

IN THE SUPREME COURT OF FLORIDA

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

CASE NO.:

**PETITION OF THE STEERING COMMITTEE ON
FAMILIES AND CHILDREN IN THE COURT TO AMEND
THE FLORIDA RULES OF JUVENILE PROCEDURE**

The Steering Committee on Families and Children in the Court (Steering Committee), by and through its chair, Circuit Judge Nikki Ann Clark, submits this Petition pursuant to this Court’s August 30, 2006 Administrative Order AOSC06-30 (Administrative Order).

During its term, the Steering Committee convened subcommittees to address the charges contained in the Administrative Order, one of which directed the Steering Committee to “Examine the role of courts in dependency cases in which children leave the foster care system without a permanent family, such as when the child reaches adulthood and ‘ages out’ of the foster care system.” Administrative Order 2. The Steering Committee was further directed to “develop recommendations for courts handling these cases and formulate an action plan for implementing those recommendations by the court system.” *Id.* The Steering Committee is submitting its Report to the Supreme Court under separate cover. Because that Report will contain, *inter alia*, other recommendations for this charge,

this Petition is limited to the Steering Committee’s proposed amendment to the rules of court procedure.

The Steering Committee proposes to amend Florida Rule of Juvenile 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)¹ must attend all court hearings if they are at least 16 years of age², 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.

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.

¹ Another planned permanent living arrangement (APPLA) is a permanency goal permitted if the court finds: that reunification is not in the best interests of the child; that a more permanent placement, such as adoption, permanent guardianship, or placement with a fit and willing relative, is not in the best interest of the child; the Department documents reasons why the placement will endure and how the proposed arrangement will be more stable and secure than ordinary foster care; the child’s health, safety, and well-being will not be jeopardized by such an arrangement; and there are compelling reasons that APPLA is the appropriate permanency goal. § 39.6241(a)-(d), Fla. Stat. (2007).

² One of the compelling reasons that placement of a child in APPLA is the most appropriate permanency goal includes the case of a foster child who is 16 years of age or older who chooses to remain in foster care, and the child’s foster parents are willing to care for the child until the child reaches 18 years of age. § 39.6241(d)3, Fla. Stat. (2007).

§ 39.01(50), Fla. Stat. (2007)(emphasis supplied). Thus, under the proposed rule, the child's presence may be sought to be excused by the parents, petitioner, department, Guardian ad Litem, or the child. Current court practices vary as to whether children appear at dependency case hearings, including judicial review hearings.

In 2004, the Legislature passed SB 512, which created current subsection 39.701(6)(a), Florida Statutes. See Ch. 2004-362, Laws of Fla. That provision requires the court to hold a judicial review hearing within 90 days after a child's 17th birthday. § 39.701(6)(a), Fla. Stat. (2007). Subsection 39.701(6)(a)1-10, Florida Statutes enumerates ten criteria for which the Department of Children and Families is required to provide written verification in its judicial review social study report that is submitted to the court for the judicial review hearing.³

Two years later, the Legislature passed HB 7173 which was enacted into law as Chapter 2006-194. See Ch. 2006-194, Laws of Fla. That bill amended section 39.701(6)(a), Florida Statutes to provide for the issuance of

³ In summary, the child must have been provided with: a current Medicaid card; a certified copy of a birth certificate and either a driver's license or Florida identification card; information relating to Social Security Insurance benefits; training on budgeting, interviewing, and parenting skills; information on the Road-to-Independence Program; a bank account or identification necessary to open an account along with banking skills; public assistance information; a clear understanding of living arrangements as of the child's 18th birthday, along with information on living expenses and enrolled educational/school programs; notice of the right to petition for an additional year of court jurisdiction pursuant to § 39.013(2); and encouragement to attend all judicial review hearing occurring after the youth's 17th birthday. See § 39.701(6)(a)1-10, Fla. Stat. (2007).

a court order removing the disability of nonage pursuant to newly created section 743.045, Florida Statutes.⁴ That section provides for the removal of the disability of nonage for children in the Department's care in foster care or subsidized independent living, who have reached 17 years of age, and have been adjudicated dependent in order to execute instruments necessary to enter into a contract for the lease of residential property upon reaching 18 years of age. Such youth are to be provided with a court order removing the disability of nonage. On June 10, 2008, the Governor signed into law HB 625 which, *inter alia*, creates new section 743.046, Florida Statutes. See Chapter 2008-122, Laws of Fla. In similar fashion to section 743.045, Florida Statutes, the newly created section applies to the same group of youth and permits them to execute instruments necessary to enter into a contract for utility services for a residential property. Likewise, the youth is to be given an order removing the disability of nonage. The new law will go into effect on July 1, 2008.

There is no "magic" age above which all children may be presumed to be mature enough to attend court proceedings but below which they are not. Children in dependency cases have endured a wide range of abuse, neglect, or abandonment; have resided in a variety of placements; are of different

⁴ Section 743.045, Florida Statutes was also created by HB 7173.

ages; have different emotional needs and maturity levels; and require different services. Each child is unique. Therefore, a “good cause” standard lends itself to effective case-by-case determinations by the court as to whether children should attend court. Unlike the “best interest” standard in section 39.01(50), Florida Statutes, the standard in the proposed rule requires a showing of “good cause” and contemplates the filing of a motion. In addition, the “best interest” standard has been used to keep children from attending court, on the grounds that the child’s presence in court is not in the child’s best interest. The proposed rule, however, would require a demonstration that good cause exists for the child not to attend. This standard better implements the statutory scheme in section 39.701(6)(a), Florida Statutes regarding services to youth who are approaching their adulthood.

By requiring children who are in APPLA placements or who are 16 years of age to appear in court, the proposed amendment to Rule 8.225 meaningfully implements the aforementioned requirement in section 39.701(6)(a), Florida Statutes that a judicial review be held within 90 days of a youth’s 17th birthday. By the time most youth have reached 17 years of age, the court will likely be conducting only two more judicial review

hearings before the youth attains the age of majority.⁵ Personal appearance in court by the youth affords the best opportunity for the court to carry out Legislative intent under section 39.701(6)(a)1-10, Florida Statutes, that youth reaching the end of their childhood are receiving services and are being prepared for adulthood.

To wait until a youth reaches the age of 17 to require the youth's presence does not truly effectuate the statute. In actual practice, many youth are not brought to court until after they turn 17, if at all. After appearing in court within 90 days of turning 17, such youth might not appear in court again until a few months prior to reaching the age of majority, when little more can be done to ensure that essential or mandated transitional services have been provided. Moreover, by bringing young adults into court when they are 16 years of age, the court is able to determine that the proper services are already starting to be provided. Youth have more options available at the age of 16 than they do after reaching age 17, such as entering into GED programs and career centers. The decisions that a young person makes while 16 will drive the services required when that person is 17 and older. Therefore, allowing the court direct access to youth in court

⁵ Section 39.701(6)(a), Florida Statutes permits more frequent reviews of the child's status during the year prior to the child's 18th birthday. Such reviews, however, obviously are unable to make up for time and opportunities that are lost to the youth due to services not having been provided.

maximizes the opportunity for meaningful review of the services and training provided to transition the young person successfully to adulthood.

During the Steering Committee's term, the subcommittee met with both current and former foster youth through the organizations Connected by 25 and Florida Children's First. The subcommittee members were greatly impressed by the presentations by these dynamic young adults. They strongly advocated for youth attendance at hearings, particularly at judicial review hearings. For whatever reason, the sheer importance of hearings, especially judicial review hearings, is not fully conveyed to many foster children. As a result, many fail to attend hearings, either because adults have decided that they will not attend or because the youth do not know to insist on attending the hearing. Some youth may not be adequately informed that they have the right to a copy of the judicial review social study report filed with the court or that the hearing affords them direct access to the judge. Obviously, the older the youth, the more important their attendance at the hearing becomes. The experiences and discussions of the current and former foster youth were instrumental in the subcommittee's formulation of the rule proposal.

The Steering Committee has considered how best to assist youth who are undertaking the arduous journey from foster children to independent

young adults. By amending Rule 8.225 in the manner proposed, courts will be better situated to assist those young people. Moreover, those young people will be better positioned to avail themselves of the services offered to them. On behalf of the Steering Committee, member Circuit Judge Herbert Baumann presented the proposed rule at the January 17, 2008 meeting of the Juvenile Rules Committee. The members of the Juvenile Rules Committee discussed the proposed amendment and though they ultimately took no formal position or action at that meeting, individual members of the rules committee commented favorably on the proposal. The Juvenile Rules Committee, as a whole, plans to file comments to the proposed rule now that it has been filed.

WHEREFORE, the Steering Committee on Families and Children in the Court respectfully requests that this Court enter an opinion adopting the proposed amendment to the Florida Rules of Juvenile Procedure.

Respectfully submitted,

Nikki Ann Clark, Circuit Judge

CERTIFICATE

I hereby certify that a copy of the foregoing document was provided by mail to: Robert W. Mason, Chair of Juvenile Rules Committee, 25 North Market Street, Suite 200, Jacksonville, Florida 32202-2802; this ____ day of June, 2008.

Nikki Ann Clark, Circuit Judge
Leon County Courthouse
301 South Monroe Street
Tallahassee, Florida 32302

CERTIFICATE

I hereby certify that the foregoing document utilizes computer-generated Times New Roman 14-point font, this ____ day of June, 2008.

Nikki Ann Clark, Circuit Judge

CERTIFICATE

I hereby certify that the foregoing rule proposal has been read against the existing rule of juvenile procedure, this ___ day of June, 2008.

Nikki Ann Clark, Circuit Judge

Rule 8.255 General Provisions for Hearings

(a) Presence of Counsel.

The department must be represented by an attorney at every stage of these proceedings.

(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) Separate Examinations.

The child and the parents, caregivers, or legal custodians of the child may be examined separately and apart from each other.

(d) Examination of Child; Special Protections.

(1) **Testimony by Child.** A child may be called to testify in open court by any party to the proceeding or the court, and may be examined or cross-examined.

(2) **In-Camera Examination.**

(A) On motion and hearing, the child may be examined by the court outside the presence of other parties as provided by law. The court shall assure that proceedings are recorded, unless otherwise stipulated by the parties.

(B) The motion may be field by any party or the trial court on its own motion.

(C) The court shall make specific written findings of fact, on the record, as to the basis for its ruling. These findings may include but are not limited to:

- (i) the age of the child;
 - (ii) the nature of the allegation;
 - (iii) the relationship between the child and the alleged abuser;
 - (iv) the likelihood that the child would suffer emotional or mental harm if required to testify in open court;
 - (v) whether the child's testimony is more likely to be truthful if given outside the presence of other parties;
 - (vi) whether cross-examination would adversely affect the child; and
 - (vii) the manifest best interest of the child.
- (D) The child may be called to testify by means of closed-circuit television or by videotaping as provided by law.

(e) Invoking the Rule.

Before the examination of any witness the court may, and on the request of any party shall, exclude all other witnesses. The court may cause witnesses to be kept separate and to be prevented from communicating with each other until all are examined.

(f) Continuances.

As permitted by law, the court may grant a continuance before or during a hearing for good cause shown by any party.

(g) Record.

A record of the testimony in all hearings shall be made by an official court reporter, a court-approved stenographer, or a recording device. The records of testimony shall be preserved as required by law. Official records of testimony shall be transcribed only on order of the court.

(h) Notice.

When these rules do not require a specific notice, all parties will be given reasonable notice of any hearing.

Steering Committee approved 14-0.

Proposed rule

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Reasons for change

These changes implement section 39.701(6)(a), Florida Statutes which requires, *inter alia*, that the court hold a judicial review hearing within 90 days after a youth’s 17th birthday and that the child be given the opportunity to address the court with any information relevant to the child’s best interest, particularly as it relates to independent living transition services.

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