

IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO THE  
RULES OF JUVENILE PROCEDURE

Case No. SC08-1236

**THE GUARDIAN AD LITEM PROGRAM'S COMMENTS  
ON THE PETITION OF THE STEERING COMMITTEE ON  
FAMILIES AND CHILDREN IN THE COURT TO AMEND RULE  
8.255 OF THE FLORIDA RULES OF JUVENILE PROCEDURE**

The Statewide Guardian ad Litem Office (“GAL”) represents the best interests of abused, abandoned, and neglected children in dependency proceedings. Florida Statutes require a guardian ad litem be appointed by the court at the earliest possible time to represent the child in a dependency proceeding.<sup>1</sup> The GAL uses a team consisting of a volunteer or staff member and an attorney to represent the best interests of over 29,000 children in dependency proceedings in Florida. The GAL respectfully submits the following comments on the proposed amendment to Rule 8.255 of the Florida Rules of Juvenile Procedure.

**I. BACKGROUND**

The Steering Committee on Families and Children in the Court (“Steering Committee”) proposes to amend Florida Rule of Juvenile

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<sup>1</sup> § 39.822(1), Fla. Stat. (2008).

Procedure 8.255 to require that a child who is either placed in licensed foster care or who is in foster care under a permanency goal of “another planned permanent living arrangement” (“APPLA”) attend all court hearings if they are at least 16 years of age, unless the child’s presence is excused upon a showing of good cause. The proposed rule also provides that any party with good cause may file a motion to excuse the presence of the child.

## **II. COMMENT**

The GAL strongly supports the Steering Committee’s effort to increase older youth’s participation in the dependency process. The GAL believes it is imperative that children of all ages be encouraged to attend court for a variety of reasons. The GAL is in agreement with the Steering Committee that personal appearance in court by older youth affords the best opportunity for the court to carry out the Legislative intent under section 39.701(6)(a)1-10, Florida Statutes, to the extent that the court can better ensure each and every youth reaching the end of their childhood are indeed receiving services and being prepared for adulthood. In addition to this section of the Florida Statutes, there are countless other times that the material discussed at a particular hearing will have a direct impact on the child or older youth, including but not limited to, hearings to address visitation, residential treatment hearings, status conferences on medical or

psychological services, psychotropic medication hearings, inspection of records, and placement decisions in which the child or older youth should be in attendance to voice concerns to the court about their future. Therefore, the GAL supports a broad interpretation of the new proposed rule to provide youth more opportunities to attend court and to take charge of their lives as they enter into adulthood. The GAL does not necessarily believe the rule should be limited to children who are 16 and older and would support any effort by the court to increase the participation of children as parties to the case.

The GAL recognizes further that it may be possible to take a narrow interpretation of the new Rule 8.255(b)(2) unless clarified. Children are parties to dependency proceedings<sup>2</sup> and are therefore, already entitled to be present. The proposed rule might be interpreted to limit participation to those 16 and older. The GAL suggests a policy statement in the rule or commentary concerning the ability of all children to participate. The GAL strongly supports the participation of children of all ages, because their input significantly improves the outcomes for children. Importantly, the GAL wishes to ensure the rule does not serve as a barrier for those children who are under age 16.

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<sup>2</sup> § 39.01(51), Fla. Stat. (2008).

Additionally, the GAL suggests the group of children encompassed in subsection (b) be more precisely defined. The proposed new language to Rule 8.255(b)(2) states:

“any child who is placed in **licensed foster care** or who is in **foster care** with ‘another planned permanent living arrangement’ goal and who is at least 16 years of age must attend all court hearings unless the child’s presence is excused by the court upon a showing of good cause why the child should not attend. Prior to the hearing, any party with good cause may file a motion to excuse the presence of the child”.

The rule identifies two groups of 16 year olds: those in licensed foster care and those in foster care with APPLA goals. The GAL submits that these are not truly two distinct groups, but rather foster care is the group and those with APPLA goals in foster care is a subgroup. However, a child with APPLA as a goal may reside in an unlicensed placement, such as with a non-relative. The GAL believes it would be beneficial for any child with a goal of APPLA to be in court. Similar to children in foster care, those with a goal of APPLA will age out of the system without a family to support them as they become independent adults. Children who age out of the foster care system are more likely to succeed if they are an active part of their own transition plan. Therefore, the GAL suggests the rule identify 16 year olds in foster care and 16 year olds with a goal of APPLA as the groups covered by subsection (b)(2).

The GAL supports increased participation by older youth in court but is concerned about the organizational structure of the proposed amendments. The last sentence of amended Rule 8.255(b)(1) overlaps with the new amendment proposed in Rule 8.255(b)(2). That, combined with the added “good cause” evidentiary standard, differs from the statutory “best interest” standard established in the definition section to “party” in Chapter 39, Florida Statutes.

Chapter 39 defines “party” as:

The parent or parents of the child, the petitioner, the department, the guardian ad litem or the representative of the guardian ad litem program when the program has been appointed, and the child. The presence of the child may be excused by order of the court when the presence would not be in the child’s best interest. Notice to the child may be excused by order of the court when the age, capacity, or other condition of the child is such that the notice would be meaningless or detrimental to the child.

The child’s appearance at a hearing is procedural in nature and therefore, falls within the Court’s authority to prescribe procedural rules, especially rules providing greater procedural due process. In this case, the Steering Committee’s proposal of a good cause evidentiary standard, rather than a best interest evidentiary standard for excusing the attendance of older youth who are age 16 should withstand challenge, even though the

Legislature employs a best interest standard as the basis for excusing children from appearing in court.<sup>3</sup>

Lastly, as a technical matter, the GAL notes a concern with the organization of the rule. Existing subsection (b)(1) of the rule describes the procedure for excusing the presence of any child. The Steering Committee then adds a sentence stating motions to excuse children from proceedings are to follow the procedure in new subsection (b)(2). Subsection (b)(2) applies only to children 16 and older, so as a technical matter, there are two different procedures. It would be possible for the rule to be reorganized so that the procedures for the motions are contained in one subsection, or, alternatively, the new sentence in subsection (b)(1) could clarify that it applies only to children over 16.

### **III. CONCLUSION**

The GAL supports the proposed amendments to Rule 8.255. As the Steering Committee stated in its Petition, “there is no magic age above

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<sup>3</sup> The GAL recognizes a rule provides procedural rights and not substantive rights. In the Interest of J.A., Jr., 367 So. 2d 702, 703(Fla. 2d DCA 1979)(“Substantive law prescribes duties and rights under our system of government, and the Legislature is responsible for enacting such law. Procedural law concerns the means and methods to apply and enforce those duties and rights, and the Supreme Court determines procedural law through the promulgation of rules”); State v. Garcia, 229 So.2d 236, 238 (Fla. 1969)(“The rules adopted by the Supreme Court are limited to matters of procedure, for a rule cannot abrogate or modify substantive law.”).

which all children may be presumed to be mature enough to attend court proceedings but below which they are not.” The GAL is in agreement that children in dependency cases have endured a wide range of abuse, neglect or abandonment and that each child is unique and by attending the court hearings, is able to offer the court a different perspective as to his/her life. Therefore, older youth in the dependency system must not only be seen and heard by the court, but also encouraged and empowered to actively participate in each step of the decision-making process. The GAL recognizes that children and older youth are parties to the case and should be present at every stage of the dependency hearings, unless excused by the court. The GAL commends the Steering Committee for all of its hard work and dedication to this cause.

Respectfully submitted,

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Dennis W. Moore  
Florida Bar No.: 0273340  
General Counsel  
Statewide Guardian ad Litem Office  
The Holland Building  
600 South Calhoun Street, Suite 274  
Tallahassee, Florida 32399-0979  
Phone: (850) 922-7213  
Fax: (850)922-7211

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent this \_\_\_\_\_ day of October 2008 was provided by U.S. Mail to The Honorable Nikki Ann Clark, Steering Committee Chair, Leon County Courthouse, 301 South Monroe Street, Tallahassee, Florida 32302.

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Dennis W. Moore

**CERTIFICATE OF COMPLIANCE**

I HEREBY CERTIFY that the foregoing document utilizes computer-generated Times New Roman 14-point font, this \_\_\_\_\_ day of October 2008.

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Dennis W. Moore