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March 31, 2006

The Honorable Justices of the Florida Supreme Court
500 South Duval Street
Tallahassee, FL 32399

Chief Justice Barbara J. Pareinte
Justice Charles T. Wells
Justice Harry Lee Anstead
Justice R. Fred Lewis
Justice Peggy A. Quince
Justice Raoul G. Cantero III
Justice Kenneth B. Bell

RE: Amendments to the Florida Rules of Juvenile Procedure (3 year cycle)
Case# SC06-140

Dear Justices:

This comment letter is limited to this Court's consideration regarding the Proposed Amendment to the Florida Juvenile Rules of Procedure, specifically Rule 8.257(h) as follows:

Prohibition on Magistrate presiding over certain cases. Notwithstanding the provisions of this rule, no General Magistrate shall preside over any of the following hearings: A shelter hearing under Section 39.402, Florida Statutes, an adjudicatory hearing under Section 39.507, Florida Statutes, or an adjudicatory hearing under Section 39.809, Florida Statutes.

At the minimum, the Florida Supreme Court has considered this issue twice, to wit: Amendments to Florida Rules of Juvenile Procedure, No. SC02-117, September 5, 2002, 827 So. 2d 219; and No. SC04-97, January 27, 2005, 894 So. 2d 875. In addition, the Court further recognized the need of General Masters (now Magistrates) referencing the number of Termination of Parental Rights cases: In Re Certification Of Need For Additional Circuit Judges, No. SC01-2703, January 3, 2002, 806 So. 2d 446.

The current Rule regarding the use of Magistrates in dependency proceedings provides critical protections for parties, and those persons who raise constitutional or titling challenges to whether or not a Magistrate should hear an adjudicatory or TPR hearing.

First, if a Circuit Court Judge for any reason does not want a Magistrate to hear a matter, it is a simple remedy. The matter is not referred to a Magistrate. Second, if any party or their counsel does not want a Magistrate to hear their case, their simple remedy is to object. No reason is required. It's a simple exercise of their right to say no. The beauty is in the simplicity of giving these complete protections to any detractor who has a stake in the process. In addition, I would emphasize that a Magistrate has no authority to enter an Order, but instead must issue a Report to which exceptions may be filed, but whether or not exceptions are filed; the Order is entered by a Circuit Judge. The Magistrate has no such indirect or direct authority.

I am a Magistrate in the Second Judicial Circuit. I've heard and have issued Reports for Dependency Trials, Termination of Parental Trials, and Dissolution of Marriage proceedings. My predecessor, General Master Harriet Williams, began this process in the Second Judicial Circuit approximately seven years ago. I currently handle

(under the direct supervision of five Circuit Judges) all dependency matters, except shelters, for four of the six counties in the Second Judicial Circuit. My case load exceeds 500 cases, and, if trends continue this case load will continue to grow.

The management of our scarce judicial resources is exercised well by our Chief Judge Charles Francis and the Circuit Judges of the Second Circuit. To limit their authority regarding who may hear adjudicatory matters in assisting the Circuit Judges would create an unacceptable burden on our present system and a threat to a timely resolution of the needs and permanency of families and dependent children.

To my knowledge, no one has queried those who, on a daily basis, work within our system. I can represent to this Court, without reservation, our parent's bar, the local attorneys for the Department of Children and Families Services, and counsel for the Guardian ad Litem Program, like and work well within our current system and practice. From post shelter you have one person from the court side who stays with the case through its conclusion, this being one of the precepts of the Unified Family Court.

I cannot answer, nor consider, what issues are present in other Circuits within our State, but it would be a logical conclusion that every Circuit has its own parochial issues that are different from all others. What works in the Second Judicial Circuit may not be effective in any other Circuit. There are different resources and needs of the people within each Circuit. This is one of the major reasons why the Chief Judge and other Circuit Judges within each Circuit should be permitted to manage the resources provided to that Circuit without unnecessary or otherwise restrictive procedural measures. This is particularly true when there are adequate protections and procedures in place.

What likewise is of concern is this piecemeal approach to the issues of the use of Magistrates. The proposed Amendment applies only to dependency. There is no mention as to any restrictions in family law (dissolution of marriage, paternity, custody, modifications, child support, and etc.). The Family Law Rules have a similar provision for referral of Magistrates, but there is no proposal to amend the Family Law Rules regarding "adjudicatory" hearings. Currently, the Family Law Rules and the Juvenile Rules mirror one another regarding such referrals. Is the issue of shared parental responsibility/sole parental responsibility any less important than placement, provision of services and reunification in dependency regarding the needs of a child? Our judicial process in these areas deals with the most precious and valuable assets of our society. Our children will be the stewards of our future society. I have not been privy to any Rules Committee meetings, discussions, or investigations regarding these issues, but I have had discussions with persons who have been involved with the Rules Committee and Judges who sit on the Unified Family Court Committee. There appears to be an absence of meaningful dialogue or debate. I have reviewed other State's published activities, rules, and statutes regarding use of Magistrates. Many have adequately addressed and acted on the broad-based issues.

The main theme I have heard expressed is when certain provisions of the effected statue use the term "... a judge" or "... the Court..." which is then referred to as Magistrate, violates some legal/constitutional principle. If we are concerned with titling, consider the following: Georgia defines "Judge" as Justices, Judges, Senior Judges, Magistrates and every such Judicial Officer of name existing or created. Nevada having had similar problems with titling as used in statutory constructions subsequently

determined that their Juvenile Masters should be titled Associate Judges. The most significant of my findings was what apparently was problem with titling and duties of a group referred to as Subordinate Judicial Officers in the State of California. This group encompassed Hearing Officers, Commissioners, Temporary Trial Judges, Magistrates, and Associate Judges. In December 2000, California Judicial Council directed their Administrative Director of Courts to establish a Subordinate Judicial Officer working group to make recommendations on policies regarding Subordinate Judicial Officers. Two years subsequent to this appointment, this group published a 38-page report. It was in depth and across the board. Florida may not have the statutory, rule and constitutional schemes of the State of California, but the use of judicial extenders and their titling should be subject to a study by an appropriate entity that can investigate and recommend to both the Supreme Court, Legislature and the Constitutional Revision Commission as to whether or not these extenders should be used and if they should, how should they be used in the entire Judicial process. Did not the Florida Legislature "rename" the Administrative Hearing Officers at the Division of Administrative Hearings as Administrative Law Judges? It should be noted that these ALJ's perform a similar function in that they do not enter orders, but forward to the effective Agency a Recommended Order, granted there are significant other issues regarding their procedures, but they are referred to as judges.

It is my understanding from the sources that allegedly are privy to the discussions regarding the proposed Amendment to the Rules of Juvenile Procedures, that issue has not been fully investigated and the discussions have been limited. The appearance of the

suggested Amendment regarding adjudicatory hearings found only in the Juvenile Rules lends credibility to those representations.

If we in this State decide to adhere to an efficient and productive Judicial system, should we not carefully exam, discuss, and publish a comprehensive report on the use of judicial extenders or do we continue with a piecemeal approach that creates as much confusion as the attempts to cure that which may need no cure.

Notwithstanding the above, the prohibition against Magistrates hearing initial shelter hearing should be retained as a survivor of the proposed amendments. This is due to the ten-day objection period regarding a referral to a Magistrate and the ten days for exceptions post filing of a Report. This appears to be axiomatic. Shelter relief requires an immediate decision of a Circuit Judge.

I appreciate the opportunity to have expressed my views for whatever value they may have.

I have been a trial lawyer for 29 years prior to my appointment as a Magistrate. I am a child's advocate. I taught Social Work and the Law in the graduate school of Florida State University School of Social Work for 5 years and have lectured Mental Health Professionals in State, National and International venues. I do believe that healthy families are a substantial contribution to a healthy society. Let us maximize the use of our limited resources to accomplish that end.

Sincerely,

Thomas W. Lager,
Magistrate - Second Judicial Circuit