IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO THE FLORIDA RULES OF JUVENILE PROCEDURE **CASE NO:**

TWO-YEAR CYCLE REPORT OF THE JUVENILE COURT RULES COMMITTEE

Alan Abramowitz, Chair, Juvenile Court Rules Committee, and John F. Harkness, Jr., Executive Director, The Florida Bar, file this two-year cycle report of the Juvenile Court Rules Committee under *Fla. R. Jud. Admin.* 2.130(c).

All proposed amendments have been approved by the Committee. As required by *Rule* 2.130(c)(2)B(c)(3), the proposed amendments have been reviewed by the Board of Governors of The Florida Bar. The voting records of the Committee and Board of Governors are shown on the attached Table of Contents.

As required by *Rule* 2.130(c)(2), a summary chart showing the proposals was published in the October 1, 2005, Florida Bar *News*, and the full text of the proposals was posted on The Florida Bar=s website, with a request for comments. (See Appendix A.) One comment was received from Magistrate Thomas W. Lager. (See Appendix B.) Mr. Lager objected to the provisions of proposed *Fla. R. Juv. P.* 8.275(h), that would place limitations on the type of dependency proceedings general magistrates can hear. The committee considered the comment at its January 19, 2006 meeting. The committee, by a vote of 11-5-2, determined that the issues raised by Mr. Lager had been considered when the rule was adopted

and declined to make any changes to the proposal.

The text of the proposed amendments in the two column and full page formats is attached to this report. This report has also been e-filed with the clerk's office.

The proposed amendments and their explanations are as follows:

Rule 8.045, Notice to Appear: Subdivision (a) of this rule states that the child is required to appear "in a designated court or governmental office." Subdivision (f)(5) currently states that the child must appear "in court." The words "in court" have been deleted from subdivision (f)(5) to conform it to subdivision (a).

Rule 8.090, Speedy Trial: Subdivision (a) of this rule currently states that the child must be brought to trial within 90 days of the date the child is taken into custody or the date the petition is filed, whichever is earlier. An amendment is proposed to subdivision (a)(2) to change "The date the petition was filed" to "The date the summons issued on the filing of the petition is served." This rule enacts section 985.219, Florida Statutes. Section 985.219(8), Florida Statutes, however, states that the jurisdiction of the court attaches when the child is taken into custody or when the summons is served. This amendment conforms the rule to the statute.

Rule 8.135, Correction of Disposition or Commitment Orders:

In subdivisions (b)(2) and (b)(2)(C), cross-references to the appellate rule

have been corrected. *Fla. R. App. P.* 9.140 was amended in 2002 (see *Amendments to Florida Rules of Appellate Procedure*, 827 So. 2d 888 (Fla. 2002)). Subdivision (e) was renumbered to (f) with no change in content.

Subdivision (b)(2)(A) has also been amended to correct a cross-reference to the appellate rule. Also in 2002, *Rule* 9.140(b)(5), Withdrawal of Defense Counsel after Judgment and Sentence, was deleted and *Rule* 9.140(d), Withdrawal of Defense Counsel after Judgment and Sentence or After Appeal by State, was added with substantially the same content. See *Amendments*, 827 So. 2d 888.

Rule 8.210, Parties and Participants: This amendment deletes the words "priority for adoption consideration" and replaces them with "notice of an adoption proceeding" in the second sentence of subdivision (b). It conforms subdivision (b) to section 63.0425(1), Florida Statutes, as amended by section 6, Chapter 2003-58, Laws of Florida. (See Appendix C.) The statute was amended to eliminate grandparents' priority for consideration for adoption of a grandchild who had lived with the grandparents. Instead, the grandparents are now entitled to notice of the adoption proceedings. A similar change was made in *Fla. R. Juv. P.* 8.505(a)(5) in the 2004 cycle.

Rule 8.257, General Magistrates: Subdivision (f) has been amended to correct an error carried over from *Fla. Fam. L. R. P.* 12.490, on which this rule was based. In the first sentence "serve" has been changed to "file." Exceptions to the

general magistrate's report must be filed with the court, as the remainder of this subdivision reflects. See also subdivision (e)(2).

A new subdivision (h) is proposed stating that general magistrates may not hear shelter hearings under section 39.402, Florida Statutes, or adjudicatory hearings under sections 39.507 and 39.809, Florida Statutes. This amendment was proposed to the committee by the Committee on Family and Children in the Courts (the Steering Committee). (See Appendix D.) Section 39.402(8)(a), Florida Statutes, requires that a shelter hearing be held within 24 hours of placement of the child in shelter. This requirement does not allow time for the consent/objection process required for referral to a general magistrate by *Fla. R. Juv. P.* 8.257(b)(1) and (b)(2). In addition, sections 39.507(1)(b) and 39.809(3), Florida Statutes, specifically require that an adjudicatory hearing be conducted by a "judge." Compare section 39.521(1), Florida Statutes ("A disposition hearing shall be conducted by the court") and section 39.701, Florida Statutes ("The court . . . shall review the status of the child at least every 6 months").

This issue has previously been considered by the committee and the Court. In 2002, the committee proposed that the rule then governing general and special masters, *Rule* 8.255, be amended to prohibit general and special masters from hearing certain types of dependency hearings. The Court declined to approve the amendment, stating "that the ultimate determination of the role of masters in

dependency proceedings should be resolved in the larger context of the Revision 7 implementation." *Amendments to Florida Rules of Juvenile Procedure*, 827 So. 2d 219, 221 (Fla. 2002). In recognition of the requirement that certain types of hearings be conducted by a judge, however, the court did amend *Rule* 8.255(i) to state that "'general and special masters may be appointed to hear issues involved in proceedings under this part, *except as otherwise provided by law*.'" *Amendments*, 827 So. 2d at 221. The Court also asked the committee to consider a rule for obtaining the parties' consent to referral to a general master.

In the 2004 two-year cycle, the committee proposed creation of *Rule* 8.257, governing use of general magistrates in dependency and termination of parental rights proceedings. The Steering Committee commented on the proposed rule, again raising the issue of whether general magistrates should hear certain types of proceedings. The Court, however, declined to address this issue and adopted the rule proposed by the Rules Committee. *Amendments to the Florida Rules of Juvenile Procedure*, 894 So. 2d 875 (Fla. 2005) (*Amendments II*). The court did, however, recognize that "the role of magistrates in juvenile proceedings may need to be reviewed and possibly amended in the future." *Amendments II*, 894 So. 2d at 883.

The committee has considered the role of general magistrates in juvenile proceedings and, for the reasons stated above, is respectfully requesting that the

court adopt the proposed amendment to limit the types of hearings that may be heard by a general magistrate.

Rule 8.350, Placement of Child into Residential Treatment Center After Adjudication of Dependency: A new subdivision (d), Standard of Proof, has been added. The amendment creates a standard of proof for hearings under this rule in conformity with *In re J.W.*, 890 So. 2d 337 (Fla. 2d DCA 2004).

Rule 8.515, Providing Counsel to Parties: Section 35 of Chapter 2005-236, Laws of Florida, created section 57.082, Florida Statutes, regarding determination of indigent status in civil proceedings. (See Appendix E.) Subdivision (a)(2) has been amended to add the words "as provided by law" to incorporate the statutory amendment.

Rule 8.535, Postdisposition Hearings: Sections 1 and 2 of Chapter 2004-389, Laws of Florida, amended sections 39.812(4) and (5) and section 63.062(7), Florida Statutes, to address a situation when a foster parent or court-ordered custodian seeks to adopt a foster child and the Department of Children and Family Services withholds its consent to the adoption. (See Appendix F.) This amendment creates a new subdivision (d) of this rule, providing procedures to implement section 39.812(5), Florida Statutes, which allows the court to determine that the department is unreasonably withholding consent and to waive the requirement for the department's consent. As is required by the statute, the rule requires filing of a

favorable home study by the petitioner. Subdivision (d)(3) also requires the court to enter an order with specific findings of fact showing how the department has abused its discretion when waiving the department's consent to the adoption.

Form 8.911, Uniform Child Custody Jurisdiction and Enforcement Act Affidavit: Rather than make extensive revisions to this form, the committee voted to incorporate by reference *Fla. Sup. Ct. App. Fam. L. Form* 12.902(d). The entire existing form has been deleted and a reference to the family law form added.

Form 8.964, Dependency Petition: Item 4 in this form has been corrected to replace "UCCJA" with "UCCJEA." This conforms to repeal of the Uniform Child Custody Jurisdiction Act (UCCJA) and enactment of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) by Chapter 2002-65, Laws of Florida. (See Appendix G.) Style changes have also been made to add blanks at the ends of lines and signature lines at the end of the form. The blank lines, which should be dotted lines to conform to the rules style, appear in *In re Amendments to the Florida Rules of Juvenile Procedure*, 725 So. 2d 296, 334 (Fla. 1998), but are not in the form in West's 2005 *Florida Rules of Court*. The signature lines appear in the Court's opinion, but are not in West.

Form 8.966, Adjudication Order — Dependency: The child and attorney for the child have been added to the list of those present to make it more complete. In items 2. and 3., "by default" has been replaced with "for failure to appear after

proper notice." Defaults are not entered in dependency cases. However, failure to appear after notice can result in the entry of a consent to dependency. See section 39.506(3), Florida Statutes, and *Rule* 8.225(c)(1). Style changes have also been made to add blanks at the end of lines and check-off lines. Missing text in item 3. has been added to conform to item 2.

Form 8.975, Dependency Order Withholding Adjudication: A new form has been created for use when the court finds the child dependent but withholds adjudication of dependency. The form is similar to *Form* 8.966, Adjudication Order — Dependency. However, items 6 and 7 in the findings section and item 1 in the ordered and adjudged section are specific to a finding of dependency with a withhold of adjudication. The Committee considered amending *Form* 8.966 to add check-off items for this purpose but determined that a separate form would be less confusing.

Form 8.980, Petition for Termination of Parental Rights Based on Voluntary Relinquishment: Item A.3. in this form has been corrected to replace "UCCJA" with "UCCJEA." This conforms to repeal of the Uniform Child Custody Jurisdiction Act (UCCJA) and enactment of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) by Chapter 2002-65, Laws of Florida. (See Appendix G.) A change has been made in item B.4. to correct an error in West's 2005 *Florida Rules of Court* and in *In re Amendments to the*

Florida Rules of Juvenile Procedure, 725 So. 2d 296, 352 (Fla. 1998) and a style change has been made in the signature block.

Form. 8.981, Petition for Involuntary Termination of Parental Rights: Item A.3. in this form has been corrected to replace "UCCJA" with "UCCJEA." This conforms to repeal of the Uniform Child Custody Jurisdiction Act (UCCJA) and enactment of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) by Chapter 2002-65, Laws of Florida. (See Appendix G.) A change has been made in item B.5. to correct an error in West's 2005 *Florida Rules of Court* and in *In re Amendments to the Florida Rules of Juvenile Procedure*, 725 So. 2d 296, 353 (Fla. 1998).

Form 8.983, Adjudication Order and Judgment of Involuntary Termination of Parental Rights: A list of persons present before the court has been added, as in *Forms* 8.965 and 8.966. A sentence has been added, to be used as necessary, to indicate which parent's rights are being terminated. This sentence allows use of the form when termination of parental rights is sought for only one of the parents.

A new item 5. under findings of fact has been added which states that the children are "at substantial risk of significant harm" and that termination of parental rights "is the least restrictive means to protect the child(ren) from harm." This conforms to the holding in *Padgett v. Dept. of Health & Rehabilitative Services*, 577 So. 2d 565, 571 (Fla. 1991). See also *Florida Dept. of Children &*

Families v. F.L., 880 So. 2d 602 (Fla. 2004).

In renumbered item 6., the statutory reference has been corrected; section 39.810 governs findings regarding the manifest best interests of the child. This item has also been amended to include a list of the statutory factors on which the court is required to make findings in determining the best interest of the child. The list tracks sections 39.810(1)–(11), Florida Statutes.

New item 7. adds a provision to be used when the parental rights of only one parent are being terminated, as permitted by section 39.811(6), Florida Statutes. New item 8. allows the court to make a finding under section 39.811(7)(a), Florida Statutes, that continued grandparent visitation is not in the best interest of the child. The statute provides that termination of parental rights of a parent does not effect the rights of grandparents unless the court makes such a specific finding. New item 9. allows the court to make a finding under section 39.811(7)(b), Florida Statutes, that communication or contact with siblings or relatives may be continued.

In the "Ordered and Adjudged" section of the form, item 2. has been amended to add a blank for the judge to indicate the specific subdivision of section 39.806, Florida Statutes, under which parental rights are being terminated. Item 3. also adds statutory references supporting the placement of the children.

A blank line at the end of the form, which appears in West's 2005 *Florida*

Rules of Court (see page 676) has been deleted. This line does not appear in *In re Amendments to the Florida Rules of Juvenile Procedure*, 725 So. 2d 296, 356 (Fla. 1998) and is contrary to the style of the other forms.

WHEREFORE, the Juvenile Court Rules Committee respectfully requests that the Court amend the Florida Rules of Juvenile Procedure as outlined in this report.

Respectfully submitted _____.

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RULE 8.045. NOTICE TO APPEAR

(a) Definition. A notice to appear, unless indicated otherwise, means a written order issued by a law enforcement officer or authorized agent of the department, in lieu of taking a child into custody or detaining a child, which requires a child accused of violating the law to appear in a designated court or governmental office at a specified date and time.

(b) By Arresting Officer. If a child is taken into custody for a violation of law and the officer elects to release the child as provided by law to a parent, responsible adult relative, or legal guardian, a notice to appear may be issued to the child by the officer unless:

(1) the child fails or refuses to sufficiently identify himself or herself or supply the required information;

(2) the child refuses to sign the notice to appear;

(3) the officer has reason to believe that the continued liberty of the child constitutes an unreasonable risk of bodily injury to the child or others;

(4) the child has no ties with the jurisdiction reasonably sufficient to ensure an appearance or there is substantial risk that the child will refuse to respond to the notice;

(5) the officer has any suspicion that the child may be wanted in any jurisdiction; or

(6) it appears that the child has previously failed to respond to a notice or a summons or has violated the conditions of any pretrial release program.

(c) By Departmental Agent. If a child is taken into custody by an authorized agent of the department as provided by law, or if an authorized agent of the department takes custody of a child from a law enforcement officer and the child is not detained, the agent shall issue a notice to appear to the child upon the child's release to a parent, responsible adult relative, or legal guardian.

(d) How and When Served. If a notice to appear is issued, 6 copies shall be prepared. One copy of the notice shall be delivered to the child and 1 copy shall be delivered to the person to whom the child is released. In order to secure the

child's release, the child and the person to whom the child is released shall give their written promise that the child will appear as directed in the notice by signing the remaining copies. One copy is to be retained by the issuer and 3 copies are to be filed with the clerk of the court.

(e) Distribution of Copies. The clerk shall deliver 1 copy of the notice to appear to the state attorney and 1 copy to the department and shall retain 1 copy in the court's file.

(f) Contents. A notice to appear shall contain the following information:

(1) The name and address of the child and the person to whom the child was released.

(2) The date of the offense(s).

(3) The offense(s) charged by statute and municipal ordinance, if applicable.

(4) The counts of each offense.

(5) The time and place where the child is to appear ~~in court~~.

(6) The name and address of the trial court having jurisdiction to try the offense(s) charged.

(7) The name of the arresting officer or authorized agent of the department.

(8) The signatures of the child and the person to whom the child was released.

(g) Failure to Appear. When a child signs a written notice to appear and fails to respond to the notice, an order to take into custody shall be issued.

(h) Form of Notice. The notice to appear shall be substantially as found in form 8.930.

Committee Notes

1991 Adoption. This rule allows juveniles to be released with definite notice as to when they must return to court. This should help decrease the number of juveniles held in detention centers awaiting a court date. It also should provide a mechanism to divert juveniles to programs more efficiently. The change also should decrease the number of summons issued by the clerk.

1992 Amendment. A summons is not sworn but the arrest affidavit that is filed with the notice to appear is sworn. The notice to appear, which is more like a summons, does not need to be sworn.

RULE 8.090. SPEEDY TRIAL

(a) Time. If a petition has been filed alleging a child to have committed a delinquent act, the child shall be brought to an adjudicatory hearing without demand within 90 days of the earlier of the following:

(1) The date the child was taken into custody.

(2) The date ~~the petition was filed~~the summons issued on the filing of the petition is served.

(b) Dismissal. If an adjudicatory hearing has not commenced within 90 days, upon motion timely filed with the court and served upon the prosecuting attorney, the respondent shall be entitled to the appropriate remedy as set forth in subdivision (m). The court before granting such motion shall make the required inquiry under subdivision (d).

(c) Commencement. A child shall be deemed to have been brought to trial if the adjudicatory hearing begins before the court within the time provided.

(d) Motion to Dismiss. If the adjudicatory hearing is not commenced within the periods of time established, the respondent shall be entitled to the appropriate remedy as set forth in subdivision (m) unless any of the following situations exist:

(1) The child has voluntarily waived the right to speedy trial.

(2) An extension of time has been ordered under subdivision (f).

(3) The failure to hold an adjudicatory hearing is attributable to the child, a co-respondent in the same adjudicatory hearing, or their counsel.

(4) The child was unavailable for the adjudicatory hearing. A child is unavailable if:

(A) the child or the child=s counsel fails to attend a proceeding when their presence is required; or

(B) the child or the child=s counsel is not ready for the adjudicatory hearing on the date it is scheduled.

No presumption of nonavailability attaches, but if the state objects to dismissal and presents any evidence tending to show nonavailability, the child must, by competent proof, establish availability during the term.

(5) The demand referred to in subdivision (g) is invalid.

(6) If the court finds dismissal is not appropriate, the pending motion to dismiss shall be denied, and an adjudicatory hearing shall commence within 90 days of a written or recorded order of denial.

(e) Incompetency of Child. Upon the filing of a motion to declare the child incompetent, the speedy trial period shall be tolled until a subsequent finding of the court that the child is competent to proceed.

(f) Extension of Time. The period of time established by subdivision (a) may be extended as follows:

(1) Upon stipulation, announced to the court or signed by the child or the child=s counsel and the state.

(2) By written or recorded order of the court on the court=s own motion or motion by either party in exceptional circumstances. The order extending the period shall recite the reasons for the extension and the length of the extension. Exceptional circumstances are those which require an extension as a matter of substantial justice to the child or the state or both. Such circumstances include:

(A) unexpected illness or unexpected incapacity or unforeseeable and unavoidable absence of a person whose presence or testimony is uniquely necessary for a full and adequate trial;

(B) a showing by the state that the case is so unusual and so complex, due to the number of respondents or the nature of the prosecution or otherwise, that it is unreasonable to expect adequate investigation or preparation within the periods of time established by this rule;

(C) a showing by the state that specific evidence or testimony is not available, despite diligent efforts to secure it, but will become available at a later time;

(D) a showing by the child or the state of necessity for delay grounded on developments which could not have been anticipated and which will materially affect the trial;

(E) a showing that a delay is necessary to accommodate a co-respondent, where there is a reason not to sever the cases in order to proceed promptly with trial of the respondent; or

(F) a showing by the state that the child has caused major delay or disruption of preparation or proceedings, such as by preventing the attendance of witnesses or otherwise.

Exceptional circumstances shall not include general congestion of the court=s docket, lack of diligent preparation or failure to obtain available witnesses, or other avoidable or foreseeable delays.

(3) By written or recorded order of the court for a period of reasonable and necessary delay resulting from proceedings including, but not limited to, an examination and hearing to determine the mental competency or physical ability of the respondent to stand trial for hearings or pretrial motions, for appeals by the state, and for adjudicatory hearings of other pending charges against the child.

(g) Speedy Trial Upon Demand. Except as otherwise provided by this rule and subject to the limitations imposed by subdivision (h), the child shall have the right to demand a trial within 60 days, by filing a written pleading entitled ADemand for Speedy Trial@ with the court and serving it upon the prosecuting attorney.

(1) No later than 5 days from the filing of a demand for speedy trial, the court shall set the matter for report, with notice to all parties, for the express purposes of announcing in open court receipt of the demand and of setting the case for trial.

(2) At the report the court shall set the case for trial to commence at a date no less than 5 days nor more than 45 days from the date of the report.

(3) The failure of the court to hold such a report date on a demand which has been properly filed shall not interrupt the running of any time periods under this subdivision (g).

(4) In the event that the child shall not have been brought to trial within 50 days of the filing of the demand, the child shall have the right to the appropriate remedy as set forth in subdivision (m).

(h) Demand for Speedy Trial; Effect. A demand for speedy trial shall be deemed a pleading by the respondent that he or she is available for the adjudicatory hearing, has diligently investigated the case, and is prepared or will be prepared for the adjudicatory hearing within 5 days. A demand may not be withdrawn by the

child except on order of the court, with consent of the state, or on good cause shown. Good cause for continuance or delay on behalf of the accused shall not thereafter include nonreadiness for the adjudicatory hearing, except as to matters which may arise after the demand for the adjudicatory hearing is filed and which could not reasonably have been anticipated by the accused or defense counsel.

(i) Dismissal After Demand. If an adjudicatory hearing has not commenced within 50 days after a demand for speedy trial, upon motion timely filed with the court having jurisdiction and served upon the prosecuting attorney, the child shall have the right to the appropriate remedy as set forth in subdivision (m), provided the court has made the required inquiry under subdivision (d).

(j) Effect of Mistrial, Appeal, or Order of New Trial. A child who is to be tried again or whose adjudicatory hearing has been delayed by an appeal by the state or the respondent shall be brought to trial within 90 days from the date of declaration of a mistrial by the trial court, the date of an order by the trial court granting a new trial, or the date of receipt by the trial court of a mandate, order, or notice of whatever form from an appellate or other reviewing court which makes possible a new trial for the respondent, whichever is last. If the child is not brought to trial within the prescribed time periods, the child shall be entitled to the appropriate remedy as set forth in subdivision (m).

(k) Discharge From Delinquent Act or Violation of Law; Effect. Discharge from a delinquent act or violation of law under this rule shall operate to bar prosecution of the delinquent act or violation of law charged and all other offenses on which an adjudicatory hearing has not begun or adjudication obtained or withheld and that were, or might have been, charged as a lesser degree or lesser included offense.

(*l*) Nolle Prosequi; Effect. The intent and effect of this rule shall not be avoided by the state entering a nolle prosequi to a delinquent act or violation of law charged and by prosecuting a new delinquent act or violation of law grounded on the same conduct or episode or otherwise by prosecuting new and different charges based on the same delinquent conduct or episode, whether or not the pending charge is suspended, continued, or the subject of the entry of a nolle prosequi.

(m) Remedy for Failure to Try Respondent Within the Specified Time.

(1) No remedy shall be granted to any respondent under this rule until the court shall have made the required inquiry under subdivision (d).

(2) The respondent may, at any time after the expiration of the prescribed time period, file a motion for discharge. Upon filing the motion the

respondent shall simultaneously file a notice of hearing. The motion for discharge and its notice of hearing shall be served upon the prosecuting attorney.

(3) No later than 5 days from the date of the filing of a motion for discharge, the court shall hold a hearing on the motion and, unless the court finds that one of the reasons set forth in subdivision (d) exists, shall order that the respondent be brought to trial within 10 days. If the respondent is not brought to trial within the 10-day period through no fault of the respondent, the respondent shall be forever discharged from the crime.

Committee Notes

1991 Amendment. (m)(2) This rule requires a notice of hearing at the time of filing the motion for discharge to ensure that the child=s motion is heard in a timely manner. A dissenting opinion in the committee was that this change does not protect the child=s rights but merely ensures that the case is not dismissed because of clerical error.

RULE 8.135. CORRECTION OF DISPOSITION OR COMMITMENT ORDERS

(a) Correction. A court at any time may correct an illegal disposition or commitment order imposed by it. However, a party may not file a motion to correct under this subdivision during the time allowed for the filing of a motion under subdivision (b)(1) or during the pendency of a direct appeal.

(b) Motion to Correct Disposition or Commitment Error. A motion to correct any disposition or commitment order error, including an illegal disposition or commitment, may be filed as allowed by this subdivision. The motion must identify the error with specificity and provide a proposed correction. A response to the motion may be filed within 15 days either admitting or contesting the alleged error. Motions may be filed by the state under this subdivision only if the correction of the error would benefit the child or to correct a scrivener's error.

(1) Motion Before Appeal. During the time allowed for the filing of a notice of appeal, a child, the state, or the department may file a motion to correct a disposition or commitment order error.

(A) This motion stays rendition under Florida Rule of Appellate Procedure 9.020(h).

(B) Unless the trial court determines that the motion can be resolved as a matter of law without a hearing, it shall hold an initial hearing no later than 10 days from the filing of the motion, with notice to all parties, for the express purpose of either ruling on the motion or determining the need for an evidentiary hearing. If an evidentiary hearing is needed, it shall be set no more than 10 days from the date of the initial hearing. Within 30 days from the filing of the motion, the trial court shall file an order ruling on the motion. If no order is filed within 30 days, the motion shall be deemed denied.

(2) Motion Pending Appeal. If an appeal is pending, a child or the state may file in the trial court a motion to correct a disposition or commitment order error. The motion may be filed by appellate counsel and must be served before the party's first brief is served. A notice of pending motion to correct disposition or commitment error shall be filed in the appellate court, which notice shall automatically extend the time for the filing of the brief, until 10 days after the clerk of the circuit court transmits the supplemental record under Florida Rule of Appellate Procedure 9.140~~(e)~~(f)(6).

(A) The motion shall be served on the trial court and on all trial and appellate counsel of record. Unless the motion expressly states that appellate counsel will represent the movant in the trial court, trial counsel will represent the movant on the motion under Florida Rule of Appellate Procedure 9.140~~(b)(5)~~(d) . If the state is the movant, trial counsel will represent the child unless appellate counsel for the child notifies trial counsel and the trial court that appellate counsel will represent the child on the state's motion.

(B) The trial court shall resolve this motion in accordance with subdivision (b)(1)(B) of this rule.

(C) Under Florida Rule of Appellate Procedure 9.140~~(e)~~(f)(6), the clerk of the circuit court shall supplement the appellate record with the motion, the order, any amended disposition, and, if designated, a transcript of any additional portion of the proceedings.

RULE 8.210. PARTIES AND PARTICIPANTS

(a) Parties. For the purpose of these rules the terms "party" and "parties" shall include the petitioner, the child, the parent(s) of the child, the department, and the guardian ad litem or the representative of the guardian ad litem program, when the program has been appointed.

(b) Participants. "Participant" means any person who is not a party but who should receive notice of hearings involving the child. Participants include foster parents or the legal custodian of the child, identified prospective parents, actual custodians of the child, grandparents entitled to ~~priority for adoption consideration~~notice of an adoption proceeding as provided by law, the state attorney, and any other person whose participation may be in the best interest of the child. The court may add additional participants. Participants may be granted leave by the court to be heard without the necessity of filing a motion to intervene and shall have no other rights of a party except as provided by law.

(c) Parent or Legal Custodian. For the purposes of these rules, when the phrase "parent(s) or legal custodian(s)" is used, it refers to the rights or responsibilities of the parent and, only if there is no living parent with intact parental rights, to the rights or responsibilities of the legal custodian who has assumed the role of the parent.

~~**Committee Notes**~~

~~**1991 Amendment.** (b) This section provides a mechanism to allow the Department of Health and Rehabilitative Services or the state attorney to become parties on notice to all other parties and the court.~~

~~**1992 Amendment.** Subdivision (b) allows additional parties, which should fall within the definition of "parties." Sections 39.405(4)(b) and 39.437(4)(b), Florida Statutes, require service of summons upon the "actual custodians." The result of the present rule is that in many instances relatives become parties. In almost all termination of parental rights cases, the foster parents would become parties. If custodians should be parties in a particular case, rule 8.210(b) would allow them to be parties.~~

RULE 8.257. GENERAL MAGISTRATES

(a) Appointment. Judges of the circuit court may appoint as many general magistrates from among the members of The Florida Bar in the circuit as the judges find necessary, and the general magistrates shall continue in office until removed by the court. The order of appointment shall be recorded. Every person appointed as a general magistrate shall take the oath required of officers by the Constitution and the oath shall be recorded before the magistrate discharges any duties of that office.

(b) Referral.

(1) Consent. No matter shall be heard by a general magistrate without an appropriate order of referral and the consent to the referral of all parties. Consent, as defined in this rule, to a specific referral, once given, cannot be withdrawn without good cause shown before the hearing on the merits of the matter referred. Consent may be express or implied in accordance with the requirements of this rule.

(2) Objection. A written objection to the referral to a general magistrate must be filed within 10 days of the service of the order of referral. If the time set for the hearing is less than 10 days after service of the order of referral, the objection must be filed before commencement of the hearing. Failure to file a written objection within the applicable time period is deemed to be consent to the order of referral.

(3) Order.

(A) The order of referral shall contain the following language in bold type:

A REFERRAL TO A GENERAL MAGISTRATE REQUIRES THE CONSENT OF ALL PARTIES. YOU ARE ENTITLED TO HAVE THIS MATTER HEARD BEFORE A JUDGE. IF YOU DO NOT WANT TO HAVE THIS MATTER HEARD BEFORE THE GENERAL MAGISTRATE, YOU MUST FILE A WRITTEN OBJECTION TO THE REFERRAL WITHIN 10 DAYS OF THE TIME OF SERVICE OF THIS ORDER. IF THE TIME SET FOR THE HEARING IS LESS THAN 10 DAYS AFTER THE SERVICE OF THIS ORDER, THE OBJECTION MUST BE MADE BEFORE THE HEARING. FAILURE TO FILE A WRITTEN OBJECTION

WITHIN THE APPLICABLE TIME PERIOD IS DEEMED TO BE A CONSENT TO THE REFERRAL.

REVIEW OF THE REPORT AND RECOMMENDATIONS MADE BY THE GENERAL MAGISTRATE SHALL BE BY EXCEPTIONS AS PROVIDED IN FLORIDA RULE OF JUVENILE PROCEDURE 8.257(f). A RECORD, WHICH INCLUDES A TRANSCRIPT OF PROCEEDINGS, WILL BE REQUIRED TO SUPPORT THE EXCEPTIONS.

(B) The order of referral shall state with specificity the matter or matters being referred. The order of referral shall also state whether electronic recording or a court reporter is provided by the court.

(4) Setting Hearing. When a referral is made to a general magistrate, any party or the general magistrate may set the action for hearing.

(c) General Powers and Duties. Every general magistrate shall perform all of the duties that pertain to the office according to the practice in chancery and rules of court and under the direction of the court. A general magistrate shall be empowered to administer oaths and conduct hearings, which may include the taking of evidence. All grounds for disqualification of a judge shall apply to general magistrates.

(d) Hearings.

(1) The general magistrate shall assign a time and place for proceedings as soon as reasonably possible after the referral is made and give notice to each of the parties either directly or by directing counsel to file and serve a notice of hearing. If any party fails to appear, the general magistrate may proceed ex parte or may adjourn the proceeding to a future day, giving notice of the adjournment to the absent party. The general magistrate shall proceed with reasonable diligence in every referral and with the least delay practicable. Any party may apply to the court for an order to the general magistrate to speed the proceedings and to make the report and to certify to the court the reason for any delay.

(2) The general magistrate shall take testimony and establish a record which may be by electronic means as provided by Florida Rule of Judicial Administration 2.070(g)(3) or by a court reporter. The parties may not waive this requirement.

(3) The general magistrate shall have authority to examine under oath the parties and all witnesses on all matters contained in the referral, to require production of all books, papers, writings, vouchers, and other documents applicable to it, and to examine on oath orally all witnesses produced by the parties. The general magistrate may take all actions concerning evidence that can be taken by the circuit court and in the same manner. The general magistrate shall have the same powers as a circuit judge to use communications equipment as defined and regulated by Florida Rule of Judicial Administration 2.071.

(4) The notice or order setting a matter for hearing shall state whether electronic recording or a court reporter is provided by the court. If the court provides electronic recording, the notice shall also state that any party may provide a court reporter at that party's expense, subject to the court's approval.

(e) Report.

(1) The general magistrate shall file a report that includes findings of fact, conclusions of law, and recommendations and serve copies on all parties. If a court reporter was present, the report shall contain the name and address of the reporter.

(2) The report and recommendations shall contain the following language in bold type:

SHOULD YOU WISH TO SEEK REVIEW OF THE REPORT AND RECOMMENDATIONS MADE BY THE GENERAL MAGISTRATE, YOU MUST FILE EXCEPTIONS WITHIN 10 DAYS OF SERVICE OF THE REPORT AND RECOMMENDATIONS IN ACCORDANCE WITH FLORIDA RULE OF JUVENILE PROCEDURE 8.257(f). YOU WILL BE REQUIRED TO PROVIDE THE COURT WITH A RECORD SUFFICIENT TO SUPPORT YOUR EXCEPTIONS WITHIN 10 DAYS OF SERVICE OF THE REPORT AND RECOMMENDATIONS OR YOUR EXCEPTIONS WILL BE DENIED. A RECORD ORDINARILY INCLUDES A WRITTEN TRANSCRIPT OF ALL RELEVANT PROCEEDINGS. THE PERSON SEEKING REVIEW MUST HAVE THE TRANSCRIPT PREPARED FOR THE COURT'S REVIEW.

(f) Exceptions. The parties may ~~serve~~file exceptions to the report within

10 days from the time it is served on them. Any party may file cross-exceptions within 5 days from the service of the exceptions. However, the filing of cross-exceptions shall not delay the hearing on the exceptions unless good cause is shown. If no exceptions are filed within that period, the court shall take appropriate action on the report. If exceptions are filed, they shall be heard on reasonable notice by either party or the court.

(g) Record. For the purpose of the hearing on exceptions, a record, substantially in conformity with this rule, shall be provided to the court by the party seeking review. The record shall consist of the court file, including the transcript of the relevant proceedings before the general magistrate, and all depositions and evidence presented to the general magistrate.

(1) The transcript of all relevant proceedings, if any, shall be delivered to the judge and provided to all other parties not less than 48 hours before the hearing on exceptions.

(2) If less than a full transcript of the proceedings taken before the general magistrate is ordered prepared by the excepting party, that party shall promptly file a notice setting forth the portions of the transcript that have been ordered. The responding party shall be permitted to designate any additional portions of the transcript necessary to the adjudication of the issues raised in the exceptions or cross-exceptions.

(3) The cost of the original and all copies of the transcript of the proceedings shall be borne initially by the party seeking review. Should any portion of the transcript be required as a result of a designation filed by the responding party, the party making the designation shall bear the initial cost of the additional transcript.

(h) Prohibition on Magistrate Presiding over Certain Hearings. Notwithstanding the provisions of this rule, a general magistrate shall not preside over 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.

RULE 8.350. PLACEMENT OF CHILD INTO RESIDENTIAL TREATMENT CENTER AFTER ADJUDICATION OF DEPENDENCY

(a) Placement.

(1) Any reference in this rule to a residential treatment center is to a residential treatment center or facility licensed under section 394.875, Florida Statutes, for residential mental health treatment. Any reference to hospital is to a hospital licensed under chapter 395, Florida Statutes, for residential mental health treatment. This rule does not apply to placement under sections 394.463 or 394.467, Florida Statutes.

(2) The placement of any child who has been adjudicated dependent for residential mental health treatment shall be as provided by law.

(3) Whenever the department believes that a child in its legal custody may require placement in a residential treatment center or hospital, the department shall arrange to have the child assessed by a qualified evaluator as provided by law and shall file notice of this with the court and all parties. Upon the filing of this notice by the department, the court shall appoint a guardian ad litem for the child, if one has not already been appointed, and may also appoint an attorney for the child. Both the guardian ad litem and attorney, if appointed, shall meet the child and shall have the opportunity to discuss the child's suitability for residential treatment with the qualified evaluator conducting the assessment. Upon the completion of the evaluator's written assessment, the department shall provide a copy to the court and to all parties. The guardian ad litem shall also provide a written report to the court and to all parties indicating the guardian ad litem's recommendation as to the child's placement in residential treatment and the child's wishes.

(4) If the department seeks to place the child in a residential treatment center or hospital, the department shall immediately file a motion for placement of the child with the court. This motion shall include a statement as to why the child is suitable for this placement and why less restrictive alternatives are not appropriate and also shall include the written findings of the qualified evaluator. The motion shall state whether all parties, including the child, are in agreement.

(5) If the evaluator's written assessment indicates that the child

requires immediate placement in a residential treatment center or hospital and that such placement cannot wait for a hearing, then the department may place the child pending a hearing, unless the court orders otherwise.

(6) The guardian ad litem must be represented by an attorney at all proceedings under this rule, unless the guardian ad litem is acting as an attorney. If the department's motion, the guardian ad litem's report, or another party based on communication with the child indicates that the child does not agree with the department's motion, then the court shall appoint an attorney to represent the child, if one has not already been appointed.

(7) 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. The department shall timely provide notice of the date, time, and place of the hearing to all parties and participants.

(8) The child's attorney or guardian ad litem shall notify the child of the date, time, and place of the hearing. No hearing shall proceed without the presence of the child's guardian ad litem and attorney, unless excused by the court for good cause shown. Should the hearing occur in the absence of the guardian ad litem and attorney, upon request the court shall set the matter for an additional hearing within 24 hours, at which time the attorney and guardian ad litem shall be present.

(9) If the child appears at the status hearing not represented by an attorney, the court shall directly inquire of the child whether he or she disagrees with the motion for placement. If the child does not appear and is not represented by an attorney at the status hearing, the court shall diligently pursue all available information to determine if the child disagrees with the department=s motion for placement. If no party disagrees with the department's motion at the status hearing, then the motion for placement may be approved by the court. However, if any party, including the child, disagrees, then the court shall set the matter for hearing within 10 working days.

(10) If counsel is not immediately available to represent the child, and the court determines that the child will be harmed if the hearing on placement is postponed, then the hearing may be held in the absence of counsel. The child shall be present at the hearing unless the court determines pursuant to subdivision (c) that a court appearance is not in the child=s best interest. In such circumstances, the child shall be provided the opportunity to express his or her views to the court

by a method deemed appropriate by the court. Further, if counsel is not available at the time of the hearing, counsel shall be appointed as soon as practical thereafter and the court shall set an additional hearing at which time both counsel and the child shall be present.

(11) Hearing on Placement.

(A) At the hearing, the court shall consider, at a minimum, all of the following:

(i) based on an independent assessment of the child, the recommendation of a department representative or authorized agent that the residential treatment or hospitalization is in the child's best interest and a showing that the placement is the least restrictive available alternative;

(ii) the recommendation of the guardian ad litem;

(iii) a case review committee recommendation, if there has been one;

(iv) the written findings of the evaluation and suitability assessment prepared by a qualified evaluator; and

(v) the views regarding placement in residential treatment that the child expresses to the court.

(B) All parties shall be permitted to present evidence and witnesses concerning the suitability of the placement.

(C) If the court determines that 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.

(b) Continuing Residential Placement Reviews.

(1) The court shall conduct a hearing to review the status of the child=s residential treatment plan no later than 3 months after the child's admission to the residential treatment program. An independent review of the child's progress toward achieving the goals and objectives of the treatment plan must be completed by a qualified evaluator and submitted to the court and all parties in writing at least

72 hours before the 3-month review hearing.

(2) Review hearings shall be conducted every 3 months thereafter, until the child is placed in a less restrictive setting. At each 3-month review hearing, if the child appears and is not represented by an attorney, the court shall directly inquire of the child whether he or she disagrees with continued placement. If the child does not appear and is not represented by an attorney, the court shall diligently pursue all information available to determine if the child disagrees with continued placement. If the court determines that the child disagrees with the continued placement, the court shall appoint an attorney for the child.

(3) If the court determines at any hearing that the child is not suitable for continued 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.

(c) Presence of Child. The child shall be present at all court hearings unless the court finds that the child's mental or physical condition is such that a court appearance is not in the child's best interest. In such circumstances, the child shall be provided the opportunity to express his or her views to the court by a method deemed appropriate by the court.

(d) Standard of Proof. At the hearing, the court shall determine whether the evidence supporting involuntary commitment of a dependent child to a residential mental health treatment facility is clear and convincing.

RULE 8.515. PROVIDING COUNSEL TO PARTIES

(a) Duty of the Court.

(1) At each hearing, the court shall advise unrepresented parents of their right to have counsel present, unless the parents have voluntarily executed a written surrender of the child and consent to the entry of a court order terminating parental rights.

(2) The court shall appoint counsel for indigent parents as provided by law. The court may appoint counsel for other parties as provided by law.

(3) The court shall ascertain whether the right to counsel is understood. If the right to counsel is waived by any parent the court shall ascertain if the right to counsel is knowingly and intelligently waived.

(4) The court shall enter its findings with respect to the appointment or waiver of counsel of indigent parents or the waiver of the right to have counsel present.

(5) Once counsel has been retained or appointed to represent a parent, the attorney shall continue to represent the parent throughout the proceedings or until the court has approved discontinuing the attorney-client relationship. If the attorney-client relationship is discontinued, the court shall advise the parent of the right to have new counsel retained or appointed for the remainder of the proceedings.

(b) Waiver of Counsel.

(1) No waiver shall be accepted if it appears that the parent is unable to make an intelligent and understanding choice because of mental condition, age, education, experience, the nature or complexity of the case, or other factors.

(2) A waiver of counsel shall be made in court and be of record. The court shall question the parent in sufficient detail to ascertain that the waiver is made knowingly and intelligently.

(3) If a waiver is accepted at any hearing, the offer of assistance of counsel shall be renewed by the court at each subsequent hearing at which the

parent appears without counsel.

RULE 8.535. POSTDISPOSITION HEARINGS

(a) Initial Hearing. If the court terminates parental rights, a postdisposition hearing must be set within 30 days after the date of disposition. At the hearing, the department or licensed child-placing agency shall provide to the court a plan for permanency for the child.

(b) Subsequent Hearings. Following the initial postdisposition hearing, the court shall hold hearings every 6 months to review progress being made toward permanency for the child until the child is adopted or reaches the age of 18, whichever occurs first. Review hearings for alternative forms of permanent placement shall be held as provided by law.

(c) Continuing Jurisdiction. The court that terminates the parental rights to a child under chapter 39, Florida Statutes, shall retain exclusive jurisdiction in all matters pertaining to the child=s adoption under chapter 63, Florida Statutes. The petition for adoption must be filed in the division of the circuit court that entered the judgment terminating parental rights, unless a motion for change of venue is granted as provided by law.

(d) Withholding Consent to Adopt.

(1) When a petition for adoption and a favorable home study under section 39.812(5), Florida Statutes, have been filed and the department=s consent has not been filed, the court shall conduct a hearing to determine if the department has unreasonably withheld consent.

(2) In reviewing whether the department unreasonably withheld its consent to adopt, the court shall determine whether the department abused its discretion by withholding consent to the adoption by the petitioner. In making this determination, the court shall consider all relevant information, including information obtained or otherwise used by the department in selecting the adoptive family, pursuant to Florida Administrative Code Chapter 65C.

(3) If the court determines that the department unreasonably withheld consent to adopt, and the petitioner has filed with the court a favorable home study as required by law, the court shall incorporate its findings into a written order with specific findings of fact as to how the department abused its discretion in withholding its consent to adopt, and the consent of the department shall be waived.

FORM 8.911. UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT AFFIDAVIT

~~UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT AFFIDAVIT~~

~~1. In the past five years the child resided at the following addresses with the following persons:~~

~~.....(dates)..... .....(address)..... .....(custodian).....~~
~~.....(present address).....~~

~~.....(dates)..... .....(address)..... .....(custodian).....~~
~~.....(present address).....~~

~~2. Affiant .....has/has not..... participated as a party or witness in other litigation concerning the custody of the child in this or any other state. Specifically, the name of the other case(s) and affiant's involvement were .....~~

~~3. Affiant .....does/does not..... have any information of any custody proceeding concerning the child pending in this or any other state. Specifically, the name of any other custody case and the location of its court are .....~~

~~4. Affiant .....does/does not..... know of any person(s) who .....is/is not..... a party to this proceeding and who has physical custody of the child or claims to have custody or visitation rights with respect to the child.~~

~~.....(name)..... .....(address).....~~

~~Affiant~~

See *Fla.Sup.Ct.App.Fam.L. Form* 12.902(d).

FORM 8.930. JUVENILE NOTICE TO APPEAR

JUVENILE NOTICE TO APPEAR

DATE ..... AGENCY .....
CASE NO. .....

PARENT, ADULT RELATIVE, LEGAL GUARDIAN .....(name).....

I am the .....(relationship to child)..... of .....(child's name)..... and promise to ensure that the child appears on .....(date)..... at .....(time)..... at .....(location)..... ~~to appear in court~~. I also promise immediately to notify the office of the state attorney at .....(telephone number)..... and the clerk of the court at .....(telephone number)..... of any change in the child's address.

_____
Signature of Parent/Adult Relative/Legal Guardian
.....(address).....
.....(telephone number).....
.....(date).....
.....(address and telephone number of child, if different).....

- - - - - - - - - - - - - - -

I, ...(child's name)....., understand that I have been charged with a law violation, ...(offense(s))....., and that I am being released at this time to the custody of .....(parent, adult relative, or legal guardian's name).....

I promise to appear on .....(date)..... at .....(time)..... at .....(location)..... ~~to appear in court~~, and to appear as required for any additional conferences or appearances scheduled by DJJ or the court. I understand that my failure to appear shall result in a custody order being issued and that I will be picked up and taken to detention.

_____
Child's Signature

Date .....

Arresting Officer .....

_____
Releasing officer or DJJ counselor authorizing release

DJJ Intake Telephone Number .....

ATTACH TO ARREST AFFIDAVIT

FORM 8.964. DEPENDENCY PETITION

PETITION FOR DEPENDENCY

COMES NOW, Petitioner, ...(name)....., by and through undersigned counsel, and petitions this court to adjudicate the above-named minor child(ren) to be dependent within the meaning and intent of chapter 39, Florida Statutes. As grounds, petitioner alleges the following:

1. This court has jurisdiction over the minor child(ren), ...(name(s))....., a .....(gender)..... child, whose date(s) of birth is/are ....., and who, at the time the dependency arose, was/were in the custody of .....(name(s))......

2. The natural mother of the minor child(ren) is .....(name)....., a resident of .....(state)....., whose address is .....

3. The father of the minor child(ren), ...(name(s))..... is .....(name)....., whose address is ..... The father ..... is ..... is not married to the mother, and ..... is ..... is not listed on the child(ren)'s birth certificate(s). The mother filed a Sworn Statement About Identity or Location of Father with this court on .....(date)....., which named ..... as the father.

4. The ~~UCCJA~~UCCJEA Affidavit ..... is attached ..... was filed with the Court on .....(date)..... and is incorporated by reference.

5. The child(ren) is/are dependent within the meaning and intent of chapter 39, Florida Statutes, in that the mother/father/parents/legal custodian/caregiver(s) abused, abandoned, or neglected the minor child(ren) on or about .....(date)....., by: .....

and that these activities and environments cause the child(ren)'s physical, mental, or emotional health to be in danger of being significantly impaired.

OR

5. The above named child(ren) is/are presently under substantial risk or imminent threat of harm or abuse or neglect, within the meaning and intent of chapter 39, Florida Statutes, which is likely to cause the child(ren)'s physical health to be significantly impaired because .....

6. The department is unable to ensure the protection of the minor child(ren) without judicial intervention.

7. The mother/father/parents has/have received the following services: .....

8. A shelter hearing was held on .....(date)....., and the child(ren) was/were placed in the custody of .....

9. An arraignment hearing

..... needs to be scheduled.

..... is scheduled for .....(date and time)......

10. A guardian ad litem

..... needs to be appointed.

..... was appointed at the shelter hearing to represent the child(ren).

11. Under chapter 39, Florida Statutes, the clerk of the court is required to issue a summons to the following parents or custodians:

The natural mother, ...(name)....., whose address is .....

The natural father, ...(name)....., whose address is .....

.....(Additional fathers and their addresses).....

WHEREFORE, the petitioner asks that process may issue in due course to bring the above-named parties before the court to be dealt with according to the law, to adjudicate the named minor child(ren) named to be dependent.

_____
.....(Petitioner's name).....

_____
.....(Attorney's name)...
.....(address and telephone number).....
.....Florida Bar number.....

Verification

Certificate of service

NOTICE OF RIGHTS

PLEASE READ THIS PETITION BEFORE ENTERING THE COURTROOM.

YOU HAVE A RIGHT TO HAVE COUNSEL PRESENT AT THIS HEARING.

BY COPY OF THIS PETITION, THE PARENTS, CAREGIVERS, AND/OR LEGAL CUSTODIANS ARE NOTIFIED OF THEIR RIGHT TO HAVE LEGAL COUNSEL

PRESENT FOR ANY PROCEEDING RESULTING FROM THIS PETITION OR TO REQUEST THE COURT TO HAVE COUNSEL APPOINTED, IF INDIGENT.

Further, these persons are informed of the following:

An arraignment is set on this matter for .....(date)....., at ..... a.m./p.m., at .....(location).....

The purpose of the arraignment is to advise as to the allegations contained in the Petition For Dependency. When your case is called, the Judge will ask you to enter a plea to this petition. The plea entered may be one of the following:

1. Admit: This means you admit that the petition states the truth and you do not want a trial.

2. Consent: This means you neither admit nor deny the petition, but do not want a trial.

(If you enter either of the above two pleas, the court will set a disposition date for the matter. At disposition, the court will decide where the child will stay and under what conditions).

3. Deny: This means you deny the allegations of the petition and wish the state to attempt to prove them at a trial.

4. Continue: This means you wish time to confer with an attorney, before entering a plea. If you enter this plea, the court will schedule another hearing in approximately 2 weeks. At that time, another arraignment hearing will be held, and you (or your attorney) must enter one of the above three pleas.

In accordance with the Americans With Disabilities Act persons needing a special accommodation to participate in this proceeding should contact the office of the Court Administrator as soon as possible, but no later than 7 days before the proceeding at .....(phone number).....

FORM 8.966. ADJUDICATION ORDER C DEPENDENCY

ORDER OF ADJUDICATION

THIS CAUSE came before this court on .....(date)....., under chapter 39, Florida Statutes, for adjudication of the Petition for Dependency filed by .....(petitioner's name)..... Present before the court were

.....(Name)....., Petitioner
.....(Name)....., Attorney for the petitioner
.....(Name)....., Attorney for the department
.....(Name)....., Department caseworker
.....(Name)....., Mother
.....(Name)....., Attorney for mother
.....(Name)....., Father of .....(child).....
.....(Name)....., Attorney for father
.....(Name)....., Guardian ad litem
.....(Name)....., Attorney for guardian ad litem
.....(Name)....., Legal custodian
.....(Name)....., Attorney for legal custodian
.....(Name(s))....., Minor child(ren)
.....(Name)....., Attorney ad litem for minor child(ren)
.....(Name)....., Other .....

The court having heard testimony and argument and being otherwise fully advised in the premises finds:

1. That the minor child(ren) who is/are the subject matter of these proceedings, is/are dependent within the meaning and intent of chapter 39, Florida Statutes, and is/are (a) resident(s) of the State of Florida.

2. The mother, ...(name).....:

..... was ..... was not noticed of this hearing;

..... did not appear, and the court:

..... entered a Consent ~~by default~~for failure to appear after proper notice.

..... did not enter a Consent ~~by default~~for failure to appear after proper notice.

..... appeared with counsel;

..... appeared without counsel and:

..... was ..... was not advised of her right to legal counsel,

..... knowingly, intelligently, and voluntarily ..... waived ..... did not waive her right to legal counsel and

..... was ..... was not determined to qualify as indigent and

.... was ..... was not appointed an attorney.

3. The father, ...(name).....:

..... was ..... was not noticed of this hearing;

..... did not appear, and the court:

..... entered a Consent ~~by default~~for failure to appear after proper notice.

..... did not enter a Consent ~~by default~~for failure to appear after proper notice.

..... appeared with counsel;

..... appeared without counsel and:

..... was ..... was not advised of his right to legal counsel,

..... knowingly, intelligently, and voluntarily waived ..... did not waive his right to legal counsel and

..... was ..... was not determined to qualify as indigent and

..... was ..... was not appointed an attorney.

..... 4. That the child(ren) is/are dependent within the meaning and intent of chapter 39, Florida Statutes, in that the mother, ...(name)....., abused, neglected, or abandoned the minor child(ren) by ..... These facts were proven by ..... preponderance of the evidence ..... clear and convincing evidence.

..... 5. That the child(ren) is/are dependent within the meaning and intent of chapter 39, Florida Statutes, in that the father, ...(name)....., abused, neglected, or abandoned the minor child(ren) by ..... These facts were proven by ..... preponderance of the evidence ..... clear and convincing evidence.

COMMENT: Use 6, 7, and 8 only if the child is in out-of-home placement.

6. That the Court finds that it is in the best interest of the child(ren) to remain in out-of-home care.

7. That every reasonable effort was made to eliminate the need for placement of the child(ren) in out-of-home care but the present circumstances of the child(ren) and the ..... mother ..... father are such that out-of-home care is the only way to ensure the health, safety, and well being of the child(ren), in that .....

8. That the child(ren)=s placement in .....(type of placement)..... is in a setting which is as family like and as close to the home as possible, consistent with the child(ren)=s best interests and special needs.

9. That returning the minor child(ren) to the custody of .....(person who had previous legal custody)..... would be contrary to the best interest and welfare of the minor child(ren).

THEREFORE, based upon the foregoing findings, it is ORDERED AND ADJUDGED that:

1. The minor child(ren), ...(name(s))....., is/are adjudicated dependent.

2. The child(ren) shall remain in the care and custody of

.....the department in shelter care

.....other .....(name).....

pending disposition.

3. This court shall retain jurisdiction over this cause to enter any such further orders that may be deemed necessary for the best interest and welfare of the minor child(ren).

4. All prior orders not inconsistent with the present order shall remain in full force and effect.

5. Disposition is scheduled for .....(date)....., at ..... a.m./p.m.

DONE AND ORDERED on .....date.....

_____
Circuit Judge

NOTICE OF HEARING

The Juvenile Court hereby gives notice of hearing in the above styled cause on .....(date)..... at ..... a.m./p.m., before .....(judge)....., at .....(location)....., or as soon thereafter as counsel can be heard.

In accordance with the Americans With Disabilities Act, persons needing a special accommodation to participate in this proceeding should contact the Office of the Court Administrator no later than 7 days before the proceeding at .....(telephone number).....

PLEASE BE GOVERNED ACCORDINGLY.

Copies furnished to:

FORM 8.975. DEPENDENCY ORDER WITHHOLDING ADJUDICATION

ORDER OF ADJUDICATION

THIS CAUSE came before this court on .....(date)....., under chapter 39, Florida Statutes, for adjudication of the Petition for Dependency filed by .....(petitioner's name)..... Present before the court were

....(Name)....., Petitioner
....(Name)....., Attorney for the petitioner
....(Name)....., Attorney for the department
....(Name)....., Department caseworker
....(Name)....., Mother
....(Name)....., Attorney for mother
....(Name)....., Father of .....(child).....
....(Name)....., Attorney for father
....(Name)....., Guardian ad litem
....(Name)....., Attorney for guardian ad litem
....(Name)....., Legal custodian
....(Name)....., Attorney for legal custodian
....(Name)....., Other .....

The court having heard testimony and argument and being otherwise fully advised in the premises finds:

1. That the minor child(ren) who is/are the subject matter of these proceedings, is/are dependent within the meaning and intent of chapter 39, Florida Statutes, and is/are (a) resident(s) of the State of Florida.

2. The mother, ...(name).....:

..... was ..... was not noticed of this hearing;

..... did not appear, and the court:

..... entered a Consent for failure to appear after proper notice.

..... did not enter a Consent for failure to appear after proper notice.

..... appeared with counsel;

..... appeared without counsel and:

..... was ..... was not advised of her right to legal counsel,

..... knowingly, intelligently, and voluntarily waived ..... did not waive her right to legal counsel and

..... was ..... was not determined to qualify as indigent and

.... was ..... was not appointed an attorney.

3. The father, ...(name).....:

..... was ..... was not noticed of this hearing;

..... did not appear, and the court:

..... entered a Consent for failure to appear after proper notice.

..... did not enter a Consent for failure to appear after proper notice.

..... appeared with counsel;

..... appeared without counsel and:

..... was ..... was not advised of his right to legal counsel,

..... knowingly, intelligently, and voluntarily waived ..... did not waive his right to legal counsel and

..... was ..... was not determined to qualify as indigent and

..... was ..... was not appointed an attorney.

.....4. That the child(ren) is/are dependent within the meaning and intent of chapter 39, Florida Statutes, in that the mother, ...(name)....., abused, neglected or abandoned the minor child(ren) by ..... These facts were proven by ..... preponderance of the evidence ..... clear and convincing evidence.

.....5. That the child(ren) is/are dependent within the meaning and intent of chapter 39, Florida Statutes, in that the father, ...(name)....., abused, neglected or abandoned the minor child(ren) by ..... These facts were proven by ..... preponderance of the evidence ..... clear and convincing evidence.

.....6. That the parties have filed a mediation agreement in which the parent(s) consent(s) to the adjudication of dependency of the child(ren) in conjunction with a withhold of adjudication, which the court accepts.

7. Under section 39.507(5), Florida Statutes, the Court finds that the child(ren) named in the petition are dependent, but finds that no action other than supervision in the child(ren)'s home is required.

THEREFORE, based upon the foregoing findings, it is ORDERED AND ADJUDGED that:

1. Under section 39.507(5), Florida Statutes, the Court hereby withholds adjudication of dependency of the minor child(ren). The child(ren) shall be .....returned/continued..... in (child(ren)'s home) under the supervision of the department. If this court later finds that the parents have not complied with the conditions of supervision imposed, the court may, after a hearing to establish the noncompliance, but without further evidence of the state of dependency, enter an order of adjudication.

2. This court shall retain jurisdiction over this cause to enter any such further orders that may be deemed necessary for the best interest and welfare of the minor child(ren).

3. All prior orders not inconsistent with the present order shall remain in full force and effect.

4. Disposition is scheduled for .....(date)....., at ..... a.m./p.m.

DONE AND ORDERED on .....date.....

_____

Circuit Judge

NOTICE OF HEARING

The Juvenile Court hereby gives notice of hearing in the above styled cause on .....(date)..... at .....a.m./p.m., before .....(judge)....., at .....(location)....., or as soon thereafter as counsel can be heard.

In accordance with the Americans With Disabilities Act, persons needing a special accommodation to participate in this proceeding should contact the Office of the Court Administrator no later than 7 days before the proceeding at .....(telephone number).....

PLEASE BE GOVERNED ACCORDINGLY.

Copies furnished to:

FORM 8.980. PETITION FOR TERMINATION OF PARENTAL RIGHTS BASED ON VOLUNTARY RELINQUISHMENT

PETITION FOR TERMINATION OF
PARENTAL RIGHTS

Petitioner, ...(name)....., respectfully petitions this Court for termination of parental rights and permanent commitment of the minor child(ren), ...(name(s))....., to .....(agency name)..... for the purpose of subsequent adoption, and as grounds states the following:

A. PARTIES

1. The child, ...(name)....., is a male/female child born on .....(date)....., at .....(city, county, state)..... At the time of the filing of this petition, the child is .....(age)..... A copy of the child's birth certificate is attached to this Petition and incorporated as Petitioner's Exhibit .....

COMMENT: Repeat above for each child on petition.

2. The child(ren) is/are presently in the care and custody of .....(name)....., and is/are residing in ..... County, Florida.

3. An affidavit under the Uniform Child Custody Jurisdiction and Enforcement Act is attached to this as Petitioner's Exhibit .....

4. The natural mother of the child(ren) is .....(name)....., who resides at .....

5. The natural/alleged/putative father of the child(ren) .....(name(s))..... is .....(name)....., who resides at .....

COMMENT: Repeat #5 as necessary.

6. A guardian ad litem ..... has ..... has not been appointed to represent the interests of the child(ren) in this cause.

B. GROUNDS FOR TERMINATION

1. The parent(s) have been advised of their right to legal counsel at all hearings that they attended.

2. The mother, ...(name)....., freely, knowingly, voluntarily, and ..... with ..... without advice of legal counsel executed an Affidavit and Acknowledgment of Surrender, Consent, and Waiver of Notice on .....(date)....., for termination of her parental rights to the minor child, ...(name)....., under section 39.806(1)(a), Florida Statutes.

COMMENT: Repeat above as necessary.

3. The father, ...(name)....., freely, knowingly, and voluntarily, and ..... with ..... without advice of legal counsel executed an Affidavit and Acknowledgment of Surrender, Consent, and Waiver of Notice on .....(date)....., for termination of his parental rights to the minor child, ...(name)....., under section 39.806(1)(a), Florida Statutes.

COMMENT: Repeat above as necessary.

4. Under the provisions of chapter 39, Florida Statutes, it is in the manifest best interest of the child(ren) for parental rights to be terminated for the following reasons:

..... allegations which correspond to sections 39.810(1)~~B~~ (11), Florida Statutes.

5. A copy of this petition shall be served on the natural mother, ...(name).....; the father(s), ...(name(s)).....; the custodian, ...(name).....; and the guardian ad litem, ...(name).....

6. This petition is filed in good faith and under oath.

WHEREFORE, the petitioner respectfully requests that this court grant this petition; find that the parents have voluntarily surrendered their parental rights to the minor child(ren); find that termination of parental rights is in the manifest best interests of this/these child(ren); and that this court enter an order permanently committing this/these child(ren) to the .....(name)..... for subsequent adoption.

_____

.....(petitioner's name and
identifying information).....

Verification

_____

.....(attorney's name).....
.....(address and telephone number).....
.....Florida Bar number.....

Certificate of Service

FORM 8.981. PETITION FOR INVOLUNTARY TERMINATION OF PARENTAL RIGHTS

PETITION FOR TERMINATION
OF PARENTAL RIGHTS

Petitioner, ...(petitioner's name)....., respectfully petitions this court for termination of parental rights and permanent commitment of the minor child(ren), ...(name(s))....., to .....(agency name)..... for the purpose of subsequent adoption, and as grounds states the following:

A. PARTIES

1. The child, ...(name)....., is a male/female child born on .....(date)....., at .....(city, county, state)..... At the time of the filing of this petition, the child is .....(age)..... A copy of the child's birth certificate is attached to this Petition and incorporated as Petitioner's Exhibit .....

COMMENT: Repeat above for each child on petition.

2. The child(ren) is/are presently in the care and custody of .....(name)....., and is/are residing in ..... County, Florida.

3. An affidavit under the Uniform Child Custody Jurisdiction and Enforcement Act is attached to this as Petitioner's Exhibit .....

4. The natural mother of the child(ren) is .....(name)....., who resides at .....

5. The natural/alleged/putative father of the child(ren) .....(name(s))..... is .....(name)....., who resides at .....

COMMENT: Repeat #5 as necessary.

6. A guardian ad litem ..... has ..... has not been appointed to represent the interests of the child(ren) in this cause.

B. GROUNDS FOR TERMINATION

1. The parents have been advised of their right to legal counsel at all hearings that they attended.

2. On or about .....(date(s))....., the following occurred: .....(acts which were basis for dependency or TPR, if filed directly).....

3. The mother has .....(grounds for TPR)..... the minor child(ren) within the meaning and intent of section 39.806, Florida Statutes, in that: .....(allegations which form the statutory basis for grounds).....

4. The father has .....(grounds for TPR)..... the minor child(ren) within the meaning and intent of section 39.806, Florida Statutes, in that: .....(allegations which form the statutory basis for grounds).....

5. Under the provisions of sections 39.806(1)~~B~~–(11), Florida Statutes, it is in the manifest best interests of the child(ren) for parental rights of .....(name(s)).....to be terminated for the following reasons: .....(allegations for each statutory factor in the manifest best interest test).....

6. A copy of this petition shall be served on the natural mother, ...(name)....., father(s), ...(name(s))....., the custodian, ...(name).....; and the guardian ad litem, ...(name).....

7. This petition is filed by the petitioner in good faith and under oath.

WHEREFORE, the petitioner respectfully requests that this court grant this petition; find that the parents have abused, neglected, or abandoned the minor child(ren); find that termination of parental rights is in the manifest best interests of this/these child(ren); and that this court enter an order permanently committing this/these child(ren) to .....(agency)..... for subsequent adoption.

_____

.....(petitioner's name and identifying information).....

Verification

_____

.....(attorney's name).....
.....(address and telephone number).....
.....(Florida Bar number).....

Certificate of Service

FORM 8.983. ADJUDICATION ORDER AND JUDGMENT OF INVOLUNTARY TERMINATION OF PARENTAL RIGHTS

ORDER OF ADJUDICATION AND JUDGMENT OF INVOLUNTARY TERMINATION OF PARENTAL RIGHTS

THIS CAUSE came before this court on .....(date)..... for an adjudicatory hearing on the Petition for Termination of Parental Rights filed by .....(name)..... Present before the court were: ~~.....(persons present) .....~~

..... (Name) ..... , Petitioner
..... (Name) ..... , Attorney for the petitioner
..... (Name) ..... , Attorney for the department
..... (Name) ..... , Department caseworker
..... (Name) ..... , Child
..... (Name) ..... , Attorney for Child
..... (Name) ..... , Mother
..... (Name) ..... , Attorney for mother
..... (Name) ..... , Father of ..... (child) .....
..... (Name) ..... , Attorney for father
..... (Name) ..... , Guardian ad litem
..... (Name) ..... , Attorney for guardian ad litem
..... (Name) ..... , Legal custodian
..... (Name) ..... , Attorney for legal custodian
..... (Name) ..... , Other .....

The court has carefully considered and weighed the testimony of all witnesses. The court has received and reviewed all exhibits.

COMMENT: Add the following only if necessary.

The petitioner has sought termination of the parental rights of .....(parent(s)) who is/are subject of petition).....

The court finds that the parent(s), ...(name(s))....., has/have .....(list grounds proved)....., under chapter 39, Florida Statutes. The grounds were proved by clear and convincing evidence. Further, the court finds that termination of parental rights of the parent(s), ...name(s)....., is clearly in the manifest best interests of the child(ren). The findings of fact and conclusions of law supporting this decision are as follows:

1. At all stages of these proceedings the parent(s) was/were advised of their right to legal counsel, or was/were in fact represented by counsel.

2. On or about .....(date(s))....., the following occurred: .....(acts which were basis for

dependency or TPR, if filed directly).....

3. The mother has .....(grounds for TPR)..... the minor child(ren) within the meaning and intent of section 39.806, Florida Statutes, in that: .....(findings that form the statutory basis for grounds).....

4. The father has .....(grounds for TPR)..... the minor child(ren) within the meaning and intent of section 39.806, Florida Statutes, in that: .....(findings that form the statutory basis for grounds).....

5. The minor child(ren) to whom ..…(parent's(s') name(s))….. parental rights are being terminated are at substantial risk of significant harm. Termination of parental rights is the least restrictive means to protect the child(ren) from harm.

6. Under the provisions of sections ~~39.806~~39.810(1)–(11), Florida Statutes, it is in the manifest best interests of the child(ren) for parental rights of .....(name(s))..... to be terminated for the ~~following~~ reasons below ~~.....(findings for each statutory factor in the manifest best interest test).....~~. The court has considered all relevant factors and finds as follows:

(a) Regarding any suitable permanent custody arrangement with a relative of the child, the court finds .....

(b) Regarding the ability and disposition of the parent or parents to provide the child with food, clothing, medical care, or other remedial care recognized and permitted under state law instead of medical care, and other material needs of the child, the court finds …….....

(c) Regarding the capacity of the parent or parents to care for the child to the extent that the child's safety, well-being, and physical, mental, and emotional health will not be endangered upon the child's return home, the court finds …….....

(d) Regarding the present mental and physical health needs of the child and such future needs of the child to the extent that such future needs can be ascertained based on the present condition of the child, the court finds .....

(e) Regarding the love, affection, and other emotional ties existing between the child and the child's parent or parents, siblings, and other relatives, and the degree of harm to the child that would arise from the termination of parental rights and duties, the court finds .....

(f) Regarding the likelihood of an older child remaining in long-term foster care upon termination of parental rights, due to emotional or behavioral problems or any special needs of the child, the court finds .....

(g) Regarding the child's ability to form a significant relationship with a parental substitute and the likelihood that the child will enter into a more stable and permanent family relationship as a result of permanent termination of parental rights and duties, the court finds .....

(h) Regarding the length of time that the child has lived in a stable, satisfactory environment and the desireability of maintaining continuity, the court finds .....

(i) Regarding the depth of the relationship existing between the child and present custodian, the court finds .....

(j) Regarding the reasonable preferences and wishes of the child, if the court deems the child to be of sufficient intelligence, understanding, and experience to express a preference, the court finds .....

(k) Regarding the recommendations for the child provided by the child's guardian ad litem or the legal representative, the court finds .....

(*l*) Regarding other relevant factors including ....., the court finds .....

COMMENT: Add items 7, 8, and 9 as applicable.

7. Under section 39.811(6)(…..), Florida Statutes, the court terminates the parental rights of only .....(parent whose rights are being terminated)..... as to the minor child(ren), ...(child(ren)'s name(s))..... Specifically, the court finds that ……(specific findings of fact under section 39.811(6), Florida Statutes).....

8. Under sections 39.509(5) and 39.811(7)(a), Florida Statutes, the court finds that continued grandparental visitation is not in the best interests of the child(ren) or that such visitation would interfere with the permanency goals for the child(ren) for the following reasons .....

9. Under section 39.811(7)(b), Florida Statutes, the court finds that although parental rights are being terminated, the best interests of .....(names of child(ren) to which this provision applies)..... support continued communication or contact by .....(names of parents, siblings, or relatives of the parent whose rights are terminated and to which this provision applies)..... except as provided above. The nature and frequency of the communication or contact shall be as follows ..... It may be reviewed on motion of any party or an identified prospective adoptive parent.

THEREFORE, after weighing credibility of witnesses, weighing all statutory factors, and based on the findings of fact and conclusions of law above, the court hereby ORDERS AND ADJUDGES THAT:

1. The petition filed by .....(name)..... is granted as to the parent(s), ...(name(s))).....

2. The parental rights of the father, ...(name)....., and of the mother, ...(name)....., to the child, ...(name) ....., are hereby terminated under section 39.806(.....), Florida Statutes.

COMMENT: Repeat the above for each child and parent, as necessary.

3. Under sections 39.811(2) and (5), Florida Statutes, ~~T~~the child(ren), ...(name(s))....., are placed in the custody of ..... (agency) ..... for the purpose of subsequent adoption.

4. The 30-day permanency plan required by section 39.811(8), Florida Statutes, shall be filed and heard at .....(time)..... on .....(date)..... in .....(location).....

DONE AND ORDERED on .....(date)....., in .....(city and county)....., Florida.

_____
Circuit Judge

NOTICE

Under section 39.815, Florida Statutes, any child, any parent, guardian ad litem, or legal custodian of any child, any other party to the proceeding who is affected by an order of the court, or the department may appeal to the appropriate District Court of Appeal within the time and in the manner prescribed by the Florida Rules of Appellate Procedure, which is 30 days from the date this order is rendered (filed).

Copies to: _____

Proposed rule	Reason for change

RULE 8.045 NOTICE TO APPEAR

(a) Definition. A notice to appear, unless indicated otherwise, means a written order issued by a law enforcement officer or authorized agent of the department, in lieu of taking a child into custody or detaining a child, which requires a child accused of violating the law to appear in a designated court or governmental office at a specified date and time.

(b) [No change]

(c) [No change]

(d) [No change]

(e) [No change]

(f) Contents. A notice to appear shall contain the following information:

(1) The name and address of the child and the person to whom the child was released.

(2) The date of the offense(s).

(3) The offense(s) charged by statute and municipal ordinance, if applicable.

(4) The counts of each offense.

(5) The time and place where the child is to appear ~~in court~~.

(6) The name and address of the trial court having jurisdiction to try the offense(s) charged.

(7) The name of the arresting officer or authorized agent of the department.

(8) The signatures of the child and the person to whom the child was released.

(g) [No change]

(h) [No change]

Committee Notes

[No change]

Subdivision (f)(5) is amended by deleting "in court" to conform to subdivision (a), which provides that the child is required to appear "in a designated court or governmental office."

Proposed rule	Reasons for change
RULE 8.090 SPEEDY TRIAL	
(a) Time. If a petition has been filed alleging a child to have committed a delinquent act, the child shall be brought to an adjudicatory hearing without demand within 90 days of the earlier of the following:	
(1) The date the child was taken into custody.	
(2) The date ~~the petition was filed~~the summons issued on the filing of the petition is served.	Amended to conform to section 985.219(8), Florida Statutes, which specifies that jurisdiction attaches when the summons is served, not when the petition is filed.
(b) [No change]	
(c) [No change]	
(d) [No change]	
(e) [No change]	
(f) [No change]	
(g) [No change]	
(h) [No change]	
(i) [No change]	
(j) [No change]	
(k) [No change]	

(*l*) [No change]

(m)[No change]

Committee Notes

[No change]

Proposed rule	Reasons for change
RULE 8.135 CORRECTION OF DISPOSITION OR COMMITMENT ORDERS	
(a) [No change]	
(b) [No change]	
(1) [No change]	
(2) Motion Pending Appeal. If an appeal is pending, a child or the state may file in the trial court a motion to correct a disposition or commitment order error. The motion may be filed by appellate counsel and must be served before the party's first brief is served. A notice of pending motion to correct disposition or commitment error shall be filed in the appellate court, which notice shall automatically extend the time for the filing of the brief, until 10 days after the clerk of the circuit court transmits the supplemental record under Florida Rule of Appellate Procedure 9.140~~(e)~~(f)(6).	Corrects cross reference to appellate rule. *Fla. R. App. P.* 9.140 was amended in 2002, renumbering (e) to (f) with no change in contents. See *Amendments to Florida Rules of Appellate Procedure*, 827 So. 2d 888 (Fla. 2002).
(A) The motion shall be served on the trial court and on all trial and appellate counsel of record. Unless the motion expressly states that appellate counsel will represent the movant in the trial court, trial counsel will represent the movant on the motion under Florida Rule of Appellate Procedure 9.140~~(b)(5)~~(d) . If the state is the movant, trial counsel will represent the child unless appellate counsel for the child notifies trial counsel and the trial court that appellate counsel will represent the child on the state's motion.	Corrects cross reference to appellate rule. Also in 2002, *Rule* 9.140(b)(5) was deleted and *Rule* 9.140(d) was added with substantially the same content. See *Amendments to Florida Rules of Appellate Procedure*, 827 So. 2d 888 (Fla. 2002).

(B) The trial court shall resolve this motion in accordance with subdivision (b)(1)(B) of this rule.

(C) Under Florida Rule of Appellate Procedure 9.140~~(e)~~(f)(6), the clerk of the circuit court shall supplement the appellate record with the motion, the order, any amended disposition, and, if designated, a transcript of any additional portion of the proceedings.

Corrects cross-reference to appellate rule. *Rule* 9.140 was amended in 2002; subdivision (e) was renumbered to (f) with no change in content. See *Amendments to Florida Rules of Appellate Procedure*, 827 So. 2d 888 (Fla. 2002).

Proposed rule	Reasons for change
RULE 8.210 PARTIES AND PARTICIPANTS	
(a) [No change]	
(b) Participants. "Participant" means any person who is not a party but who should receive notice of hearings involving the child. Participants include foster parents or the legal custodian of the child, identified prospective parents, actual custodians of the child, grandparents entitled to ~~priority for adoption consideration~~notice of an adoption proceeding as provided by law, the state attorney, and any other person whose participation may be in the best interest of the child. The court may add additional participants. Participants may be granted leave by the court to be heard without the necessity of filing a motion to intervene and shall have no other rights of a party except as provided by law.	This amendment conforms subdivision (b) to section 63.0425(1), Florida Statutes, as amended by section 6, Chapter 2003-58, Laws of Florida. The statute was amended to eliminate grandparents' priority for consideration for adoption of a grandchild who had lived with the grandparents. Instead, the grandparents are now entitled to notice of the adoption proceedings. A similar change was made to *Fla .R. Juv. P.* 8.505(a)(5) in the 2004 cycle changes.
(c) [No change]	
~~**Committee Notes**~~	
~~**1991 Amendment.** (b) This section provides a mechanism to allow the Department of Health and Rehabilitative Services or the state attorney to become parties on notice to all other parties and the court.~~	The committee notes have been deleted because the references are no longer accurate.
~~**1992 Amendment.** Subdivision (b) allows additional parties, which should fall within the definition of "parties." Sections 39.405(4)(b) and 39.437(4)(b), Florida Statutes, require service of summons upon the "actual custodians." The result of the present rule is that in many instances relatives~~	

~~become parties. In almost all termination of parental rights cases, the foster parents would become parties. If custodians should be parties in a particular case, rule 8.210(b) would allow them to be parties.~~

Proposed rule | **Reasons for change**

RULE 8.257 GENERAL MAGISTRATES

(a) [No change]

(b) [No change]

(c) [No change]

(d) [No change]

(e) Report.

(1) [No change]

(2) The report and recommendations shall contain the following language in bold type:

SHOULD YOU WISH TO SEEK REVIEW OF THE REPORT AND RECOMMENDATIONS MADE BY THE GENERAL MAGISTRATE, YOU MUST FILE EXCEPTIONS WITHIN 10 DAYS OF SERVICE OF THE REPORT AND RECOMMENDATIONS IN ACCORDANCE WITH FLORIDA RULE OF JUVENILE PROCEDURE 8.257(f). YOU WILL BE REQUIRED TO PROVIDE THE COURT WITH A RECORD SUFFICIENT TO SUPPORT YOUR EXCEPTIONS WITHIN 10 DAYS OF SERVICE OF THE REPORT AND RECOMMENDATIONS OR YOUR EXCEPTIONS WILL BE DENIED. A RECORD ORDINARILY INCLUDES A WRITTEN

TRANSCRIPT OF ALL RELEVANT PROCEEDINGS. THE PERSON SEEKING REVIEW MUST HAVE THE TRANSCRIPT PREPARED FOR THE COURT'S REVIEW.

(f) Exceptions. The parties may ~~serve~~ file exceptions to the report within 10 days from the time it is served on them. Any party may file cross-exceptions within 5 days from the service of the exceptions. However, the filing of cross-exceptions shall not delay the hearing on the exceptions unless good cause is shown. If no exceptions are filed within that period, the court shall take appropriate action on the report. If exceptions are filed, they shall be heard on reasonable notice by either party or the court.

This error was carried over from *Fla. Fam. L. R. P.* 12.490 on which this rule was based. Exceptions must be filed with the court as the remainder of this subdivision reflects. See also subdivision (e)(2).

(g) [No change]

(h) Prohibition on Magistrate Presiding over Certain Hearings. Notwithstanding the provisions of this rule, a general magistrate shall not preside over 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.

Section 39.402(8)(a), Florida Statutes requires that a shelter hearing be held within 24 hours of placement of the child in shelter. This requirement does not allow time for the consent process required by *Fla. R. Juv. P.* 8.257(b)(1) and (b)(2). Sections 39.507(1)(b) and 39.809(3), Florida Statutes, specifically require that an adjudicatory hearing be conducted by a "judge."

Proposed rule	Reasons for change
RULE 8.350. PLACEMENT OF CHILD INTO RESIDENTIAL TREATMENT CENTER AFTER ADJUDICATION OF DEPENDENCY	
(a) [No change]	
(b) [No change]	
(c) [No change]	
(d) Standard of Proof. At the hearing, the court shall determine whether the evidence supporting involuntary commitment of a dependent child to a residential mental health treatment facility is clear and convincing.	Adds subdivision (d) to create a standard of proof in conformity with *In re J.W.*, 890 So. 2d 337 (Fla. 2d DCA 2004).

Proposed rule	Reasons for change
RULE 8.515 PROVIDING COUNSEL TO PARTIES	
(a) Duty of the Court.	
(1) At each hearing, the court shall advise unrepresented parents of their right to have counsel present, unless the parents have voluntarily executed a written surrender of the child and consent to the entry of a court order terminating parental rights.	
(2) The court shall appoint counsel for indigent parents <u>as provided by law</u>. The court may appoint counsel for other parties as provided by law.	Amended to conform to creation of section 57.082, Florida Statutes, by section 35 of Chapter 2005-236, Laws of Florida.
(3) [No change]	
(4) [No change]	
(5) [No change]	
(b) [No change]	

Proposed rule

RULE 8.535. POSTDISPOSITION HEARINGS

(a) [No change]

(b) [No change]

(c) [No change]

(d) Withholding Consent to Adopt.

(1) When a petition for adoption and a favorable home study under section 39.812(5), Florida Statutes, have been filed and the department=s consent has not been filed, the court shall conduct a hearing to determine if the department has unreasonably withheld consent.

(2) In reviewing whether the department unreasonably withheld its consent to adopt, the court shall determine whether the department abused its discretion by withholding consent to the adoption by the petitioner. In making this determination, the court shall consider all relevant information, including information obtained or otherwise used by the department in selecting the adoptive family, pursuant to Florida Administrative Code Chapter 65C.

(3) If the court determines that the department unreasonably withheld consent to adopt, and the petitioner has filed with the court a favorable home study as required by law, the court shall incorporate its findings into a written order with specific findings of fact as to how the department abused its discretion in withholding its consent to adopt, and the consent

Reasons for change

This amendment provides procedures to implement amendments to section 39.812(5), Florida Statutes, made by sections 1 and 2 of Chapter 2004-389, Laws of Florida, regarding withholding of consent to adoption by the Department of Children and Family Services.

of the department shall be waived.

APPENDIX A

[Copy of Florida Bar News notice]

APPENDIX B

October 31, 2005

Alan Abramowitz. Chair
Juvenile Rules Committee
210 North Palmetto Ave
Suite 440 Daytona Beach,
FL 32114-3269

RE: Proposed Juvenile Procedure Rules, Rule

8.257(h)

Dear Mr. Abramowitz:

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

Prohibition on Magistrate presiding over certain cases. Now normal 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. SCO 1-2703, January 3, 2002, 806 So. 2d 446.

The need for the above Proposed Amendment is unclear. The existing Rule regarding Magistrates provides two very critical protections for parties. One, any party may object to a Magistrate hearing the case whereupon a Circuit Judge hears the matter. Second, a Magistrate has no authority to enter any 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 six 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

loads exceeds 400 cases, and, as of October 2005, we now have in Leon County (our most populous County) exceeded the number of dependency cases for the entire 2004 calendar year.

The management of our scarce judicial resources is exercised well by our Chief Judge Charles Francis. To limit his authority regarding who may hear adjudicatory matters in assisting our Circuit Judges would create an unacceptable burden on our present system.

To my knowledge, no one has queried those who work within the system on a daily basis. I can represent to this Committee, without reservation, our parent's bar, the local attorneys for the Department of Children and Families Services, and the 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 Judicial side who stays with the case through its conclusion.

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 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.

What likewise is of concern is this piecemeal approach to the issues of Magistrates. The proposed Amendment applies only to dependency. There is no mention as to any restrictions in family law (dissolution of marriage). 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 Rule 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. I have reviewed other State's published activities, rules, and statutes regarding use of Magistrates.

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 title 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 Administrate 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.

It is my understanding from the sources who 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 in only 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 needs no cure.

I appreciate the opportunity to have express my views for whatever value they may have. I have been a trial lawyer for 29 plus years before 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

APPENDIX C

Chapter 2003-58
H.B. No. 835
ADOPTION

Section 6. Subsection (1) of section 63.0425, Florida Statutes, is amended to read:

<< FL ST § 63.0425 >>

63.0425. Grandparent's right to adopt

(1) When a child ~~who~~has lived with a grandparent for at least 6 months within the 24-month period immediately preceding the filing of a petition for termination of parental rights pending adoption~~is placed for adoption~~, the adoption entity ~~handling the adoption~~ shall provide notice to~~notify~~that grandparent of the hearing on the petition for termination of parental rights pending adoption~~impending adoption before the petition for adoption is filed. If the grandparent petitions the court to adopt the child, the court shall give first priority for adoption to that grandparent~~.

Section 39. This act shall take effect upon becoming a law.

Approved by the Governor May 30, 2003.

Filed in Office Secretary of State May 30, 2003.

APPENDIX D

Ellen Sloyer/The Florida Bar 02/22/2005 09:01 AM

To Deborah Schroth

cc Avron Bernstein

bcc

Subject Fw: Juvenile Rules amendment

Deborah - Attached is a proposed revision to Rule 8.257(h). I will put it on the agenda for the June meeting, Do you want anyone to look at it before the meeting?

Thanks.

ellen

Forwarded by Ellen Sloyer/The Florida Bar on 02/22/2005 09:01 AM ——

"Avron Bernstein" <bernsteina@flcourts.org> 02/18/2005 04:55 PM

To <esloyer@flabar.org>

cc <afilippo@jud6.org>, "Pat Badland" <BadlandP@flcourts.org>, "Thomas D. Hall" <hall@flcourts.org>

Subject Juvenile Rules amendment

As I may have indicated, attached is a proposed amendment to Florida Rule of Juvenile Procedure 8.257, which itself was promulgated by Supreme Court opinion dated January 27, 2005. The Steering Committee on Families and Children in the Court met on February 11, 2005 and discussed the language that is attached. A majority of the Steering Committee voted in favor of the substance of the rule with 2 voting against it. I understand that it may be necessary for the language to be submitted to a subcommittee prior to the June Committee meeting as part of any emergency rule process. Please feel free to call me at 414-8661 if you have any questions or if there are further requirements to be complied with.

Avron Bernstein

Office of the State Courts Administrator-Office of Court Improvement

500 South Duval Street

Tallahassee, Florida 32399-1900

(850)414-1507

(850) 414-1505 (fax)

Rule 8.257. General Magistrates

(h) Prohibition on Magistrate Presiding over Certain Hearings. Notwithstanding the provisions of this rule, no General Magistrate shall preside over any of the following hearings: a shelter hearing under section 39.402, an adjudicatory hearing under 39.507, or an adjudicatory hearing under 39.809.

SUPREME COURT COMMITTEE ON FAMILIES AND CHIILDREN IN THE COURT

Friday, February 10, 2005 (9:00 – 3:00)
Florida Supreme Court Building

M I N U T E S

Judge John Cooper
Judge Robert Evans
Judge Catherine Green
Ms. Jeanne Howard
Judge Judith Kreeger
Mr. Evan Marks
Mr. Ted McFetridge
Judge James Perry
Ms. Jennifer Parker (Secretary Schembri)
Judge Hugh Starnes
Ms. Mary Vandenbrook
Ms. Jean-Adel Williams
Mr. Tom Mato (Dr. Zingale)
Judge Robert Doyel
Judge Marci Goodman
Judge Hugh Hayes
Magistrate Jon Johnson
Judge Kathleen Kroll
Mr. Carlos Martinez
Ms. Angela Orkin
Judge Sue Robbins
Mr. Kent Spuhler
Judge Irene Sullivan
Judge Dell Wallace
Ms. Claudia Wright

Staff from the OSCA Office of Court Improvement (OCI):

Patricia Badland
John Couch
Roderick Harris
Linda McNeil
Rose Patterson
Avron Bernstein
Dana Dowling
Christopher Hill
Sandy Neidert
Joanne Snair

In addition, Justice Quince, Florida Supreme Court, Martha Martin and Jo Deyo, OSCA Judicial Education Unit, Blan Teagle, Deputy State Courts Administrator, and Judith Levine, Department of Children and Families were in attendance.

Committee members who could not attend were:

Major Craig Broughton
Judge Daniel Dawson
Judge Scott Bernstein
Ms. Marsha Freeman
Ms. Josie Tamayo
Judge Raymond McNeal
Judge Kerry Evander
Judge Lynn Tepper
Ms. Carol Ortman

Judge Robert Morris, chair, convened the meeting shortly after 9:00 AM by first welcoming a surprise guest. Chief Justice Barbara Pariente stopped by and praised the committee for their continued work and commitment to their assigned charges. She noted that during her travels to the judicial circuits, it is evident that movement is underfoot to implement the unified family

court. Judge Morris then reviewed the agenda and described the progress he hoped the committee would make in following up on their decision at the previous meeting to revisit certain recommendations contained in the May 2001 Supreme Court Opinion.

The Essential Elements were first discussed. OSCA staff had prepared a comparison chart of the elements as set forth in the 2001 opinion with recommendations on proposed changes. Judge Kreeger suggested that greater detail be provided on case management with basic requirements for each circuit to establish directions to include such as the handling of cross-over cases and the use of alternative dispute resolution. Judge Doyel noted that staff recommended that "domestic violence" was no longer treated as an essential element. This led to a general discussion on how to approach a reorganization of the essential elements that both preserved the intent of the 2001 opinion while also providing greater guidance to the trial courts on more effectively achieving the UFC concept.

Staff was asked by the committee to revisit the draft of amendments and expand upon case management, include lawyers and parties under security issues, express the fundamental need for technology to identify related cases, and describe the model intake function. In addition, Judge Starnes suggested that circuits be required to continue submitting annual reports to the Supreme Court with FLAG activities.

The next issue addressed was that of judicial rotation. Judge Morris stated that rotation policies vary among the circuits. Judge Hayes said the 20th circuit had a two year rotation policy; Judge Perry said the 18th circuit had a 12 month rotation policy and Judge Doyel stated that the 10th circuit had an 18 month rotation policy. The committee embarked on a discussion regarding the possibility of requiring certification of family judges similar to the policy currently in place for death penalty cases. The issue of judges presiding in family cases while going through their own divorces needed to be addressed. Judge Morris stated he would appoint a subcommittee to develop a recommendation that would include considerations that chief judges should make when exercising their assignment duties.

Subsequent to the meeting, Judge Morris asked Judge Kroll to chair the Judicial Rotation Workgroup with the following members: Judge Doyel, Judge Kreeger, Judge Green, Judge Evans, Judge Cooper and Judge Starnes.

The next issue for discussion was the chief judge appointment of administrative judges to be responsible for the organization of divisions of court. The committee unanimously concluded that implementation of UFC is hampered when circuits are able to assign multiple administrative judges. They affirmed that the circuits must have one administrative judge accountable for implementing UFC and referred back to the recommendation offered to the Court by another iteration of this committee in 2000.

The One-Family One-Judge concept was next raised by Judge Morris. Claudia Wright offered that a team approach to cases allows judges to avoid UFC; that while it may work well for judges, it does not serve the parties. Judge Kreeger agreed, and stated that her review of summaries of FLAG meetings indicates that the "one team" approach doesn't work well. Jeanne Howard stated that the One-Family One Judge concept can be difficult for prosecutors and public

defenders that do not have the staff to cover multiple dockets. Kent Spuhler stated that the committee is drifting from our goal of wanting to better serve the public when we revert to discussions about structures and artificial barriers rather than problem-solving solutions.

Judge Morris stated he would create a One-Family One Judge Workgroup to further develop the issue and offer a recommendation to the committee. Subsequent to the meeting, he appointed Judge Robbins to chair the workgroup with the following members: Carlos Martinez, Jeanne Howard, Angela Orkin, Kent Spuhler, Evan Marks, Jean-Adel Williams, Judge Wallace, Judge Hayes, Judge Bernstein and Judge Kreeger.

Judge Morris asked Judge Kreeger to update the committee on her work with the Supreme Court committee that is studying the issue of privacy and electronic access to records. She stated that their report will be submitted to the Supreme Court in July. The committee received a copy of a letter drafted by Judge Renee Goldenberg with recommendations concerning the sealing of certain records related to divorcing families. Judge Kreeger asked the committee to read the letter and send her any comments.

Carlos Martinez announced that the Public Defenders Association was working on obtaining legislative sponsors to pass statutory language that would ensure that children are provided a meaningful opportunity to confer with a lawyer at the early stages of a delinquency proceeding. This is in response to the Supreme Court opinion on the Rules of Juvenile Procedure (January of 2005) wherein the court sought legislative action to address the issue. The language was not available in its final form for the meeting; however, Mr. Martinez stated he would keep the committee apprised. The committee endorsed the concept with the exception of the Department of Juvenile Justice, taking the position that the issue was procedural rather than statutory.

Secretary Schembri stopped by briefly and asked judges to support his concept of leniency on first time offenders who would be better served in diversion programs.

The committee was updated on the status of an appellate ruling related to the use of general magistrates for certain dependency court proceedings. A representative from the Department of Children and Families, Judith Levine, addressed the group regarding the DCF position that magistrates should be prohibited from hearing shelter, adjudicatory, and termination of parental rights proceedings. A lengthy discussion ensued and a vote was eventually taken on rule language to that affect that was drafted by Avron Bernstein, senior attorney and staff support to the committee. The proposed language was voted favorably by majority vote with two dissents.

After a working lunch, Judge Morris asked the subcommittees to provide an update of their activities.

Delinquency / Domestic Violence Subcommittee – A site visit to the Delinquency Domestic Violence Mediation Program in the 15th judicial circuit has been arranged for March 17th. The committee is still awaiting data from the Department of Juvenile Justice regarding frequency of DV crimes committed by youth on family members.

Domestic Relations / Domestic Violence Subcommittee – The work group is developing

minimum standards for case management, assisting the clerks of the court in developing their guiding principles for UFC, establishing protocols to coordinate criminal DV cases with related cases, creating a standard process for intake of DR and DV cases, and addressing outreach to stakeholders in furthering UFC.

Domestic Relations / Dependency Subcommittee – Judge Robbins distributed a dependency case plan brochure under development that offers families a simplified summary of the lengthy case plan document.

Dependency / Delinquency Subcommittee – Avron Bernstein reported that the subcommittee had discussed the delinquency court brochure and a project in the 6th Judicial Circuit regarding attendance of children in court. The 6th Circuit's program sets aside specific dates on which to have children attend their judicial review hearings. The subcommittee also discussed the Dependency Reassessment with Christopher Hill as well as an article by Claudia Wright regarding an IEP approach to juvenile cases. Avron then reported that the subcommittee discussed recently promulgated Florida Rule of Juvenile Procedure 8.257 on the use of magistrates and a possible amendment thereto regarding hearings over which a magistrate could not preside. This led to the full Committee's discussion and disposition of that issue.

John Couch provided an overview of the UFC stakeholder outreach plans that the subcommittees developed the day before. He addressed some of the common barriers that were identified by the subcommittees which included: issues with the Clerk's Office, resistance to change, misperceptions on the meaning of UFC, and stakeholder inclusion in Family Law Advisory Groups. He then stated some of the outreach tools that the subcommittees came up with including: benchbooks, workshops, videos, websites, and state grants. He concluded by naming several of the outreach goals set by the subcommittees.

Judge Morris welcomed Sharon Press, Chief of Alternative Dispute Resolution unit of the OSCA, who provided an update on the proposed changes in qualifying individuals to be certified family and dependency mediators. She stated that the current process of relying on educational credentials to certify mediators has served the courts well in firmly establishing the use of mediation. However, the Supreme Court ADR committee recognizes that a degree should not be solely relied upon in determining fitness to mediate court ordered cases. A point system that combines education and length of years of mediation will be proposed to the Supreme Court.

Avron Bernstein provided a legislative update on the Family Efficiency bill, Drug Court bill, Reorganization of Chapter 985; and Psychotropic Medications for children bill. He stated that all were moving through their committees of referral and being reported out favorably.

Joanne Snair offered an update of the planned Family Court Conference to be held October 6-7 in Orlando. She advised that she would be seeking FCC assistance in developing the workshops and conference goals.

Christopher Hill provided an overview of the activities of the Office of Court Improvement. This overview addressed OCI's mission and major initiatives which include: Child Support, Delinquency, Dependency, Domestic Violence, Drug Court, and Unified Family Court.

Judge Morris stated that the next FCC meetings would be held in Tallahassee with subcommittee meetings to precede the full group discussions. The meetings are set for May 12th – 13th and August 18th – 19th. He then adjourned the meeting.

APPENDIX E

Chapter 2005-236
H.B. No. 1935
JUDICIAL CIRCUITS--STATE ATTORNEYS--CLERKS OF COURT

Section 35. Section 57.082, Florida Statutes, is created to read:

<< FL ST § 57.082 >>

57.082. Determination of civil indigent status

(1) Application to the clerk.--A person seeking appointment of a private attorney in a civil case eligible for court-appointed counsel, or seeking relief from prepayment of fees and costs under s. 57.081, based upon an inability to pay must apply to the clerk of the court for a determination of civil indigent status using an application form developed by the Florida Clerks of Court Operations Corporation with final approval by the Supreme Court.
(a) The application must include, at a minimum, the following financial information:
1. Net income, consisting of total salary and wages, minus deductions required by law, including court-ordered support payments.
2. Other income, including, but not limited to, social security benefits, union funds, veterans' benefits, workers' compensation, other regular support from absent family members, public or private employee pensions, unemployment compensation, dividends, interest, rent, trusts, and gifts.
3. Assets, including, but not limited to, cash, savings accounts, bank accounts, stocks, bonds, certificates of deposit, equity in real estate, and equity in a boat or a motor vehicle or in other tangible property.
4. All liabilities and debts.

The application must include a signature by the applicant which attests to the truthfulness of the information provided. The application form developed by the corporation must include notice that the applicant may seek court review of a clerk's determination that the applicant is not indigent, as provided in this section.
(b) The clerk shall assist a person who appears before the clerk and requests assistance in completing the application and the clerk shall notify the court if a person is unable to complete the application after the clerk has provided assistance.
(c) The clerk shall accept an application that is signed by the applicant and submitted on his or her behalf by a private attorney who is representing the applicant in the applicable matter.
(2) Determination by the clerk.--The clerk of the court shall determine whether an applicant seeking such designation is indigent based upon the information provided in the application and the criteria prescribed in this subsection.
(a) 1. An applicant, including an applicant who is a minor or an adult tax-dependent person, is indigent if the applicant's income is equal to or below 200 percent of the then-current federal poverty guidelines prescribed for the size of the household of the applicant by the United States Department of Health and Human Services.
2. There is a presumption that the applicant is not indigent if the applicant owns, or has equity in, any intangible or tangible personal property or real property or the expectancy of an interest in any such property having a net equity value of $2,500 or more, excluding the value of the person's homestead and one vehicle having a net value not exceeding $5,000.
(b) Based upon its review, the clerk shall make one of the following determinations:
1. The applicant is not indigent.
2. The applicant is indigent.
(c) If the clerk determines that the applicant is indigent, the clerk shall immediately file the determination in the case record.

(d) The duty of the clerk in determining whether an applicant is indigent is limited to receiving the application and comparing the information provided in the application to the criteria prescribed in this subsection. The determination of indigent status is a ministerial act of the clerk and may not be based on further investigation or the exercise of independent judgment by the clerk. The clerk may contract with third parties to perform functions assigned to the clerk under this section.

(e) The applicant may seek review of the clerk's determination that the applicant is not indigent in the court having jurisdiction over the matter by filing a petition to review the clerk's determination of nonindigent status for which a filing fee may not be charged. If the applicant seeks review of the clerk's determination of indigent status, the court shall make a final determination as provided in subsection (4).

(3) Appointment of counsel on an interim basis.--If the clerk of the court has not made a determination of indigent status at the time a person requests appointment of a private attorney in a civil case eligible for court-appointed counsel, the court shall make a preliminary determination of indigent status, pending further review by the clerk, and may, by court order, appoint private counsel on an interim basis.

(4) Review of the clerk's determination.--

(a) If the clerk of the court determines that the applicant is not indigent and the applicant seeks review of the clerk's determination, the court shall make a final determination of indigent status by reviewing the information provided in the application against the criteria prescribed in subsection (2) and by considering the following additional factors:

1. Whether paying for private counsel or other fees and costs creates a substantial hardship for the applicant or the applicant's family.

2. Whether the applicant is proceeding pro se or is represented by a private attorney for a fee or on a pro-bono basis.

3. When the applicant retained private counsel.

4. The amount of any attorney's fees and who is paying the fees.

5. Any other relevant financial circumstances of the applicant or the applicant's family.

(b) Based upon its review, the court shall make one of the following determinations and shall, if appropriate, appoint private counsel:

1. The applicant is not indigent.

2. The applicant is indigent.

(5) Processing charge; payment plans.--A person who the clerk or the court determines is indigent for civil proceedings under this section shall be enrolled in a payment plan under s. 28.246 and shall be charged a one-time administrative processing charge under s. 28.24(26)(c). A monthly payment amount, calculated based upon all fees and all anticipated costs, is presumed to correspond to the person's ability to pay if it does not exceed 2 percent of the person's annual net income, as defined in subsection (1), divided by 12. The person may seek review of the clerk's decisions regarding a payment plan established under s. 28.246 in the court having jurisdiction over the matter. A case may not be impeded in any way, delayed in filing, or delayed in its progress, including the final hearing and order, due to nonpayment of any fees by an indigent person.

(6) Financial discrepancies; fraud; false information.--

(a) If the court learns of discrepancies between the application and the actual financial status of the person found to be indigent, the court shall determine whether the status and any relief provided as a result of that status shall be revoked. The person may be heard regarding the information learned by the court. If the court, based on the information, determines that the person is not indigent, the court shall revoke the provision of any relief under this section.

(b) If the court has reason to believe that any applicant, through fraud or misrepresentation, was improperly determined to be indigent, the matter shall be referred to the state attorney. Twenty-five percent of any amount recovered by the state attorney as reasonable value of the services rendered, including fees, charges, and costs paid by the

state on the person's behalf, shall be remitted to the Department of Revenue for deposit into the Grants and Donations Trust Fund within the Justice Administrative Commission. Seventy-five percent of any amount recovered shall be remitted to the Department of Revenue for deposit into the General Revenue Fund.
(c) A person who knowingly provides false information to the clerk or the court in seeking a determination of indigent status under this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 76. Except as otherwise provided herein, this act shall take effect July 1, 2005.

APPENDIX F

Chapter 2004-389
S.B. No. 2046
ADOPTION--FOSTER CARE--DEPARTMENT OF CHILDREN AND FAMILY SERVICES

An act relating to adoption; amending s. 39.812, F.S.; restricting the ability of the Department of Children and Family Services to remove a child from the home of a foster parent or court-ordered custodian under certain circumstances; providing an exception to a requirement that a department consent be attached to an adoption petition; amending s. 63.062, F.S.; requiring a waiver of department consent under certain circumstances; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (4) and (5) of section 39.812, Florida Statutes, are amended to read:

<< FL ST § 39.812 >>

39.812. Postdisposition relief; petition for adoption

(4) The court shall retain jurisdiction over any child placed in the custody of the department until the child is adopted. After custody of a child for subsequent adoption has been given to the department, the court has jurisdiction for the purpose of reviewing the status of the child and the progress being made toward permanent adoptive placement. As part of this continuing jurisdiction, for good cause shown by the guardian ad litem for the child, the court may review the appropriateness of the adoptive placement of the child. When a licensed foster parent or court-ordered custodian has applied to adopt a child who has resided with the foster parent or custodian for at least 6 months and who has previously been permanently committed to the legal custody of the department and the department does not grant the application to adopt, the department may not, in the absence of a prior court order authorizing it to do so, remove the child from the foster home or custodian, except when:
(a) There is probable cause to believe that the child is at imminent risk of abuse or neglect;
(b) Thirty days have expired following written notice to the foster parent or custodian of the denial of the application to adopt, within which period no formal challenge of the department's decision has been filed; or
(c) The foster parent or custodian agrees to the child's removal.
(5) The petition for adoption must be filed in the division of the circuit court which entered the judgment terminating parental rights, unless a motion for change of venue is granted pursuant to s. 47.122. A copy of the consent executed by the department as required under s. 63.062(7) must be attached to the petition, unless the court determines that such consent is being unreasonably withheld and provided that the petitioner has filed with the court a favorable preliminary adoptive home study performed by a licensed child-placing agency, a child-caring agency registered under s.409.176, or a licensed professional or agency described in s. 61.20(2). The petition must be accompanied by a form provided by the department which details the social and medical history of the child and each parent and includes the social security number and date of birth for each parent, if such information is available or readily obtainable. The person seeking to adopt the child may not file a petition for adoption until the judgment terminating parental rights becomes final. An adoption proceeding under this subsection is governed by chapter 63, as limited under s. 63.037.

Section 2. Subsection (7) of section 63.062, Florida Statutes, is amended to read:

<< FL ST § 63.062 >>

63.062. Persons required to consent to adoption; affidavit of nonpaternity; waiver of venue

(7) If parental rights to the minor have previously been terminated, the adoption entity with which the minor has been placed for subsequent adoption may provide consent to the adoption. In such case, no other consent is required. The consent of the department shall be waived upon a determination by the court that such consent is being unreasonably withheld, provided that the petitioner has filed with the court a favorable preliminary adoptive home study performed by a licensed child-placing agency, a child-caring agency registered under s. 409.176, or a licensed professional or agency described in s. 61.20(2).

Section 3. This act shall take effect upon becoming a law.

Approved by the Governor July 1, 2004.

Filed in Office Secretary of State July 1, 2004.

APPENDIX G

Chapter 2002-65
C.S.H.B. No. 549
CHILDREN AND MINORS--CUSTODY--JURISDICTION

An act relating to child custody jurisdiction and enforcement; amending s. 39.502, F.S.; conforming references and cross references; re-enacting s. 44.102, F.S.; to incorporate an amendment to s. 61.13, F.S.; amending s. 61.13, F.S.; conforming a reference; providing for the posting of a bond with respect to certain orders of child custody or visitation; providing criteria for the court to use in assessing the need for a bond; providing for forfeiture of the bond under certain circumstances; creating sections 61.501 through 61.542, F.S., cited as the "Uniform Child Custody Jurisdiction and Enforcement Act"; providing purposes; providing definitions; specifying proceedings not governed by the act; providing application to Indian tribes; providing international application of the act; providing the effect of a child custody determination; providing priority for questions jurisdiction under the act; providing for notice to persons outside the state; providing for appearance at proceedings and limited immunity; providing for communication between courts of this state and courts of other states; providing for taking testimony in another state; providing for cooperation between courts and the preservation of records; providing for initial child custody jurisdiction; providing for exclusive, continuing jurisdiction; providing for jurisdiction to modify a child custody determination; providing for temporary emergency jurisdiction; providing for notice, opportunity to be heard, and joinder; providing procedures with respect to simultaneous proceedings; providing for determination of an inconvenient forum; providing procedures for a court to decline jurisdiction by reason of conduct; specifying information to be submitted to the court; providing for the appearance of the parties and the child at proceedings; providing definitions relating to enforcement; providing for enforcement under the Hague Convention; providing duty of the court to enforce child custody determinations of a court of another state; providing for temporary visitation; providing for registration of out-of-state child custody determinations; providing for enforcement of registered determinations; providing procedures with respect to simultaneous proceedings; providing for expedited enforcement of a child custody determination; providing for service of petition and order; providing for hearing and order; providing for issuance of a warrant to take physical custody of a child under certain circumstances; providing for award of costs, fees, and expenses to the prevailing party; providing for recognition of enforcement orders of a court of another state; providing for appeals; providing for actions by the state attorney; providing for actions by law enforcement officers; providing for assessment of costs and expenses incurred by the state attorney and law enforcement officers; providing for application and construction of the act; providing for transition; amending s. 741.30, F.S.; conforming references and cross references; repealing ss. 61.1302, 61.1304, 61.1306, 61.1308, 61.131, 61.1312, 61.1314, 61.1316, 61.1318, 61.132, 61.1322, 61.1324, 61.1326, 61.1328, 61.133, 61.1332, 61.1334, 61.1336, 61.1338, 61.134, 61.1342, 61.1344, 61.1346, and 61.1348, F.S., relating to the "Uniform Child Custody Jurisdiction Act"; providing an effective date.

Section 5. Sections 61.501 through 61.542, Florida Statutes, are created to read:

<< FL ST § 61.501 >>

<<+61.501. Short title**+>>**

<<+This part may be cited as the "Uniform Child Custody Jurisdiction and Enforcement Act."**+>>**

Section 7. **<<+**Sections 61.1302, 61.1304, 61.1306, 61.1308, 61.131, 61.1312, 61.1314, 61.1316, 61.1318, 61.132, 61.1322, 61.1324, 61.1326, 61.1328, 61.133, 61.1332, 61.1334,

61.1336, 61.1338, 61.134, 61.1342, 61.1344, 61.1346, and 61.1348, Florida Statutes, are repealed. **+ > >**

Section 8. This act shall take effect October 1, 2002.