Legal Aid Society of Palm Beach County, Inc.
Foster Children's Project
423 Fern Street, Suite 220
West Palm Beach, Fl 33401-5826

November 14, 2008

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

Re: SC08-1724 Comments on proposed appellate rules involving juvenile dependency and termination of parental rights cases and cases involving families and children in need of services - Rules 9.130 and 9.146

To Whom it May Concern:

Our office specializes in the representation of dependent children in Palm Beach County, and has been doing so for a decade. One of the most daunting challenges facing our clients is that they are stuck for indeterminable periods of time in foster care.

It is ironic that the proposed juvenile appellate rule amendments in The Florida Bar News, October 15, 2908, were listed under the headline: "Amendments aimed at reducing delays in juvenile proceedings and termination of parental rights appeals," when three of the amendments will no doubt doom those very expectations. Our objections are to proposed appellate rules 9.130(a)(2) and 9.146(c)(2)(a)-(c) , which expand avenues of appeal of non-final orders. These amendments pose grave threats to dependent children's hopes of attaining timely permanency.

By allowing the appeal of these non-final orders, parties will be provided continuous opportunities for appeals at every step of the process, from removal through permanent placement.

Proposed appellate rule 9.146(c)(2) allows any party to take a direct appeal from a shelter hearing. This is likely to cripple an already overburdened system considering on most days there is at least one shelter hearing, and often as many as four to eight. Although Fla. R. J. P. 9.146(c)(1) provides there would be no stay of further proceedings at the lower court "after considering the welfare and best interest of the child," it is illogical to believe that the case could continue at the lower level while the appeal of the shelter is pending. Nearly every major decision about a child revolves around custody. Custody is addressed and redressed at every phase of the proceeding. Despite the intent of the best interests provision that the case proceed notwithstanding the pendency of the appeal, in many instances the appeal will force the child's case to come to a screeching halt.

Consider that the parent may challenge the child being sheltered with a relative. Understandably,

the appeal may dissuade the relative from caring for the child due to concerns about potential conflicts with a parent. Often times the relative does not want to be in the middle of such disputes. One has to consider that the mother may be upset that the paternal relative rather than the maternal relative obtained custody. This scenario would provoke family feuds, with the child being the pawn.

By allowing the appeal of the modification of placement of a child to foster care, into, out of, or within foster care, in accordance with Rule 9.146(c)(2)(b), the door widely opens for any aggrieved parent to challenge a child's placement depending upon the parent's approval or disapproval of a particular foster parent or placement. This allows the parent a critical veto power over the child's placement. As unhealthy as it is for the state to move a child from foster home to foster home, it is a reality in the system and the legislature has long restricted even the court's ability to comment on the specific placement of a child. While our office, as children's attorneys, would like to see the court given more discretion about the child's particular placement, we must recognize that this limitation on the court's power derives from the long standing belief that the Department is in the best position to manage the placement of children into and out of their licensed homes. Granting the power to appeal this decision to any party will create a free-for-all atmosphere where each party fells empowered to appeal a placement decision that they independently determine to be not in the child's best interest, regardless of whether they have that interest at heart or not. The uncertainty this would breed may discourage foster parents from accepting custody of a child due to the fact that the decision to place the child with them is now subject to appellate review. We must be cognizant of the fact that this provision places foster parent on the defensive. It is already difficult enough finding suitable foster parents.

Our objection to Rule 9.146(c)(2)(c) regarding the denial of motions to amend the child's case plan rests in the ability of the parent to challenge not only any service he or she does not like but also the goal or goals approved by the court. This rule has wide-ranging implications considering a parent's appeal would pose a mammoth challenge to the direction of services afforded a family to be completed within a statutory time frame. A dissatisfied parent may opt to appeal the court's approval of a case plan requiring the parent to submit to a psychological evaluation. While the appeal is pending, no evaluation could occur despite indications of the parent's psychosis or a personality disorder that could or would alter the direction of services to that parent AND the child. In this sense, such an appeal may interrupt the quality and progress of services to children. As a further example, this provision provides an easy opportunity for an aggrieved parent to challenge the task of in-patient substance abuse treatment as opposed to out-patient, a common complaint among parents with substance abuse issues. That appeal would waste valuable time that could have been used for a parent to become completely sober and compliant, or fail to do so. Keep in mind that when such a parent needs therapy, it is often recommended that no therapy commence until after the parent completes substance abuse treatment. While that appeal is pending, the child would have to sit and wait, another obstruction to expedited permanency. This would create havoc in the provision of services offered under a case plan. It would eviscerate the time frames of the Adoptions and Safe Family Act and state statutes mandating one year to permanency.

With every opportunity that is presented for an appeal, there exists an increasing likelihood that any stability a child may have achieved in a placement or through a service attained in a therapeutic relationship, would be upset.

These new grounds provide a mine field of obstacles to a child's permanency. The amended rules encourage a parent to take an appeal at any stage because it would be the duty of the attorney to inform the client of that right. It would be tempting for an aggrieved parent to take advantage of each opportunity to challenge a disadvantageous ruling. An aggrieved parent may appeal the ruling from a shelter hearing. Once that appeal ends, that parent may appeal an adjudication of dependency. Once that appeal ends, that parent or another parent may appeal a change of shelter placement. Once that appeal is completed, that parent may appeal another change of placement of the child. For an indigent parent, there is no disincentive to playing these games. Sadly, a parent often can only benefit from delaying the final resolution of a dependency case. Certainly those parents who are willing and able to be reunified with their children would not want to engage in frivolous appeals. However, a large percentage of parents could use these provisions to delay the outcome of the case and all other parties would be powerless to stop them. Even the most frivolous appeal can devour months of precious time. We simply can see no positive end result from these provisions.

This amendment will have huge ramifications for court appointed conflict counsel who, according to § 27.5304(6), Florida Statutes (2008), are required to handle all appeals except for the adjudication of dependency, for the one flat fee for dependency proceedings. If the idea in setting up the conflict counsel system was to save costs by curtailing fees, the added work for the same fee will surely discourage quality attorneys from representing these parents. These rules would create unmanageable case loads for them, let alone for the child's attorney, guardian ad litem attorneys and Department attorneys who would have to defend the appeals.

Appeals of dependency cases are uniquely omitted from the existing appellate rules and there are good and sound reasons why. Our cases are special; they involve our most vulnerable children. In place already is a tried and true method to challenge a non final order. The time-honored writ process remains such an avenue and, point in fact, is a rapid method of resolving any salient point of litigation involving a child.

For these reasons, we urge you to reject the proposed amendment to appellate rules 9.130(a)(2) and 9.146(c)(2)(a)-(c).

Sincerely,

John Walsh
Managing Attorney
Foster Children's Project
Legal Aid Society of Palm Beach County, Inc.

cc: Robert Bertisch, Executive Director, Legal Aid Society of Palm Beach County, Inc.

I HEREBY certify that a true copy of the foregoing has been furnished by U. S. Mail to: Scott M. Dimond, Chair, Rules of Judicial Administration Committee, 2665 S. Bayshore Dr., Penthouse 2, Miami, FL 33133; David M. Silverstein, Chair, Juvenile Court Rules Committee, 501 E. Kennedy Blvd., Suite 1100, Tampa, FL 33602-5242; John S. Mills, Chair, Appellate Court Rules Committee, 865 May St., Jacksonville, FL 32204-3310 and Judge Martha C. Warner, Chair, Commission on District of Appeal Performance and Accountability, Fourth District Court of Appeal, 1525 Palm Beach Lakes Blvd., West Palm Beach, Fl 33401 this 14th day of November, 2008.

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