

IN THE SUPREME COURT OF FLORIDA

**IN RE: AMENDMENTS TO THE FLORIDA RULES
OF JUDICIAL ADMINISTRATION, THE FLORIDA RULES OF
JUVENILE PROCEDURE, AND THE FLORIDA RULES OF
APPELLATE PROCEDURE — IMPLEMENTATION OF THE
COMMISSION ON DISTRICT COURT OF APPEAL
PERFORMANCE AND ACCOUNTABILITY
RECOMMENDATIONS**

CASE NO: SC08-1724

**RESPONSE OF THE JUVENILE COURT RULES
COMMITTEE TO COMMENTS OF THE
DEPARTMENT OF CHILDREN AND FAMILY SERVICES**

David N. Silverstein, Chair, Juvenile Court Rules Committee, and John F. Harkness, Jr., Executive Director, The Florida Bar, file this response to comments of the Department of Children and Family Services to the Committee's proposals filed in the above case. The comments were considered by the Committee on an email vote and approved by a vote of ---.

Rule 8.276: The Committee does not object to the department's request for the Court to indicate that it does not intend for the adoption of proposed *Rule 8.276* to have any substantive impact and/or to either expand or contract the scope of *Rule 9.146*.

Rule 8.330: The Committee disagrees with the department's position that the 2008 amendments to section 39.507(7), Florida Statutes, have any bearing on proposed amendments to *Rule 8.330*. The Committee agrees that dependency is a status of the child and not charges against a particular parent. However, the proposed amendments to *Rule 8.330* do not have any effect on this concept.

A child is dependent based on findings by the court that the child has been abandoned, abused, or neglected by a parent or that the child is at substantial risk of imminent abuse, abandonment, or neglect by a parent. §§39.01(15)(a), (15)(f), Fla. Stat. The statutes require the petition to specifically set forth acts or omissions upon which the petition is based and the identity of the person who committed the acts or omissions. §39.501(3)(c), Fla. Stat. The court may find that a child is dependent and enter an order briefly stating the facts upon which its finding is based. §§39.507(5)–(6), Fla. Stat. Therefore, the dependency of the child is based on findings which arise from allegations of parental acts or omissions, or substantial risk of imminent abuse, abandonment, or neglect to the child.

The proposed amendments to *Rule* 8.330 were designed to clarify dismissals of dependency petitions. The current rules address the dismissal of the entire dependency petition. There are no rules that concern dismissal of certain allegations of the petition regarding a parent and the consequences of the dismissal. Without direction of a rule, some practitioners treat a dismissal of allegations of the petition regarding a parent to constitute a dismissal of the petition regarding the parent and dismissal of the parent as a party to the proceedings. In these cases, the proceedings then continue regarding the petition as to the other parent with the court and the parties no longer recognize that the dismissed parent continues to have party status. But a parent is not dismissed from a petition. The parent is a party to the action regardless of any allegations which pertain to the parent.

The need for a rule to clarify dismissals was apparent in the case of *C.L.R. v. Dept. of Children & Families*, 913 So. 2d 764 (Fla. 5th DCA 2005). In *C.L.R.*, the department orally dismissed the dependency action as to the father. *Id.* at 765–766. The mother consented to dependency. *Id.* at

766. The trial court granted the mother's motion for reunification. *Id.* The father objected to the order of reunification because he did not receive a notice of hearing. *Id.* He also requested discovery. *Id.* The trial court concluded that because the petition had been dismissed against the father, he was not entitled to a hearing or discovery.

The Fifth District Court of Appeal held that although the petition was dismissed as to the father, he remained a party to the proceedings. *C.L.R.* at 766. However, the Court concluded that the father was not entitled to court-appointed counsel because he was not a parent against whom allegations or acts or omissions giving rise for dependency are made. *Id.* at 767.

C.L.R. illustrates the need for a rule to clarify dismissals of dependency petitions and allegations in the petitions regarding a parent. If there had been such a rule prior to *C.L.R.*, the trial court and petitioner would have had direction to dismiss the allegations of the petition regarding the father and to continue to treat the father as a party to the proceedings.

The proposed rule allows the court in an adjudicatory hearing to dismiss allegations of the petition regarding a parent while still granting the petition based on allegations that pertain to the other parent. The proposed rule further clarifies that a parent whose allegations were dismissed remains a party to the dependency proceedings. Therefore, the Juvenile Rules Committee respectfully requests this Court to approve the Committee's proposed amendments to *Rule* 8.330.

Respectfully submitted _____.

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CERTIFICATE OF SERVICE

I certify that a copy of this response was provided to the persons listed below by U.S. Mail on _____.

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