

IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENT TO THE FLORIDA
RULES OF JUVENILE PROCEDURE

CASE NO.: SC07-1162

COMMENTS OF THE FLORIDA PUBLIC DEFENDER ASSOCIATION

Comes now, the, Florida Public Defender Association (FPDA) and presents these comments regarding the potential fiscal impact of and additional information about the proposed changes to Florida Rule of Juvenile Procedure 8.165. The Public Defenders state:

1. As it did when the amendment was initially proposed, the FPDA strongly supports amending the juvenile rule of procedure to require a meaningful opportunity to confer with counsel before a child relinquishes his right to counsel in a delinquency proceeding.
2. Even though this Court adopted significant changes to Florida Rule of Juvenile Procedure 8.165 in 2005, the problem persists while the consequences to children with delinquency cases have gotten worse.¹

¹ Effective July 1, 2007, Florida teenagers adjudicated delinquent of certain charges are subject to sex offender registration under Senate Bill 1604 .

3. After this Court enacted the changes in January 2005, the National Juvenile Defender Center (NJDC) conducted an assessment of children's access to counsel in delinquency proceedings in Florida. The NJDC subsequently issued a report, *An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* (2006). The findings and recommendations in the report were based on extensive survey data collected in 2005 from and interviews with juvenile court judges, defense counsel, probation officers, prosecutors and other juvenile court personnel; and site visits and court observations in fifteen counties cutting across ten of Florida's 20 judicial circuits. Counties were selected based on a variety of factors, including population, geography, demographics, juvenile arrest data, and disposition rates. The sample includes urban, suburban and rural counties.
4. In the report, the NJDC summarized its observations of the excessive waiver of counsel, stating

"Youth in Florida's courts, even very young children, were observed routinely waiving the constitutional right to counsel. This often occurs with a wink and a nod – or even encouragement - from judges. Judges were sometimes observed implying that

waiving counsel and making an admission was a way to resolve the case quickly, get out of the courtroom, and not have to set another date so the child's parent or guardian would not need to miss work and return to court again. Other players in the delinquency system would echo this approach. All this was done without counsel being present or any meaningful discussion of the potential long-term disadvantages of waiving counsel taking place while the advantages were dangled in front of the children like candy.

Judges generally comply with the procedural rule requiring that a waiver be in writing, but seem to regard the written form as a substitute for a meaningful inquiry into the youth's understanding. The written form(s) are complex and rarely explained. Despite a consistent body of appellate decisions on the need for judges to ensure that a waiver of counsel is knowing and intelligent, several judges we observed accepted waivers from youth after cursory, superficial colloquies.

The procedural rule mandating that youth consult with an adult about the waiver decision is helpful, but routinely flouted.

Consultation with a parent may also be an inadequate safeguard.

Florida has created incentives, some subtle and some not so subtle, that encourage parents to pressure youth into waiving counsel.

Indigence and application fees, other surcharges, complex application forms, and inadequate oversight of indigence determinations by judges also discourage youth and families from exercising the right to counsel.”

5. In *Amendments to the Florida Rules of Juvenile Procedure*, 894 So. 2d 875,880 (Fla. 2005), this Court expressed concern about “the potential financial impact of the amendment to rule 8.165(a) regarding consultation with attorneys.”
6. According to information gathered by the FPDA, the fiscal impact on the public defenders advising a child of his or her legal rights before being permitted to waive the right to counsel is minimal.
7. However, if a public defender is appointed to represent a child in a case because the child chooses not to waive his or her right to counsel, some circuits would be significantly affected and others would not. In large circuits like the Fourth (Jacksonville), the Eleventh (Miami), the Thirteenth (Tampa), and the Seventeenth (Broward), there would be no impact because the common practice there is to appoint a public defender to almost all indigent children.

In the Second, Sixth, and Twelfth Circuits, there could be a significant increase in caseloads because it is not standard practice to appoint the Public Defender to almost all cases.

8. The FPDA requests that this Court balance the potential fiscal impact against the likelihood that reversals on appeal in which a child has not received legal counsel may decrease if the amendment to the rule is adopted.
9. The Public Defenders do not believe that the caseload increases and fiscal impact will be unduly burdensome. While there will be increases, most offices will be able to absorb those increases within current staffing levels or with the addition of a minimal number of positions. The Public Defenders remain supportive of the proposed rule changes and agree to provide the consultation required by the proposed rule.

Respectfully submitted,

Florida Public Defender Association

CARLOS J. MARTINEZ
Vice President,
Florida Public Defender Association
Florida Bar # 870846
on behalf of Richard Parker,
Public Defender, President,
Florida Public Defender Association

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U. S. Mail and Electronic mail to: Robert W. Mason, Chairman, Florida Rules of Juvenile Court Rules Committee, Public Defender's Office, 25 N. Market Street, Suite 200, Jacksonville, Florida 32202-2802, rwm@pd4duval.coj.net, Hon. Richard Parker, Public Defender, Eighth Judicial Circuit, President, Florida Public Defender Association, Post Office Box 2820, Gainesville, Florida 32602, parkerr@pdo8.org, David Silverstein, Vice Chair, Florida Rules of Juvenile Court Rules Committee, 501 E Kennedy Blvd Ste 1100, Tampa, Florida 33602-5242, David.Silverstein@myfloridalegal.com, Tamara Gray, Vice Chair, Florida Rules of Juvenile Court Rules Committee, Public Defender's Office, 3300 NW 27th Avenue, Miami, Florida, 33142-5881, tgray@pdmiami.com, Hon. Nancy Daniels, Public Defender, Second Judicial Circuit, Leon County Courthouse, 301 S. Monroe Street, Tallahassee, FL 32301, nancyd@leoncountyfl.gov, Hon. Sandy E. Karlan, Circuit Judge, Eleventh Judicial Circuit, 174 N.W. 1st Ave., Ste. 2327, Miami, FL 33128-1846, skarlan@jud11.flcourts.org, Hon. Lynn Tepper, Circuit Judge, Sixth Judicial Circuit, 38053 Live Oak Ave., Room 106 B, Dade City, FL 33523, ltepper@co.pinellas.fl.us, and John F. Harkness, Jr., Director, The Florida

Bar, 651 East Jefferson Street, Tallahassee, FL 32399-2300,

jharkness@flabar.org, this 15th day of August, 2007.

CARLOS J. MARTINEZ
Vice President,
Florida Public Defender Association
Florida Bar # 870846
on behalf of Richard Parker,
Public Defender, President,
Florida Public Defender Association