

Supreme Court of Florida
651 East Jefferson Street
Tallahassee, Florida 32399-2300

March 17, 2006

RE: Comments to proposed amendments to Fla. R. App. P. 9.130(a)(3)(C)(iii)

To Whom it May Concern:

This office represents dependent children aged zero to twelve years of age and their siblings who are in shelter or foster care. Our Project was funded to reduce the length of time these children remain in foster care and expedite them to permanency. We accomplish our mission by defending state laws requiring one year to permanency, and as endorsed in the federal Adoption and Safe Families Act.

Currently, the biggest obstacle to permanency is the appeal by a parent of a termination of parental rights order. These appeals are guaranteed to indigent parents who are provided free counsel to protect their fundamental right to custody of their children. Although expedited, invariably such appeals delay our clients' permanency on the average of nine months.

The proposed amendment to Fla. R. App. P. 9. 130(a)(3)(C)(iii), would cause a significant and unnecessary barrier to achieving permanency in a timely manner. The impact of this amendment on our children could be devastating.

Consider that every day, children are removed from their custodians on an emergency basis upon a finding of probable cause of abuse, abandonment or neglect by a trial court judge. This amendment would enable any custodian affected by that order to appeal. Although this appeal does not automatically stay the lower court proceedings, most trial courts are loathe to finalize any child's placement until all pending legal challenges are first resolved.

These appeals would invariably postpone and complicate proceedings. In motions to modify placement, the lower court's findings must be based on the best interest of the child and must be upheld if supported by competent and substantial evidence. Such findings must be affirmed unless clearly erroneous or lacking in evidentiary support. *Rump v. V.D.*, 667 So. 2d 998-99 (Fla. 3rd DCA 1996)(Schwartz, J., concurring). This burden is so high that it would be rare when such findings are reversed. Yet, the amendment would

give the green light to anyone adversely affected by a child custody order to appeal.

The proposed amendment would conflict with existing Florida law and procedure. While an aggrieved custodian's appeal is pending, he/she may logically assert in the trial court the right to visitation with the child. This amendment would invariably expand the pool of litigants below by allowing former custodians to continue to assert claims, i.e. visitation, while their appeal is pending. The procedures currently in place have standing to participate in the process, consistent with curtailing extraneous litigation to prevent the process from descending into a zoo-like situation.

Apart from further delaying the child's permanency, the impact of this amendment would flood litigation at the appellate level. Consider an all too-common scenario: A child is moved from foster care belatedly to an out of state relative after many months of waiting for a positive home study on that relative. The relative has priority for placement so the court has little choice in modifying placement. The interstate compact process for home studies is slow and beyond anyone's control. Once the child is moved out of state to that placement, that court order deprives the foster parent of custody. This is a foster parent who loves the child and is left broken hearted by the modification. This is a foster parent who is most apt to challenge the nonfinal custody order. The impact on the child is devastating. Permanency is again elusive for that child.

Consider another situation where you have relatives competing for child custody. The maternal grandparent loses the child to the paternal grandparent. The aggrieved relative may now challenge the court's order.

These are some of the logjams children face as a result of the amendment. In giving life to the claims of such persons who have lost custody of Florida's most helpless populace, the children's lives are again left in limbo. To avoid such a scenario for Florida's foster children, it is imperative that the focus remain on the parent's right to custody and the children's right to permanence as presently balanced within the existing statutory framework which allows for appeal of truly final orders.

On behalf of these children, we ask that you reject this amendment.

Sincerely,

John Walsh
Managing Attorney
Legal Aid Society, Foster Children's Project

cc: Jack C. Reiter, Esq., The Florida Bar Appellate Court Rules Committee Chair
Ryan Thomas Truskoski, Esq.
E-mail submission to Supreme Court
Robert Bertisch, Director, Legal Aid Society of Palm Beach County, Inc.