this rule, unless the GAL is acting as an attorney. The GAL advocates for protection of the child’s best interests and legal interest(s) at each stage of his or her dependency case. The GAL supports the Committee’s amendment adding subsection (d) to Rule 8.350 establishing clear and convincing evidence as the burden of proof for the involuntary commitment of dependent children to treatment facilities.

Amending the rule to include a standard of proof will make the Florida Rules of Juvenile Procedure comport with Florida case law and internally consistent. Current Florida case law has established that clear and convincing evidence is the standard of proof to be applied when the state seeks an order committing a dependent child to a treatment facility. *In re J.W.*, 890 So.2d 337 (Fla. 2d DCA 2004). In so holding, the *J.W.* court relied, in part, on the fact that the clear and convincing evidence standard applies in similar proceedings

involving involuntary placement of persons for mental health treatment such as Florida's Baker Act proceedings. *Id.* at 339. In *J.W.*, the court relied upon the United States Supreme Court's statement in *Parham v. J.R.*, 442 U.S. 584, 99 S.Ct. 2493, 61 L.E.d.2d 101 (1979): "It is not disputed that a child, in common with adults, has a substantial liberty interest in not being confined unnecessarily for medical treatment...." *J.W.* at 339-340 (citing *M.W. v. Davis*, 756 So.2d 90, 97 (Fla. 2000)). Based upon the substantial liberty interest at stake and the fact that similar commitment proceedings require a clear and convincing standard of proof, the *J.W.* court held that, "...the proper standard of proof in proceedings for the involuntary commitment of a dependent child to a residential mental health treatment facility is clear and convincing evidence." *Id.* at 340.

The GAL believes the reasoning of the *J.W.* court is sound and should be incorporated into Rule 8.350. A clear and convincing standard of proof will help to ensure that the child's legal interests are protected and an outcome consistent with the child's best interest is reached. Dependent children in need of mental health treatment are some of the most fragile children in the dependency system and their cases must be handled with the utmost care and consideration.

In addition, incorporating subsection (d) into the rule would harmonize the structure of the dependency rules. The standard of proof in other types of dependency hearings, such as dependency and termination of parental rights

adjudicatory hearings, is detailed in the Florida Rules of Juvenile Procedure. *See* Fla. R. Juv. P. 8.330 (a) and Fla. R. Juv. P. 8.525 (a).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent this ____ day of April, 2006 by U.S. Mail to the following: Alan Abromowitz, Esq., Committee Chair, Florida Bar Juvenile Rules Committee, 210 N. Palmetto Avenue, Suite 440, Daytona Beach, Florida 32114-3269.

Dennis Moore

Appendix A - Provisions in Chapter 39 Referencing Judge
(sections 39.507 and 39.809 are not included)

Section	Title	Excerpt
39.0132	Oaths, records, and confidential information.--	<p>(1) The judge, clerks or deputy clerks, or authorized agents of the department shall each have the power to administer oaths and affirmations.</p> <p>(4)(a) All information obtained pursuant to this part in the discharge of official duty by any judge, employee of the court, authorized agent of the department, correctional probation officer, or law enforcement agent is confidential and exempt from s. 119.07(1) and may not be disclosed to anyone other than the authorized personnel of the court, the department and its designees, correctional probation officers, law enforcement agents, guardian ad litem, and others entitled under this chapter to receive that information, except upon order of the court.</p> <p>(5) All orders of the court entered pursuant to this chapter shall be in writing and signed by the judge, except that the clerk or deputy clerk may sign a summons or notice to appear.</p>
39.201	Mandatory reports of child abuse, abandonment, or neglect; mandatory reports of death; central abuse hotline.--	<p>(1)(b) Reporters in the following occupation categories are required to provide their names to the hotline staff:</p> <p style="padding-left: 40px;">7. Judge.</p> <p>The names of reporters shall be entered into the record of the report, but shall be held confidential and exempt as provided in s. 39.202.</p>
39.205	Penalties relating to reporting of child abuse, abandonment, or neglect.--	<p>(1) A person who is required to report known or suspected child abuse, abandonment, or neglect and who knowingly and willfully fails to do so, or who knowingly and willfully prevents another person from doing so, is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. A judge subject to discipline pursuant to s. 12, Art. V of the Florida Constitution shall not be subject to criminal prosecution when the information was received in the course of official duties.</p>
39.402	Placement in a shelter.--	<p>(11)(a) If a child is placed in a shelter pursuant to a court order following a shelter hearing, the court shall require in the shelter hearing order that the parents of the child, or the guardian of the child's estate, if possessed of assets which under law may be disbursed for the care, support, and maintenance of the child, to pay, to the department or institution having custody of the child, fees as established by the department.</p>

		<p>When the order affects the guardianship estate, a certified copy of the order shall be delivered to the judge having jurisdiction of the guardianship estate. The shelter order shall also require the parents to provide to the department and any other state agency or party designated by the court, within 28 days after entry of the shelter order, the financial information necessary to accurately calculate child support pursuant to s. 61.30</p> <p>(12) In the event the shelter hearing is conducted by a judge other than the juvenile court judge, the juvenile court judge shall hold a shelter review on the status of the child within 2 working days after the shelter hearing.</p>
39.407	Medical, psychiatric, and psychological examination and treatment of child; physical or mental examination of parent or person requesting custody of child.--	<p>(4)(a) A judge may order a child in an out-of-home placement to be examined by a licensed health care professional.</p> <p>(b) The judge may also order such child to be evaluated by a psychiatrist or a psychologist or, if a developmental disability is suspected or alleged, by the developmental disability diagnostic and evaluation team of the department. If it is necessary to place a child in a residential facility for such evaluation, the criteria and procedure established in s. 394.463(2) or chapter 393 shall be used, whichever is applicable.</p> <p>(c) The judge may also order such child to be evaluated by a district school board educational needs assessment team. The educational needs assessment provided by the district school board educational needs assessment team shall include, but not be limited to, reports of intelligence and achievement tests, screening for learning disabilities and other handicaps, and screening for the need for alternative education as defined in s. 1001.42.</p> <p>(5) A judge may order a child in an out-of-home placement to be treated by a licensed health care professional based on evidence that the child should receive treatment. The judge may also order such child to receive mental health or developmental disabilities services from a psychiatrist, psychologist, or other appropriate service provider. Except as provided in subsection (6), if it is necessary to place the child in a residential facility for such services, the procedures and criteria established in s. 394.467 or chapter 393 shall be used, whichever is applicable. A child may be provided developmental disabilities or mental health services in emergency situations, pursuant to the procedures and criteria contained in s. 394.463(1) or chapter 393, whichever is applicable.</p>
39.504	Injunction pending disposition of petition; penalty.--	<p>(2) Notice shall be provided to the parties as set forth in the Florida Rules of Juvenile Procedure, unless the child is reported to be in imminent danger, in which case the court may issue an injunction immediately. A judge may issue an emergency injunction pursuant to this section without notice at times when the court is closed for the transaction of judicial business. When such an immediate injunction is issued, the court shall hold a hearing on the next day of judicial business either to dissolve the injunction or to continue or modify</p>

		it in accordance with the other provisions of this section.
39.801	Procedures and jurisdiction; notice; service of process.--	(c) Notice as prescribed by this section may be waived, in the discretion of the judge, with regard to any person to whom notice must be given under this subsection if the person executes, before two witnesses and a notary public or other officer authorized to take acknowledgments, a written surrender of the child to a licensed child-placing agency or the department.
39.814	Oaths, records, and confidential information.--	(1) The judge, clerks or deputy clerks, and authorized agents of the department shall each have the power to administer oaths and affirmations. (4) All information obtained pursuant to this part in the discharge of official duty by any judge, employee of the court, authorized agent of the department, or law enforcement agent shall be confidential and exempt from the provisions of s. 119.07(1) and shall not be disclosed to anyone other than the authorized personnel of the court, the department and its designees, law enforcement agents, and others entitled under this part to receive that information, except upon order of the court. (5) All orders of the court entered pursuant to this part shall be in writing and signed by the judge, except that the clerk or deputy clerk may sign a summons or notice to appear.
39.827	Hearing for appointment of a guardian advocate.- -	(3) The hearing shall be conducted by the judge without a jury, applying the rules of evidence in use in civil cases. In a hearing on a petition for appointment of a guardian advocate, the moving party shall prove all the elements in s. 39.828 by a preponderance of the evidence. (4) The hearing under this section shall remain confidential and closed to the public. The clerk shall keep all court records required by this part separate from other records of the circuit court. All court records required by this part shall be confidential and exempt from the provisions of s. 119.07(1). All records shall be inspected only upon order of the court by persons deemed by the court to have a proper interest therein, except that a child and the parents or custodians of the child and their attorneys and the department and its designees shall always have the right to inspect and copy any official record pertaining to the child. The court may permit authorized representatives of recognized organizations compiling statistics for proper purposes to inspect and make abstracts from official records, under whatever conditions upon their use and disposition the court may deem proper, and may punish by contempt proceedings any violation of those conditions. All information obtained pursuant to this part in the discharge of official duty by any judge, employee of the court, or authorized agent of the department shall be confidential and exempt from the provisions of s. 119.07(1) and shall not be disclosed to anyone other than the authorized personnel of the court or the department and its designees, except upon order of the court.

39.8296	Statewide Guardian Ad Litem Office; legislative findings and intent; creation; appointment of executive director; duties of office.--	<p>(1)(b) The Legislature also finds that while the Guardian Ad Litem Program has been supervised by court administration within the circuit courts since the program's inception, there is a perceived conflict of interest created by the supervision of program staff by the judges before whom they appear.</p> <p>(2)(b)4. The office shall develop a guardian ad litem training program. The office shall establish a curriculum committee to develop the training program specified in this subparagraph. The curriculum committee shall include, but not be limited to, dependency judges, directors of circuit guardian ad litem programs, active certified guardians ad litem, a mental health professional who specializes in the treatment of children, a member of a child advocacy group, a representative of the Florida Coalition Against Domestic Violence, and a social worker experienced in working with victims and perpetrators of child abuse.</p>
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