

IN THE SUPREME COURT OF FLORIDA

**IN RE: AMENDMENTS TO THE
FLORIDA RULES OF JUVENILE
PROCEDURE**

CASE NO.: SC08-1236

**COMMENTS OF THE JUVENILE COURT
RULES COMMITTEE**

David N. Silverstein, Chair, Juvenile Court Rules Committee, and John F. Harkness, Jr., Executive Director, The Florida Bar, file these comments to the petition of the Steering Committee on Families and Children in the Court to amend *Fla. R. Juv. P.* 8.255, as requested by the Court in its publication for comment of this rule amendment in the August 1, 2008, *Florida Bar News*. See Appendix A.

The Steering Committee proposes to amend *Rule* 8.255(b)(2) to require that a child in licensed foster care or in foster care with “another planned permanent living arrangement” and who is at least 16 years old be required to attend all court hearings unless the child’s presence is excused by the court on the showing of good cause. The Juvenile Court Rules Committee considered the proposed amendment at its September 11, 2008, meeting and has the following comments and suggestions. The comments have been reviewed by the Executive Committee of The Florida Bar Board of Governors in accordance with *Fla. R. Jud. Admin.* 2.140(f) and approved by a vote of 8-0.

1. Proposed amendments to *Rule* 8.255(b)(2) provide that any child “who is in licensed foster care or who is in foster care with ‘another planned permanent living arrangement’ goal” and who is at least 16 years old must attend all court hearings. The Juvenile Court Rules Committee proposes that this should be changed to read “any child who ~~is in licensed~~

~~foster care or who is in foster care with ‘another planned permanent living arrangement’~~ goals eligible for independent living and who is at least 16 years old.” The Committee believes this change makes the rule more inclusive for all children who have been placed outside their home and who are aging out of the system and are entitled to independent living services. The rule as currently written would exclude children placed with relatives or nonrelatives who are not in licensed care (*e.g.*, those placed with a guardian or relative). The vote on this comment was 25-3-3.¹

2. The Committee believes that it is better to involve a dependent child at the earliest possible time in preparing for independent living. Having children in court can lead to permanency sooner because the child can see the reality of the situation and tell the court what he or she wants and where he or she wants to live. Children often complain that they are not informed about how their case is progressing. Although children have a right to be present at dependency hearings, *see Rule 8.255(b)*, the reality is they are seldom brought to court. The Committee recommends lowering the age requirement in the rule from 16 to 13, the age at which the court must begin considering the child’s “preparation for adulthood and independent living” in judicial reviews. *See § 39.701(8)(j)*, Fla. Stat. The vote on this comment was 18-8-5.

3. The Committee acknowledges that the requirement for all 16 or 13 years old to attend court would involve the transportation of a large number of children and may create financial and other burdens on the state, community based-care agencies, relative caregivers, foster parents, and nonrelative caregivers. The Committee did not have sufficient information regarding these effects. The vote on this comment was 16-5-6.

¹ The Committee is also recommending that the age in the proposed rule be changed from 16 to 13.

4. The Committee was uncertain of the consequences of a child's failure to appear. Does the child's failure to appear preclude the hearing from proceeding? Even an adolescent child will most likely have to rely on adults to bring him or her to court. It is important to engage the child in the process and obtain his or her input. However, if the child willfully chooses not to attend by making him or herself unavailable, the hearing should not be delayed but should proceed in the child's absence. The vote on this comment was 17-6-7.

5. The Committee believed that the proposed amendments can cause confusion, since the court is already able to require the presence of a child pursuant to *Rule* 8.255(b). Because the amendments to the rule create an additional statement of what is already a "right" of the child to attend hearings, the amendments may be unnecessary.

There was also concern among Committee members that requiring the Department of Children and Family Services (the department) to bring a child to court may be outside the scope of the rulemaking process because the issue is more substantive than procedural. Costs and complications associated with transporting the child are beyond the court's control. The rule as proposed mandates action by the department and incurring of costs.

Finally, because there is no standard for "good cause" to excuse the attendance of the child, it is likely that children will receive disparate treatment based on where they live. The Committee heard comments, for example, that it would be a greater burden to transport children in the rural areas of the Panhandle as opposed to metropolitan areas of the state and that "good cause" might include the cost or time associated with transporting children. If this is the case, it would appear that the rule would accomplish little.

The vote on these comments was 17-6-6.

Respectfully submitted _____.

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Certificate of Service

I certify that a copy of these comments were provided to Hon. Nikki Ann Clark, Chair, Steering Committee on Families and Children in the Court, Leon County Courthouse, 302 South Monroe Street, Tallahassee, FL 32301, by U.S. mail on _____.

APPENDIX A

The Steering Committee on Families and Children in the Court has submitted to the Florida Supreme Court a petition seeking to amend Florida Rule of Juvenile Procedure 8.255, General Provision for Hearing, to require a child who is in licensed foster care or foster care with “another planned permanent living arrangement” goal who is at least 16 years old to attend all court hearings, unless the child’s presence is excused based on a showing of good cause.

The Court invites all interested persons to comment on the Steering Committee's proposed amendments, which are reproduced in full below, as well as online at <http://www.floridasupremecourt.org/decisions/proposed.shtml> . The Court specifically seeks comments from the Juvenile Court Rules Committee. An original and nine paper copies of all comments must be filed with the Court on or before October 1, 2008, with a certificate of service verifying that a copy has been served on Steering Committee Chair, The Honorable Nikki Ann Clark, Leon County Courthouse, 301 South Monroe Street, Tallahassee, Florida 32302, as well as a separate request for oral argument if the person filing the comment wishes to participate in oral argument, which may be scheduled in this case. The Steering Committee Chair has until October 21, 2008, to file a response to any comments filed with the Court. Electronic copies of all comments also must be filed in accordance with the Court's administrative order In re Mandatory Submission of Electronic Copies of Documents, Fla. Admin. Order No. AOSC04-84 (Sept. 13, 2004).

IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO FLORIDA RULE OF JUVENILE
PROCEDURE 8.255, CASE NO. SC08-1236

RULE 8.255. General Provisions for Hearings

(a) [No Change]

(b) Presence of Child.

(1) The child has a right to be present at the hearing unless the court finds that the child’s mental or physical condition or age is such that a court

appearance is not in the best interest of the child. Any party may file a motion to require or excuse the presence of the child. A motion to excuse the presence of a child filed under this subsection shall be subject to the provisions in subdivision (2), if applicable.

(2) 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 a child.

(c) – (h) [No Change]

Committee Notes

[No Change]