IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO THE FLORIDA RULES OF JUVENILE PROCEDURE (THREE-YEAR CYCLE) **CASE NO.:**

THREE-YEAR CYCLE AMENDMENTS TO THE FLORIDA RULES OF JUVENILE PROCEDURE

David N. Silverstein, Chair, Juvenile Court Rules Committee, and John F. Harkness, Jr., Executive Director, The Florida Bar, file this three-year cycle report of the Juvenile Court Rules Committee, under *Fla. R. Jud. Admin.* 2.140(b). All rule and form amendments have been approved by the full committee and, as required by *Rule* 2.140(b)(2), reviewed by The Florida Bar Board of Governors. The voting records of the committee and the Board of Governors are shown on the attached table of contents (*see* Appendix A).

The proposed amendments were published for comment in the June 15, 2008, Florida Bar *News* (*see* Appendix D) and posted on The Florida Bar's website. Two comments were received, (1) from the Florida Public Defenders Association and Florida Children's First and (2) attorney Bernard Perlmutter. (*See* Appendix E and Appendix F.) Both supported the proposed amendments to *Fla. R. Juv. P.* 8.100.

The proposed rules and forms are attached in the full-page (*see* Appendix B) and two-column (*see* Appendix C) formats. The reasons for change are as follows:

Ineffective Assistance of Counsel. On May 23, 2007, the Court asked the Committee to consider the issue of claims of ineffective assistance of counsel in termination of parental rights proceedings raised in *E.T. v. State*,

957 So. 2d 559 (Fla. 2007), and to respond in its next regular cycle report. (*See* Appendix G). In *E.T. v. State, Dept. of Children & Families*, 930 So. 2d 721, 729 (Fla. 4th DCA 2006), the court certified the following questions to the Florida Supreme Court:

> 1. Does Florida recognize a claim of ineffective assistance of counsel arising from a lawyer's representation of a parent(s) in a proceeding for the termination of parental rights?
>
> 2. If so, what procedure must be followed to pursue a claim of ineffective assistance of counsel?

The Florida Supreme Court discharged jurisdiction, finding that the case was moot because the children had been adopted, and referred the issue to the Appellate Court Rules Committee and Juvenile Court Rules Committee. After considerable study and discussion, the Juvenile Court Rules Committee voted 18-2-3 that a rule on this issue was not within the scope and purview of the committee because it was a substantive, rather than procedural, issue.

National Juvenile Defender Center's (NJDC) Assessment: On February 14, 2007, Chief Justice R. Fred Lewis asked the Committee to review the recommendations in the NJDC's Assessment (*see* Appendix H) and propose any rule amendments that it believed were necessary in its next regular cycle report. In response to this request, the Committee recommends the following amendments:

Rule 8.010. Detention Hearing. Recommendation 7 of the NJDC Assessment Report (*see* Appendix I) states, in part, that "[t]he quality of representation in juvenile court should be improved through early appointment of counsel." A new subdivision (e) has been added to this rule stating that the child must be advised of the right to counsel at the detention hearing and that counsel shall be appointed unless waived by the child in accordance with *Rule* 8.165. Previous subdivision (e)(2) has been deleted because of creation of subdivision (e). Subsequent subdivisions have been renumbered.

A new sentence has been added in subdivision (b) that incorporates the requirements of section 985.255(3)(a), Florida Statutes, that a detained child be given a hearing within 24 hours after being detained.

Rule 8.070. Arraignments. The rule has been divided into subdivisions, corresponding to the tasks that must be accomplished at an arraignment. The amendment to subdivision (a), Appointment of Counsel, conforms to Recommendation 7 of the NJDC Assessment Report (*see* Appendix I), regarding early appointment of counsel. The amendment to subdivision (b), Plea, conforms to Recommendation 10 regarding plea agreements and more closely conforms to the parallel adult rule, *Fla. R. Crim. P.* 3.160. New sentences have been added regarding reading of the charges and the filing of written pleas before arraignment. A sentence has also been added regarding the right of the child to a "reasonable time in which to prepare for trial."

Rule 8.080. Acceptance of Guilty or Nolo Contendere Plea. This rule has two sets of amendments. Amendments to subdivisions (b) and (b)(2) were made in response to the NJDC Assessment Report (*see* Appendix I). Subdivision (b) has been amended to require that the court determine that the child understands the "rights and consequences of entering a guilty or nolo contendere plea" in conformance with Recommendation 4, which states, in part, that with regard to judicial colloquies, judges should take time to fully test the youth's understanding. A requirement has been added in subdivision (b)(2) that counsel be appointed for a child who qualifies for appointment and has not waived counsel in accordance with *Rule* 8.165. This conforms to Recommendations 3 and 7, regarding both waiver of counsel and early appointment of counsel.

Subdivision (b)(8) has also been created to conform the juvenile rule to *Fla. R. Crim. P.* 3.172(c)(9), requiring the court to advise the child that a plea may subject the child to possible involuntary civil commitment as a sexual predator. New subdivision (f) conforms to *Fla. R. Crim. P.* 3.172(h), allowing a plea to be withdrawn if the judge does not concur.

Rule 8.100. General Provisions for Hearings. Majority Report. One of the 10 "Core Recommendations" of the NJDC Report, Recommendation 6 (*see* Appendix I) states that:

> State legislators, local policymakers, and juvenile court judges should end the practice of shackling youth by hand, foot and belly chain for court appearances unless an extenuating individual situation warrants such restraint. Under any

> circumstance, the practice of shackling youth to each other in a group or to fixed objects in the courtroom should be strictly prohibited.

To implement this policy, the NJDC suggests that judges should "prohibit the generalized policy of allowing youth to appear in juvenile court in shackles or handcuffs unless extenuating circumstances warrant such restraint in individual cases." The decision of whether a child should be shackled in court should be reached by an individualized determination based on manifest need. A new subdivision (b) has been added to this rule to conform to those recommendations and end use of indiscriminate chaining and shackling. It provides that restraints, such as handcuffs, chains, irons, or straitjackets, may not be used during a court appearance unless the child is a danger to himself or others or there is a founded belief that the child presents a substantial risk of flight from the courtroom and there are no less restrictive alternatives to restraint.

The Florida Bar's Public Interest Law Section and Committee on the Legal Needs of Children took a position in 2006 opposing the indiscriminate use of chains and shackles in juvenile courtrooms throughout the state and also encouraged the adoption of a ban on such shackling through court rule, legislation, and executive branch policy. The Juvenile Court Rules Committee voted to support the section's and committee's request to The Florida Bar Board of Governors for permission to lobby this position. This position was "not prohibited" for lobbying purposes by the Board of Governors in September 2006. (*See* Appendix J.)

The Juvenile Court Rules Committee devoted substantial time and energy to discussing this amendment. The Committee also considered presentations by speakers not on the Committee. A majority of the Committee believes that the proposed amendment is procedural and in accordance with the recommendation of the National Juvenile Defender Center. Detailed comments strongly supporting the proposed amendment were received from the Florida Public Defender Association and Florida's Children First (*see* Appendix E) and attorney Bernard Perlmutter (*see* Appendix F). Mr. Perlmutter's comment, which grew out of an affidavit and amicus brief filed in Florida litigation, has been published in the Fall 2007 *Barry Law Review*. After considerable deliberation, the rule passed 12-11-1. Because of the close vote, the Committee deemed it appropriate to include the minority report which follows. Despite the narrow vote in the Committee, the Florida Bar Board of Governors unanimously supported the amendment by a vote of 30-0-0.

This amendment establishes a procedural framework for juvenile court judges to exercise their inherent discretionary authority over courtroom security and also provides flexibility for the court to balance safety and security needs with the individualized needs and rights of children. Section 985.02, Florida Statutes, states the legislative intent for the juvenile justice system. One of the general protections provided to children is a "safe and nurturing environment which will preserve a sense of personal dignity and integrity." § 985.02(1)(c), Fla. Stat. The proposed amendment will advance this goal.

As described in the supporting comments received from the Florida Public Defender Association, Florida Children's First, and Bernard Perlmutter (*see* Appendices E and F), the indiscriminate shackling of children without any regard to the youth's age, size, or alleged offense, or inquiry into the likelihood of misbehavior or escape, is contrary to the intent of the juvenile justice system. Indiscriminately restraining youths with handcuffs or shackles violates their constitutional right to a fair hearing and assistance of counsel. An attorney who has a juvenile client shackled to other children cannot engage in a discussion that upholds a client's confidences and secrets. Children in shackles and belly chains are paraded through courthouse halls and chained to courtroom furniture and thus placed in degrading, embarrassing, and humiliating situations. The chains stay on for hours at a time, sometimes as long as a full day, and are not removed even when the children need to use the bathroom.

The routine shackling of children is an affront to the dignity of the children and courtroom proceedings. It violates a child's right to due process and the presumption of innocence. Routine shackling of children is also incompatible with three key principles of the juvenile justice system: individualized assessment, respect for the dignity of the child and the court, and the goal of rehabilitation.

Routine shackling is gratuitously punitive, counter-therapeutic, and psychologically harmful. A large number of children in delinquency proceedings have suffered physical or sexual abuse, have mental illness or retardation, or have disabilities. A substantially disproportionate number of children in the juvenile justice system are special education students whose

misbehavior is related to their disability, and for whom shackling is particularly inappropriate and harmful. There are other less restrictive alternatives to protecting public safety in the courtroom while maintaining the dignity of the children and the court proceedings. As of the time this report was filed, Miami-Dade County had eliminated the practice of indiscriminate shackling of children in court proceedings without further incident.

The indiscriminate shackling of children harms the child and the integrity of the judicial system. It is contrary to Chapter 985, Florida Statutes, and the rehabilitative purposes of the juvenile justice system. The current predetermined, blanket policy of chaining and shackling children represents a mechanistic approach to a matter that requires individual care and attention. The Committee believes the proposed amendment provides the court with the ability to provide the individualized care and attention that our children deserve.

Rule 8.100. General Provisions for Hearings. Minority Report.

The minority asserts that the proposed rule is ill advised and should not be promulgated, for several reasons. First, the issue of shackling of children is primarily one of substantive law, not procedure, and thus falls outside the scope of authority of the committee. Second, the proposed rule exceeds the recommendation of the National Juvenile Defender Center (NJDC) that was the basis for the proposed rule, and it lacks any other legal basis. Third, it is the minority position that the proposed rule involves matters of courtroom security rather than juvenile procedure, and the committee lacks the expertise and the resources required to make a well-reasoned decision.

Finally, it is the minority opinion that the decision regarding shackling of securely detained juveniles in court was based on individual philosophies and personal reactions to the issue, rather than on solid evidence relevant to statewide juvenile court procedural issues. In summary, the committee acted beyond the scope of its authority, acted without sufficient basis in the NJDC recommendation or any basis in law, and without demonstrable evidence, and encroached on the traditional authority of trial judges.

The task of the Juvenile Court Rules Committee is well defined. The Florida Rules of Juvenile Procedure, as rules of the Court, must deal solely with matters relating to practice and procedure in the juvenile divisions of the circuit courts of this state. *In re Transition Rule 11*, 270 So. 2d 715 (Fla. 1972); *Rule* 8.000. This Court and the various rules committees must remain vigilant in their efforts to ensure that rulemaking does not encroach on the legislature's sphere of authority, just as the Court must assure that the legislature confines its acts to those dealing with substantive areas of law.

Regarding the proposed rule, it is the minority position that the committee has overstepped its bounds by attempting to create substantive law relating to juvenile detention and use of mechanical restraints by detention staff. In general, detention and control of juveniles under the supervision of the Department of Juvenile Justice is recognized as an area within the realm of authority of the legislature, and is controlled by the provisions of Chapter 985, Florida Statutes. *See, e.g.,* §§ 985.24–985.275, Fla. Stat. During the 2008 legislative session, Senator Siplin and Senator Wilson each proposed separate bills addressing the shackling issue. SB 140, SB 1336, Reg. Sess. (Fla. 2008). Each bill died in committee, due to lack of

support by that elected body. To impose the will of a one-vote majority of this appointed committee of The Florida Bar over that of the legislature in areas of substantive law clearly would be inappropriate.

The proposed juvenile rule was derived from a recommendation by the National Juvenile Defender Center (NJDC), in its assessment of legal representation of indigent defendants in Florida's juvenile justice system.[1] Less than two pages in the 72-page assessment are devoted to a condemnation of shackling practices in Florida juvenile courts, with minimal legal support for the proposition.[2] Nevertheless, a proposal to curtail the practice is one of the ten "Core Recommendations" of the assessment,[3] and suggests that:

> State legislators, local policymakers, and juvenile court judges should end the practice of shackling youth by hand, foot and belly chain for court appearances unless an extenuating individual situation warrants such restraint. Under any circumstance, the practice of shackling youth to each other in a group or to fixed objects in the courtroom should be strictly prohibited.[4]

[1] Patricia Puritz and Cathryn Crawford, Florida, An Assessment of Access to Counsel & Quality of Representation in Delinquency Proceedings, National Juvenile Defender Center, (2006), http://www.njdc.info/assessments.php.
[2] See, Puritz and Crawford, 57.
[3] Puritz and Crawford, 5, 66.
[4] Puritz and Crawford, 5, 66.

Legal authority reviewed for and cited in the Assessment in support of the "extenuating individual situation" argument is almost entirely based on "shackling [of adult] defendants in jury trials."[5]

In support of the recommendation, the Assessment cites only one Florida opinion regarding juveniles, from the First District Court of Appeal: *S.Y. v. McMillan*, 563 So. 2d 807 (Fla. 1st DCA 1990).[6] *S.Y.* provides no support for the NJDC position or for the proposed rule. In *S.Y.*, the District Court reasoned that "[t]he criteria for secure detention [are] narrow and a juvenile who is detained has already been determined to meet [those] criteria." *S.Y.*, at 808. The *S.Y.* court ruled that routine shackling of juveniles was "within the discretion of [the] judges." *Id.*, citing *Piver v. Birman*, 311 So. 2d 675 (Fla. 4th DCA 1975).

The Assessment cites *U.S. v. Howard*, 429 F. 3d 843 (2005), for the proposition that such a generalized shackling policy "without adequate justification by the government beyond generalized safety concerns, violates due process."[7] After the Assessment was published, however, the opinion in *Howard* was withdrawn after rehearing; in the opinion issued in its place, the *Howard* court upheld the shackling policy and specifically stated it did not violate due process. *U.S. v. Howard*, 480 F. 3d 1005 (2007).

The Assessment again cites *Howard*, and *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 392 (1992), for the proposition that "[i]n general, staffing issues or financial constraints are not permissible reasons for the

[5] Puritz and Crawford, 57.
[6] See, Puritz and Crawford, fn. 219-220.
[7] See, Puritz and Crawford, fn. 222.

government to create or perpetuate unconstitutional conditions."[8] The *Rufo* case, stemming from jail overcrowding, turns on whether a consent decree in institution reform litigation can be modified upon the "grievous wrong standard" applied in civil procedure. *Rufo*, at 379–383. The citation to *Rufo* in the Assessment erroneously suggests that an unconstitutional situation exists in the policy of shackling securely detained juveniles, and the Assessment apparently seeks thereby to forestall any suggestion of financial or logistical justification for the shackling policy. In reality, a Florida court has already justified such a policy and no controlling authority has been offered to challenge it. *See S.Y.* No additional legal authority was presented to the Juvenile Rules Committee before or during its deliberations that produced the proposed rule.

Going beyond the recommendation by NJDC, the Committee approved a rule that forbids not just shackling, but the use of simple handcuffs in a juvenile courtroom, unless the court first makes an individualized finding. The proposed rule far exceeds the recommendation of the Assessment, which sought only to prohibit "the practice of shackling children to each other in a group or to fixed objects" and to limit "the practice of shackling youth by hand, foot and belly chain." Moreover, the Committee, albeit unknowingly, followed the NJDC language (with its inapposite authority of *Rufo*), and included language in the proposed rule that precludes the use of any mechanical restraints without an individualized finding, even when justified by limited court personnel or facilities. An amendment that would have permitted the use of handcuffs in the courtroom was offered to the Committee but rejected.

[8] Puritz and Crawford, fn. 223.

There is nothing in the Assessment that suggests Florida juvenile courts ought to operate without any mechanical restraint on securely detained children, and no rule should so require. Likewise, there has been no presentation of any legal authority for the proposed rule that requires, even in circumstances of limited facilities or reduced security staff, an individualized finding before the use of any mechanical restraint upon securely detained children.

It is the minority position that the proposed rule improperly encroaches upon the traditional authority of the trial judge. Control of courtroom security and the safety of those present in the courtroom are matters that should remain within the sound discretion of the trial court judge. Given the wide variations in courtroom facilities across the state and differing availability of security staff, it is a matter of necessity that the trial judge retains full authority over the security of his or her courtroom, to protect the safety of all persons present.

Case law recognizes the trial judge's inherent authority in this area.[9] Some courthouses in Florida have been constructed recently, with state-of-the-art security measures, while others are older and offer very little protection. The number of court security personnel available varies from county to county and can often change from hour to hour within the same courthouse.

[9] "Courts have the inherent power 'to preserve order and decorum in the court room, to protect the rights of the parties and witnesses and generally to further the administration of justice.'" *Miami Herald Publishing Co. v. Lewis*, 426 So. 2d 1, 3-4 (Fla. 1982) (quoting *State ex rel. Gore Newspapers Co. v. Tyson*, 313 So. 2d 777, 781-782 (Fla. 4th DCA 1975) (*overruled English v. McCrary*, 348 So. 2d 293 (Fla. 1977), citing *People v. Hinton*, 31 N.Y.2d 71, 334 N.Y.S.2d 885, 286 N.E.2d 265 (1972), *cert. den.* 410 U.S. 911. "This power exists apart from any statute or specific constitutional provision and springs from the creation of the very court itself; it is essential to the existence and meaningful functioning of the judicial tribunal." *Id.*

In juvenile courts, the use of mechanical restraints is even more appropriate than in other courts. From the standpoint of safety, more children are in the juvenile courtroom and children securely detained for repeated felony offenses are side by side with children securely detained for a misdemeanor domestic battery. Children who are witnesses or victims are more likely to be present in juvenile court, often in close proximity to defendants. Moreover, from a due process standpoint, mechanical restraints are less likely to be inappropriate in juvenile court, because a jury will never be present. The judge in juvenile court, as finder of fact, is obviously aware of the juvenile's status as a secure detainee, but disregards that fact as required by law.

Safety concerns are paramount in juvenile court. It is the juvenile judge who can best take into consideration the safety of all present, and who should continue to do so, without the imposition of rules more appropriate to adult defendants in the presence of a jury. The numbers of restrained individuals involved, the limited number of detention staff available, and the greater propensity of young people to act without fully considering the consequences all mandate rejection of the rule proposed by the majority. In accordance with historical precedent, control of juvenile courtroom security should remain in the hands of the judge.

The proposed rule will almost certainly have a dramatic effect upon courthouse security and courtroom security. The committee passed the rule without properly addressing what security measures would replace mechanical restraints and what the economic impact of those new measures would be. Before enacting such a rule, due consideration should be given to

security concerns and to the budgets of the individual jurisdictions and the Department of Juvenile Justice. The effect on courtroom safety and the increase in security expense can only be determined after a thorough review of proposed security measures. The Juvenile Rules Committee has neither the expertise nor the financial resources to make such evaluations.

No valid scientific evidence was presented to the Committee. Committee members speaking in support of the proposed rule asserted that shackling frequently causes stumbling accidents with the possibility of physical injury. It was further posited that mechanical restraints would unnecessarily expose children to possible emotional damage, both to the children held in the restraints and to those who merely saw other children restrained. Proponents of the rule argued that, because of the risks of physical or emotional injury, shackles should not be applied to children not shown in advance to have a propensity for violence in the courtroom or escape.

Those opposing the rule responded that stumbling accidents are not that common and injuries quite rare. It was noted that shackling, rather than being injurious, could have several beneficial effects, including impressing upon the securely detained child the seriousness of his or her situation, and, likewise, a deterrent effect upon other young people in the courtroom could be expected. Most children who see a child brought into juvenile court in shackles can draw the conclusion that secure detention awaits those children who violate the rules of society.

Members opposed to the rule recalled comments from juveniles who described a marked deterrent effect upon seeing themselves or other young people placed in secure detention and shackles. Guests of the Committee favoring the rule offered a presentation to the Committee that described the experience of one county in Florida where, to date, juvenile courts successfully avoided security problems after suspending the use of shackling. The presentation, however, did not clarify whether, or at what cost, other measures replaced the practice in that county.

In the absence of empirical data and without consensus in the Committee, the minority respectfully requests careful consideration of its position prior to a decision regarding the proposed rule.

In conclusion, the use of restraints is an issue of courtroom security and a matter of substantive law. The Florida Legislature has recently considered the issue in committee, but at this time, no basis in law or fact has been shown to indicate the proposed rule change, much less require it. The trial judge, as the one most familiar with court facilities, with security personnel, and with the parties involved in the proceedings, is in the best position to assess security issues in the courtroom. It is the judge who must deal with the consequences of any breach of courtroom security, and the judge who should have the final say. No statewide rule ever can address, fully and appropriately, the infinite variations of daily courtroom activity. To constrain juvenile judges as proposed by the rule would compromise courtroom safety when no real benefit has been demonstrated.

The rule proposed by the Juvenile Rules Committee is beyond the Committee's authority, without basis in law or fact, and bad public policy. Therefore, the minority urges this Court to reject the proposed amendment to *Rule* 8.100.

Rule 8.115. Disposition Hearing. A new subdivision (b) has been created to provide that counsel be appointed at disposition hearings, including hearings when the case has been transferred for disposition, if the child qualifies for appointment and has not waived counsel in accordance with *Rule* 8.165. This conforms to NJDC Assessment Recommendation 2, to "ensure that youth are competently represented by defense counsel at all court hearings and throughout the entire delinquency process." (*See* Appendix I.) It also conforms to section 985.033(1), Florida Statutes, which requires that a "child shall be represented by legal counsel at all stages of all court proceedings unless the right to counsel is freely, knowingly, and intelligently waived by the child" (emphasis added).

Subdivision (d)(2) has been amended in response to a separate referral from the Court. On July 13, 2006, the Court requested that the Committee address an issue raised in *J.I.S. v. State*, 930 So. 2d 587 (Fla. 2006), regarding whether to require a notation of credit for time spent in secure juvenile detention in all juvenile commitment orders. (*See* Appendix K.) The committee was directed to respond with its next regular cycle report. The Committee has adopted an amendment to subdivision (~~c~~d)(2), requiring that the disposition order specifically list any credit for time served in secure detention before disposition.

Rule 8.130. Motion for Rehearing; Rule 8.265, Motion for Rehearing. By letter dated January 27, 2006, Clerk Thomas D. Hall referred to the Committee a proposal received from Ryan Thomas Truskoski to amend *Rules* 8.130 and 8.265. (*See* Appendix L.) The problem raised by Mr. Truskoski was that a motion for rehearing does not currently toll the time for taking an appeal in juvenile proceedings and that it is often difficult to obtain a ruling on a motion for rehearing before the 30-day window to file an appeal expires. The delinquency and dependency subcommittees of the Committee chose slightly different approaches to addressing this problem. *Rule* 8.130(b)(3) has been amended by striking the word "not," thus stating that a motion for rehearing shall toll the time for taking of an appeal. A new sentence has been added to *Rule* 8.265(b)(3) to state that the court must rule on a motion for rehearing within 10 days of filing or it is denied. This effectively removes the problem raised by Mr. Truskoski because the motion for rehearing would have to be acted on before the 30 days for filing of an appeal expires. *See Fla. R. App. P.* 9.130(b).

Rule 8.225. Process, Diligent Searches, and Service of Pleadings and Papers. Subdivision (a)(4)(A)(iii) has been deleted to eliminate the use of mail to serve summons and other process on persons residing outside the state. Conforming amendments have also been made to subdivisions (a)(4)(B) and (a)(4)(C). It was argued that the current rule allowing for service by mail on parents out of state discriminated against those parents because parents located in Florida could not be served by mail.

Grammatical corrections have been made in subdivisions (c)(2) and (c)(5)(D).

Rule 8.235. Motions. Although a dependency petition usually contains allegations against both parents, in some cases the allegations against one parent are subsequently dismissed. The rules do not currently contain provisions for this situation. Subdivision (b) has been amended to provide that a motion to dismiss may be to dismiss the petition or "the allegations in the petition against a particular party." Subdivision (c) has been amended to make the same provision for a sworn motion to dismiss. *See also* amendments to *Rule* 8.310.

A grammatical correction has been made in subdivision (b).

Rule 8.257. General Magistrates. The current rule requires that the movant provide a transcript when moving for exceptions to the general magistrate's report. *See Rules* 8.257(b)(3)(A), (e)(2), (g). The requirement to provide a transcript is costly for the movant and delays the resolution of the exception and entry of a final order. The rule has been amended in subdivisions (b)(3)(A), (e)(2), and (g) to permit the movant to provide a transcript, an electronic recording, or a stipulation by the parties of the evidence considered by the magistrate when filing exceptions to the general magistrate's report.

The minority view was that this amendment should not be approved. A video or audio recording is not a transcript under the Rules of Appellate Procedure. *See Moorman v. Hatfield*, 958 So. 2d 396 (Fla. 2d DCA 2007), *rev. den.* 965 So. 2d 824 (Alternbernd, J., concurring). Use of an electronic recording at the trial court level raises the possibility that the trial judge will be relying on different information than the appellate court, which will have

a written transcript to review. This amendment will also create a difference between the Rules of Juvenile Procedure and the Family Law Rules of Procedure. See *Fla. Fam. L. R. P.* 12.490. It may also require a considerable time commitment for the trial judge to listen to a recording of a lengthy hearing.

Rule 8.310. Dependency Petitions. Similarly to *Rule* 8.235, Motions, subdivision (e) of this rule has been amended to accommodate dismissal of the petition or allegations against only one parent.

Rule 8.400. Case Plan Development; Rule 8.410. Approval of Case Plans. Section 39.507(5), Florida Statutes, allows the court to enter an order withholding adjudication. Section 39.6011, Florida Statutes, requires the Department of Children and Family Services to develop and file with the court a case plan for each child receiving services. The Rules of Juvenile Procedure, however, do not mention filing and review of a case plan when there has been a withhold of adjudication. There is confusion over whether the court should conduct a disposition hearing after withholding adjudication. The statutes are clear that a disposition hearing occurs after an adjudication of dependency, which a withhold of adjudication is not.

Proposed *Rule* 8.332, which is currently pending with the Court (*see 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 Number SC08-1724), creates a new subdivision (c), which specifies the procedure to be

followed by the court when withholding adjudication. Subdivision (c)(1) requires the department to file a case plan and for the court to review it. Amendments to *Rule* 8.330 consistent with those proposed here are also pending with the court in the same case.

Rules 8.400(d)(7), (d)(8), and (f) have been amended to require that a case plan be filed with the court and served on the parties three business days before the disposition or case plan review hearing. *Rule* 8.410(a) has been amended to require the court to review the contents of the case plan at the disposition or case plan review hearing.

A style correction has been made in subdivision (d).

Rule 8.505. Process and Service; Form 8.982. Notice of Action for Advisory Hearing. There is a need for clarification on what may be included in a notice of action for service by publication in termination of parental rights cases. Some child welfare legal offices include the child's full name and date of birth, the mother's full name, and the father/prospective father's name in the notice of action. However, section 39.0132(4)(a), Florida Statutes, provides that all information obtained pursuant to the dependency statutes is confidential and may not be disclosed other than to specified persons, except on court order. Therefore, publication of this detailed information about the parents and child appears to be in conflict with section 39.0132(4)(a), Florida Statutes, unless there is a court order.

Fla. R. Juv. P. 8.225(a)(3)(A) provides that service by publication is required in termination of parental rights proceedings for parents whose

identities are known but whose whereabouts cannot be ascertained by diligent search. *Rule* 8.505(c) provides that parties upon whom personal service cannot be effected shall be served by publication. Section 39.801(3)(b), Florida Statutes, provides that if a party cannot be served, notice of hearings must be provided as specified by law or in civil actions. *Fla. R. Civ. P.* 1.070(d) provides that service by publication may be made as provided by statute. Section 49.011(13), Florida Statutes, authorizes service by publication in termination of parental rights cases and section 49.021, Florida Statutes, provides that service by publication is appropriate when personal service cannot be made. Section 49.08(1), Florida Statutes, specifies that the notice of action must include the name of the defendant or a description of an unknown defendant. Therefore, the law appears to require that the father/prospective father be included in the notice of action, even though this may be contrary to sections 39.0132(4)(a) and 39.205(3), Florida Statutes. However, the statutes and rules do not appear to require or authorize publication of the child's name or the name of the other parent not subject to the notice of action.

Rule 8.505(c) has been amended to specify the information that may be contained in a notice of action for service by publication in a termination of parental rights case. *Form* 8.982, Notice of Action for Advisory Hearing, has been created to provide a form that meets the requirements of the rule as amended.

Form 8.978(a). Order Concerning Youth's Eligibility for Florida's Tuition and Fee Exemption. Section 1009.25(2)(c), Florida Statutes, provides an exemption from payment of tuition and fees for post-secondary

educational institutions in Florida for students who, at the time they reached age 18, were in the custody of the Department of Children and Family Services or a relative under section 39.5085, Florida Statutes; who were adopted from the department after May 5, 1997; or who, after spending at least six months in the department's custody after age 16, were placed in a guardianship by the court. Many post-secondary institutions require verification of the youth's eligibility for the tuition and fee exemption. This form provides an order to be entered by the court at the time the youth turns 18.

The Committee respectfully asks that the court amend the Florida Rules of Juvenile Procedure as outlined in this report.

Respectfully submitted _____.

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8.105 WAIVER OF JURISDICTION [NO CHANGE]
8.110 ADJUDICATORY HEARINGS [NO CHANGE]
8.115 DISPOSITION HEARING [AMENDED]
Committee votes: (b) 23-0-0
(d)(2) 28-0-0
Board of Governors vote: 32-0
8.120 POST-DISPOSITION HEARING [NO CHANGE]

G. RELIEF FROM ORDERS AND JUDGMENTS

8.130 MOTION FOR REHEARING [AMENDED]
Committee vote: 27-5-2
Board of Governors vote: 32-0
8.135 CORRECTION OF DISPOSITION OR COMMITMENT ORDERS [NO CHANGE]
8.140 EXTRAORDINARY RELIEF [NO CHANGE]
8.145 SUPERSEDEAS ON APPEAL [NO CHANGE]

H. CONTEMPT

8.150 CONTEMPT [NO CHANGE]

I. GENERAL PROVISIONS

8.160 TRANSFER OF CASES [NO CHANGE]
8.165 PROVIDING COUNSEL TO PARTIES [NO CHANGE]
8.170 GUARDIAN AD LITEM [NO CHANGE]
8.180 COMPUTATION AND ENLARGEMENT OF TIME [NO CHANGE]
8.185 COMMUNITY ARBITRATION [NO CHANGE]

PART II. DEPENDENCY AND TERMINATION OF PARENTAL RIGHTS PROCEEDINGS

A. GENERAL PROVISIONS

8.201 COMMENCEMENT OF PROCEEDINGS [NO CHANGE]
8.203 APPLICATION OF UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT [NO CHANGE]
8.205 TRANSFER OF CASES [NO CHANGE]
8.210 PARTIES AND PARTICIPANTS [NO CHANGE]
8.215 GUARDIAN AD LITEM [NO CHANGE]
8.217 ATTORNEY AD LITEM [NO CHANGE]
8.220 STYLE OF PLEADING AND ORDERS [NO CHANGE]
8.224 PERMANENT MAILING ADDRESS [NO CHANGE]

8.225 PROCESS, DILIGENT SEARCHES, AND SERVICE OF PLEADINGS AND PAPERS [AMENDED]
Committee vote: 17-4-3
Board of Governors vote: 32-0
8.230 PLEADINGS TO BE SIGNED [NO CHANGE]
8.235 MOTIONS [AMENDED]
Committee vote; 33-0-1
Board of Governors vote: 32-0
8.240 COMPUTATION, CONTINUANCE, EXTENSION, AND ENLARGEMENT OF TIME [NO CHANGE]
8.245 DISCOVERY [NO CHANGE]
8.250 EXAMINATIONS, EVALUATION, AND TREATMENT [NO CHANGE]
8.255 GENERAL PROVISIONS FOR HEARINGS [NO CHANGE]
8.257 GENERAL MAGISTRATES [AMENDED]
Committee vote: 16-7-1
Board of Governors: 32-0
8.260 ORDERS [NO CHANGE]
8.265 MOTION FOR REHEARING [AMENDED]
Committee vote: 27-5-2
Board of Governors vote: 32-0
8.270 RELIEF FROM JUDGMENTS OR ORDERS [NO CHANGE]
8.285 CONTEMPT [NO CHANGE]
8.290 DEPENDENCY MEDIATION [NO CHANGE]

B. TAKING CHILDREN INTO CUSTODY AND SHELTER HEARINGS

8.300 TAKING INTO CUSTODY [NO CHANGE]
8.305 SHELTER PETITION, HEARING, AND ORDER [NO CHANGE]

C. PETITION, ARRAIGNMENT, ADJUDICATION, AND DISPOSITION

8.310 DEPENDENCY PETITIONS [AMENDED]
Committee vote: 33-0-1
Board of Governors vote: 32-0
8.315 ARRAIGNMENTS AND PREHEARING CONFERENCES]NO CHANGE]
8.320 PROVIDING COUNSEL TO PARTIES [NO CHANGE]
8.325 ANSWERS AND PLEADINGS [NO CHANGE]
8.330 ADJUDICATORY HEARINGS [NO CHANGE]
8.335 ALTERNATIVES PENDING DISPOSITION [NO CHANGE]
8.340 DISPOSITION HEARINGS [NO CHANGE]
8.345 POST-DISPOSITION RELIEF [NO CHANGE[
8.350 PLACEMENT OF CHILD INTO RESIDENTIAL TREATMENT CENTER AFTER ADJUDICATION OF DEPENDENCY [NO CHANGE]
8.355 ADMINISTRATION OF PSYCHOTROPIC MEDICATION TO A CHILD IN SHELTER CARE OR IN FOSTER CARE WHEN PARENTAL CONSENT HAS NOT BEEN OBTAINED [NO CHANGE]

D. CASE PLANS

8.400	CASE PLAN DEVELOPMENT Committee vote: 30-0-2 Board of Governors vote: 32-0	[AMENDED]
8.410	APPROVAL OF CASE PLANS Committee vote: 30-0-2 Board of Governors vote: 32-0	[AMENDED]
8.415	JUDICIAL REVIEW OF DEPENDENCY CASES	[NO CHANGE]
8.420	CASE PLAN AMENDMENTS	[NO CHANGE]
8.425	PERMANENCY HEARINGS	[NO CHANGE]
8.430	MODIFICATION OF PERMANENCY ORDER	[NO CHANGE]

E. TERMINATION OF PARENTAL RIGHTS

8.500	PETITION	[NO CHANGE]
8.505	PROCESS AND SERVICE Committee vote: 20-0-0 Board of Governors vote: 32-0	[AMENDED]
8.510	ADVISORY HEARING AND PRETRIAL STATUS CONFERENCES	[NO CHANGE]
8.515	PROVIDING COUNSEL TO PARTIES	[NO CHANGE]
8.520	ANSWERS AND RESPONSIVE PLEADINGS	[NO CHANGE]
8.525	ADJUDICATORY HEARINGS	[NO CHANGE]
8.535	POSTDISPOSITION HEARINGS	[NO CHANGE]

PART III. PROCEEDINGS FOR FAMILIES AND CHILDREN IN NEED OF SERVICES

8.601	COMMENCEMENT OF PROCEEDINGS	[NO CHANGE]
8.603	APPLICATION OF UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT	[NO CHANGE]
8.605	TRANSFER OF CASES	[NO CHANGE]
8.610	PARTIES	[NO CHANGE]
8.615	PROVIDING COUNSEL TO PARTIES	[NO CHANGE]
8.617	GUARDIAN AD LITEM	[NO CHANGE]
8.620	STYLE OF PLEADINGS AND ORDERS	[NO CHANGE]
8.625	GENERAL PROVISIONS FOR HEARINGS	[NO CHANGE]
8.630	COMPUTATION AND ENLARGEMENT OF TIME	[NO CHANGE]
8.635	PROCESS	[NO CHANGE]
8.640	PLEADINGS TO BE SIGNED	[NO CHANGE]
8.645	ORDERS	[NO CHANGE]
8.650	TAKING INTO CUSTODY	[NO CHANGE]
8.655	SHELTER PETITION, HEARING, AND ORDER	[NO CHANGE]
8.660	PETITIONS	[NO CHANGE]
8.665	ANSWERS, ARRAIGNMENTS, AND PREHEARING CONFERENCES	[NO CHANGE]
8.670	MOTIONS	[NO CHANGE]
8.675	EXAMINATIONS, EVALUATION, AND TREATMENT	[NO CHANGE]
8.680	DISCOVERY	[NO CHANGE]
8.685	ADJUDICATORY HEARINGS	[NO CHANGE]
8.690	DISPOSITION HEARINGS	[NO CHANGE]
8.695	POSTDISPOSITION RELIEF	[NO CHANGE]

PART IV. OTHER PROCEEDINGS

A. GUARDIAN ADVOCATES FOR DRUG-DEPENDENT NEWBORNS

8.705 COMMENCEMENT OF PROCEEDINGS	[NO CHANGE]
8.710 PARTIES	[NO CHANGE]
8.715 GUARDIAN AD LITEM	[NO CHANGE]
8.720 PROCESS AND SERVICE	[NO CHANGE]
8.725 PETITION	[NO CHANGE]
8.730 HEARING	[NO CHANGE]
8.735 REVIEW AND REMOVAL	[NO CHANGE]

B. JUDICIAL WAIVER OF PARENTAL NOTICE OF TERMINATION OF PREGNANCY

8.800 APPLICABILITY	[NO CHANGE]
8.805 COMMENCEMENT OF PROCEEDINGS	[NO CHANGE]
8.810 PETITION	[NO CHANGE]
8.815 COUNSEL	[NO CHANGE]
8.820 HEARING	[NO CHANGE]
8.825 ORDER AND JUDGMENT	[NO CHANGE]
8.830 TRANSCRIPTS	[NO CHANGE]
8.835 CONFIDENTIALITY OF RECORDS	[NO CHANGE]

PART V. FORMS FOR USE WITH RULES OF JUVENILE PROCEDURE

A. GENERAL FORMS

8.901 CAPTION OF PLEADINGS AND ORDERS	[NO CHANGE]
8.902 VERIFICATION	[NO CHANGE]
8.903 CERTIFICATE OF SERVICE	[NO CHANGE]
8.904 AFFIDAVIT FOR ORDER TO TAKE INTO CUSTODY	[NO CHANGE]
8.905 ORDER TO TAKE INTO CUSTODY	[NO CHANGE]
8.906 RELEASE ORDER	[NO CHANGE]
8.907 TRANSFER ORDER	[NO CHANGE]
8.908 SUMMONS	[NO CHANGE]
8.909 PLAN FOR TREATMENT, TRAINING, OR CONDUCT	[NO CHANGE]
8.911 UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT AFFIDAVIT	[NO CHANGE]
8.912 PETITION TO SHOW CAUSE	[NO CHANGE]
8.913 ORDER TO SHOW CAUSE	[NO CHANGE]

B. DELINQUENCY FORMS

8.929 DETENTION ORDER	[NO CHANGE]
8.930 JUVENILE NOTICE TO APPEAR	[NO CHANGE]
8.931 DELINQUENCY PETITION	[NO CHANGE]
8.932 APPLICATION FOR COUNSEL AND ORDER	[NO CHANGE]
8.933 WAIVER OF COUNSEL	[NO CHANGE]
8.934 ORDER TO DETERMINE MENTAL CONDITION	[NO CHANGE]
8.935 ORDER OF INCOMPETENCY	[NO CHANGE]
8.936 ORDER OF COMPETENCY	[NO CHANGE]
8.937 DEMAND FOR VOLUNTARY WAIVER	[NO CHANGE]
8.938 ORDER OF VOLUNTARY WAIVER	[NO CHANGE]
8.939 MOTION FOR INVOLUNTARY WAIVER	[NO CHANGE]

8.940 MOTION TO COMPILE REPORT	[NO CHANGE]
8.941 ORDER TO COMPILE REPORT	[NO CHANGE]
8.942 ORDER OF INVOLUNTARY WAIVER	[NO CHANGE]
8.947 DISPOSITION ORDER — DELINQUENCY	[NO CHANGE]
8.948 PETITION FOR REVOCATION OF JUVENILE PROBATION	[NO CHANGE]
8.949 ORDER FOR HIV TESTING	[NO CHANGE]
8.950 RESTITUTION ORDER	[NO CHANGE]
8.951 MOTION FOR JUVENILE SEXUAL OFFENDER PLACEMENT	[NO CHANGE]

C. DEPENDENCY FORMS

8.959 SUMMONS FOR DEPENDENCY ARRAIGNMENT	[NO CHANGE]
8.960 SHELTER PETITION	[NO CHANGE]
8.961 SHELTER ORDER	[NO CHANGE]
8.962 MOTION FOR INJUNCTION	[NO CHANGE]
8.963 INJUNCTION ORDER	[NO CHANGE]
8.964 DEPENDENCY PETITION	[NO CHANGE]
8.965 ARRAIGNMENT ORDER	[NO CHANGE]
8.966 ADJUDICATION ORDER — DEPENDENCY	[NO CHANGE]
8.967 ORDER OF DISPOSITION, ACCEPTANCE OF CASE PLAN, AND NOTICE OF HEARING	[NO CHANGE]
8.968 AFFIDAVIT OF DILIGENT SEARCH	[NO CHANGE]
8.969 SWORN STATEMENT REGARDING IDENTITY OR LOCATION OF FATHER	[NO CHANGE]
8.970 ORDER ON JUDICIAL REVIEW	[NO CHANGE]
8.971 MOTION TO TERMINATE JURISDICTION	[NO CHANGE]
8.972 ORDER TERMINATING JURISDICTION	[NO CHANGE]
8.973 ORDER ON JUDICIAL REVIEW FOR CHILD AGE 17 OR OLDER	[NO CHANGE]
8.974 PETITION TO EXTEND OR REINSTATE COURT'S JUDISDICTION	[NO CHANGE]
8.975 DEPENDENCY ORDER WITHHOLDING ADJUDICATION	[NO CHANGE]
8.976 PROPOSED RELATIVE PLACEMENT	[NO CHANGE]
8.977 ORDER AUTHORIZING CHILD TO ENTER INTO RESIDENTIAL LEASEHOLD BEFORE THE CHILD'S 18TH BIRTHDAY	[NO CHANGE]
8.978 ORDER AUTHORIZING CHILD TO SECURE DEPOSITORY FINANCIAL SERVICES BEFORE THE CHILD'S 18TH BIRTHDAY	[NO CHANGE]
8.978(a) ORDER CONCERNING YOUTH'S ELIGIBILITY FOR FLORIDA'S TUITION AND FEE EXEMPTION	[NEW FORM]

Committee vote: 24-0-0
Board of Governors vote: 32-0

D. TERMINATION OF PARENTAL RIGHTS FORMS

8.979 SUMMONS FOR ADVISORY HEARING	[NO CHANGE]

8.980	PETITION FOR TERMINATION OF PARENTAL RIGHTS BASED ON VOLUNTARY RELINQUISHMENT	[NO CHANGE]
8.981	PETITION FOR INVOLUNTARY TERMINATION OF PARENTAL RIGHTS	[NO CHANGE]
8.982	NOTICE OF ACTION FOR ADVISORY HEARING	[NEW FORM]
	Committee vote: 20-0-0	
	Board of Governors vote: 32-0	
8.983	ADJUDICATION ORDER AND JUDGMENT OF INVOLUNTARY TERMINATION OF PARENTAL RIGHTS	[NO CHANGE]
8.984	JUDGMENT OF VOLUNTARY TERMINATION OF PARENTAL RIGHTS	[NO CHANGE]
8.985	MOTION TO TERMINATE SUPERVISION AND JURISDICTION	[NO CHANGE]
8.986	ORDER TERMINATING SUPERVISION AND JURISDICTION	[NO CHANGE]

E. JUDICIAL WAIVER OF PARENTAL NOTICE OF TERMINATION OF PREGNANCY FORMS

8.987	PETITION FOR JUDICIAL WAIVER OF PARENTAL NOTICE OF TERMINATION OF PREGNANCY	[NO CHANGE]
8.988	SWORN STATEMENT OF TRUE NAME AND PSEUDONYM	[NO CHANGE]
8.989	ADVISORY NOTICE TO MINOR	[NO CHANGE]
8.990	FINAL ORDER GRANTING PETITION FOR JUDICIAL WAIVER OF PARENTAL NOTICE OF TERMINATION OF PREGNANCY	[NO CHANGE]
8.991	FINAL ORDER DISMISSING PETITION FOR JUDICIAL WAIVER OF PARENTAL NOTICE OF TERMINATION OF PREGNANCY	[NO CHANGE]
8.992	CLERK'S CERTIFICATE PURSUANT TO SECTION 390.01114(4)(b), FLORIDA STATUTES	[NO CHANGE]

APPENDIX B

RULE 8.010. DETENTION HEARING

(a) When Required. No detention order provided for in rule 8.013 shall be entered without a hearing at which all parties shall have an opportunity to be heard on the necessity for the child's being held in detention, unless the court finds that the parent or custodian cannot be located or that the child's mental or physical condition is such that a court appearance is not in the child's best interest.

(b) Time. The detention hearing shall be held within the time limits as provided by law. A child who is detained shall be given a hearing within 24 hours after being taken into custody.

(c) Place. The detention hearing may be held in the county where the incident occurred, where the child is taken into custody, or where the child is detained.

(d) Notice. The intake officer shall make a diligent effort to notify the parent or custodian of the child of the time and place of the hearing. The notice may be by the most expeditious method available. Failure of notice to parents or custodians or their nonattendance at the hearing shall not invalidate the proceeding or the order of detention.

(e) Appointment of Counsel. At the detention hearing, the child shall be advised of the right to be represented by counsel. Counsel shall be appointed if the child qualifies, unless the child waives counsel in writing subject to the requirements of rule 8.165.

(ef) Advice of Rights. At the detention hearing the persons present shall be advised of the purpose of the hearing and the child shall be advised of:

(1) the nature of the charge for which he or she was taken into custody;

~~(2) the right to be represented by counsel and if insolvent the right to appointed counsel;~~

(~~3~~2) that the child is not required to say anything and that anything said may be used against him or her;

(~~4~~3) if the child's parent, custodian, or counsel is not present, that he or she has a right to communicate with them and that, if necessary, reasonable means will be provided to do so; and

(~~5~~4) the reason continued detention is requested.

(~~f~~g) Issues. At this hearing the court shall determine the following:

(1) The existence of probable cause to believe the child has committed a delinquent act. This issue shall be determined in a nonadversary proceeding. The court shall apply the standard of proof necessary for an arrest warrant and its finding may be based upon a sworn complaint, affidavit, deposition under oath, or, if necessary, upon testimony under oath properly recorded.

(2) The need for detention according to the criteria provided by law. In making this determination in addition to the sworn testimony of available witnesses all relevant and material evidence helpful in determining the specific issue, including oral and written reports, may be relied upon to the extent of its probative value, even though it would not be competent at an adjudicatory hearing.

(3) The need to release the juvenile from detention and return the child to the child's nonresidential commitment program.

(g~~h~~) Probable Cause. If the court finds that such probable cause exists, it shall enter an order making such a finding and may, if other statutory needs of detention exist, retain the child in detention. If the court finds that such probable cause does not exist, it shall forthwith release the child from detention. If the court finds that one or more of the statutory needs of detention exists, but is unable to make a finding on the existence of probable cause, it may retain the child in detention and continue the hearing for the purpose of determining the existence of probable cause to a time within 72 hours of the time the child was taken into custody. The court may, on a showing of good cause, continue the hearing a second time for not more than 24 hours beyond the 72-hour period. Release of the child based on no

probable cause existing shall not prohibit the filing of a petition and further proceedings thereunder, but shall prohibit holding the child in detention prior to an adjudicatory hearing.

RULE 8.070. ARRAIGNMENTS

(a) Appointment of Counsel. Prior to the adjudicatory hearing, the court may conduct a hearing to determine whether a guilty, nolo contendere, or not guilty plea to the petition shall be entered and whether the child is represented by counsel or entitled to appointed counsel as provided by law. Counsel shall be appointed if the child qualifies for such appointment and does not waive counsel in writing subject to the requirements of rule 8.165.

(b) Plea. The reading or statement as to the charge or charges may be waived by the child. If the child is represented by counsel, counsel may file a written plea of not guilty at or before arraignment and arraignment shall then be deemed waived. If a plea of guilty or nolo contendere is entered, the court shall proceed as set forth under rule 8.115, disposition hearings. If a plea of not guilty is entered, the court shall set an adjudicatory hearing within the period of time provided by law ~~and appoint counsel when required. If the child is represented by counsel, counsel may file a written plea of not guilty at or before arraignment and thereupon arraignment shall be deemed waived.~~ The child is entitled to a reasonable time in which to prepare for trial.

Committee Notes

1991 Adoption. This rule creates an arraignment proceeding that is referred to in section 985.215(7), Florida Statutes.

RULE 8.080. ACCEPTANCE OF GUILTY OR NOLO CONTENDERE PLEA

(a) Voluntariness. Before accepting a plea of guilty or nolo contendere, the court shall determine that the plea is knowingly and voluntarily entered and that there is a factual basis for it. Counsel for the prosecution and the defense shall assist the court in this determination.

(b) Determination by Court. The court, when making this determination, should place the child under oath and shall address the child personally. The court shall determine that the child understands each of the following rights and consequences of entering a guilty or nolo contendere plea:

(1) The nature of the charge to which the plea is offered and the possible dispositions available to the court.

(2) If the child is not represented by an attorney, that the child has the right to be represented by an attorney at every stage of the proceedings and, if necessary, one will be appointed. Counsel shall be appointed if the child qualifies for such appointment and does not waive counsel in writing subject to the requirements of rule 8.165.

(3) That the child has the right to plead not guilty, or to persist in that plea if it had already been made, and that the child has the right to an adjudicatory hearing and at that hearing has the right to the assistance of counsel, the right to compel the attendance of witnesses on his or her behalf, the right to confront and cross-examine witnesses against him or her, and the right not to be compelled to incriminate himself or herself.

(4) That, if the child pleads guilty or nolo contendere, without express reservation of the right to appeal, the right to appeal all matters relating to the judgment, including the issue of guilt or innocence, is relinquished, but the right to review by appropriate collateral attack is not impaired.

(5) That, if the child pleads guilty or nolo contendere, there will not be a further adjudicatory hearing of any kind, so that by pleading so the right to an adjudicatory hearing is waived.

(6) That, if the child pleads guilty or nolo contendere, the court may ask the child questions about the offense to which the child has pleaded, and, if those questions are answered under oath, on the record, the answers may later be used against the child in a prosecution for perjury.

(7) The complete terms of any plea agreement including specifically all obligations the child will incur as a result.

(8) That, if the child pleads guilty or nolo contendere, and the offense to which the child is pleading is a sexually violent offense or a sexually motivated offense, or if the child has been previously adjudicated for such an offense, the plea may subject the child to involuntary civil commitment as a sexually violent predator on completion of his or her sentence. It shall not be necessary for the trial judge to determine whether the present or prior offenses were sexually motivated, as this admonition shall be given to all children in all cases.

(c) Acknowledgment by Child. Before the court accepts a guilty or nolo contendere plea, the court must determine that the child either:

(1) acknowledges guilt; or

(2) acknowledges that the plea is in the child's best interest, while maintaining innocence.

(d) Of Record. These proceedings shall be of record.

(e) When Binding. No plea offer or negotiation is binding until it is accepted by the court after making all the inquiries, advisements, and determinations required by this rule. Until that time, it may be withdrawn by either party without any necessary justification.

(f) Withdrawal of Plea When Judge Does Not Concur. If the trial judge does not concur in a tendered plea of guilty or nolo contendere arising from negotiations, the plea may be withdrawn.

(~~f~~g) Failure to Follow Procedures. Failure to follow any of the procedures in this rule shall not render a plea void, absent a showing of prejudice.

RULE 8.100. GENERAL PROVISIONS FOR HEARINGS

Unless otherwise provided, the following provisions apply to all hearings:

(a) Presence of the Child. The child shall be present unless the court finds that the child's mental or physical condition is such that a court appearance is not in the child's best interests.

(b) Use of Restraints on the Child. Instruments of restraint, such as handcuffs, chains, irons, or straitjackets, may not be used on a child during a court proceeding and must be removed prior to the child's appearance before the court unless the court finds both that:

(1) The use of restraints is necessary due to one of the following factors:

(A) Instruments of restraint are necessary to prevent physical harm to the child or another person;

(B) The child has a history of disruptive courtroom behavior that has placed others in potentially harmful situations or presents a substantial risk of inflicting physical harm on himself or herself or others as evidenced by recent behavior; or

(C) There is a founded belief that the child presents a substantial risk of flight from the courtroom; and

(2) There are no less restrictive alternatives to restraints that will prevent flight or physical harm to the child or another person, including, but not limited to, the presence of court personnel, law enforcement officers, or bailiffs.

(~~b~~c) Absence of the Child. If the child is present at the beginning of a hearing and during the progress of the hearing voluntarily absents himself or herself from the presence of the court without leave of the court, or is removed from the presence of the court because of disruptive conduct during the hearing, the hearing shall not be postponed or delayed, but shall proceed in all respects as if the child were present in court at all times.

(~~c~~d) Invoking the Rule. Prior to the examination of any witness the court may, and on the request of any party in an adjudicatory hearing 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.

(~~d~~e) Continuances. The court may grant a continuance before or during a hearing for good cause shown by any party.

(ef) Record of Testimony. 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 shall be preserved for 5 years from the date of the hearing. Official records of testimony shall be provided only on request of a party or a party's attorney or on a court order.

(~~f~~g) Notice. When these rules do not require a specific notice, all parties will be given reasonable notice of any hearing.

RULE 8.115. DISPOSITION HEARING

(a) Information Available to Court. At the disposition hearing the court, after establishing compliance with the dispositional considerations, determinations, and discussions required by law, may receive any relevant and material evidence helpful in determining the proper disposition to be made. It shall include written reports required by law, and may include, but shall not be limited to, the child's need for substance abuse evaluation and/or treatment, and any psychiatric or psychological evaluations of the child that may be obtained and that are relevant and material. Such evidence may be received by the court and may be relied upon to the extent of its probative value, even though not competent in an adjudicatory hearing.

(b) Appointment of Counsel. Counsel shall be appointed at all disposition hearings, including cases transferred from other counties and restitution hearings, if the child qualifies for such appointment and does not waive counsel in writing as required by rule 8.165.

(~~b~~c) Disclosure. The child, the child's attorney, the child's parent or custodian, and the state attorney shall be entitled to disclosure of all information in the predisposition report and all reports and evaluations used by the department in the preparation of the report.

(~~c~~d) Disposition Order. The disposition order shall be prepared and distributed by the clerk of the court. Copies shall be provided to the child, defense attorney, state attorney, and department representative. Each case requires a separate disposition order. The order shall:

(1) state the name and age of the child;

(2) state the disposition of each count, specifying the charge title, degree of offense, and maximum penalty defined by statute and giving credit for time served in secure detention before disposition;

(3) state general and specific conditions or sanctions;

(4) make all findings of fact required by law;

(5) state the date and time when issued and the county and court where issued; and

(6) be signed by the court with the title of office.

(~~d~~e) Fingerprints. The child's fingerprints shall be affixed to the order of disposition.

Committee Notes

1991 Amendment. (c) Section 985.23(3)(e), Florida Statutes, requires the court to fingerprint any child who is adjudicated or has adjudication withheld for a felony. This rule extends this requirement to all dispositions. Sentencing guidelines include scorable points for misdemeanor offenses as well as for felonies. This procedure also should assist in identifying juveniles who use false names and birthdates, which can result in the arrest of an innocent child whose name was used by the offender.

RULE 8.130. MOTION FOR REHEARING

(a) Basis. After the court has entered an order ruling on a pretrial motion, an order of adjudication, or an order withholding adjudication, any party may move for rehearing upon one or more of the following grounds:

(1) That the court erred in the decision of any matter of law arising during the hearing.

(2) That a party did not receive a fair and impartial hearing.

(3) That any party required to be present at the hearing was not present.

(4) That there exists new and material evidence which, if introduced at the hearing, would probably have changed the court's decision and could not with reasonable diligence have been discovered before and produced at the hearing.

(5) That the court is without jurisdiction of the proceeding.

(6) That the judgment is contrary to the law and evidence.

(b) Time and Method.

(1) A motion for rehearing may be made and ruled upon immediately after the court announces its judgment but must be made within 10 days of the entry of the order being challenged.

(2) If the motion is made in writing, it shall be served as provided in these rules for service of other pleadings.

(3) A motion for rehearing shall ~~not~~ toll the time for the taking of an appeal.

(c) Court Action.

(1) If the motion for rehearing is granted, the court may vacate or modify the order or any part thereof and allow additional

proceedings as it deems just. It may enter a new judgment, and may order or continue the child in detention pending further proceedings.

(2) The court on its own initiative may vacate or modify any order within the time limitation provided in subdivision (b).

RULE 8.225. PROCESS, DILIGENT SEARCHES, AND SERVICE OF PLEADINGS AND PAPERS

(a) Summons and Subpoenas.

(1) Summons. Upon the filing of a dependency petition, the clerk shall issue a summons. The summons shall require the person on whom it is served to appear for a hearing at a time and place specified not less than 72 hours after service of the summons. A copy of the petition shall be attached to the summons.

(2) Subpoenas. Subpoenas for testimony before the court, for production of tangible evidence, and for taking depositions shall be issued by the clerk of the court, the court on its own motion, or any attorney of record for a party. Subpoenas may be served within the state by any person over 18 years of age who is not a party to the proceeding. In dependency and termination of parental rights proceedings, subpoenas may also be served by authorized agents of the department or the guardian ad litem. Except as otherwise required by this rule, the procedure for issuance of a subpoena by an attorney of record in a proceeding shall be as provided in the Florida Rules of Civil Procedure.

(3) Service of Summons and Other Process to Persons Residing in the State. The summons and other process shall be served upon all parties other than the petitioner as required by law. The summons and other process may be served by authorized agents of the department or the guardian ad litem.

(A) Service by publication shall not be required for dependency hearings and shall be required only for service of summons in a termination of parental rights proceeding for parents whose identities are known but whose whereabouts cannot be determined despite a diligent search. Service by publication in these circumstances shall be considered valid service.

(B) The failure to serve a party or give notice to a participant in a dependency hearing shall not affect the validity of an order of adjudication or disposition if the court finds that the petitioner has completed a diligent search that failed to ascertain the identity or location of that party.

(C) Personal appearance of any person in a hearing before the court eliminates the requirement for serving process upon that person.

(4) Service of Summons and Other Process to Persons Residing Outside of the State in Dependency Proceedings.

(A) Service of the summons and other process on parents, parties, participants, petitioners, or persons outside this state shall be in a manner reasonably calculated to give actual notice, and may be made:

(i) by personal delivery outside this state in a manner prescribed for service of process within this state;

(ii) in a manner prescribed by the law of the place in which service is made for service of process in that place in an action in any of its courts of general jurisdiction; or

~~(iii) by any form of mail addressed to the person to be served and requesting a receipt; or~~

(~~iv~~iii) as directed by the court. Service by publication shall not be required for dependency hearings.

(B) Notice under this rule shall be served, ~~mailed,~~ delivered, or last published at least 20 days before any hearing in this state.

(C) Proof of service outside this state may be made by affidavit of the person who made the service or in the manner prescribed by the law of this state, the order pursuant to which the service is made, or the law of the place in which the service is made. ~~If service is made by mail, proof may be in a receipt signed by the addressee or other evidence of delivery to the addressee.~~

(D) Personal appearance of any person in a hearing before the court eliminates the requirement for serving process upon that person.

(b) Paternity Inquiry and Diligent Search.

(1) Identity Unknown. If the identity of a parent is unknown, and a petition for dependency, shelter care, or termination of parental rights is filed, the court shall conduct the inquiry required by law. The information required by law may be submitted to the court in the form of a sworn affidavit executed by a person having personal knowledge of the facts.

(2) Location Unknown. If the location of a parent is unknown and that parent has not filed a permanent address designation with the court, the petitioner shall undertake a diligent search as required by law.

(3) Affidavit of Diligent Search. If the location of a parent is unknown after the diligent search has been completed, the petitioner shall file with the court an affidavit of diligent search executed by the person who made the search and inquiry.

(4) Continuing Duty. After filing an affidavit of diligent search in a dependency or termination of parental rights proceeding, the petitioner, and, if the court requires, the department, are under a continuing duty to search for and attempt to serve the parent whose location is unknown until excused from further diligent search by the court. The department shall report on the results of the continuing search at each court hearing until the person is located or until further search is excused by the court.

(5) Effect of Paternity Inquiry and Diligent Search.

(A) Failure to serve parents whose identity or residence is unknown shall not affect the validity of an order of adjudication or disposition if the court finds the petitioner has completed a diligent search.

(B) If the court inquiry fails to identify any person as a parent or prospective parent, the court shall so find and may proceed without further notice.

(C) If the inquiry, diligent search, or subsequent search identifies and locates any person who may be a parent or prospective parent, the court shall require notice of the hearing to be provided to that person. That person must then be given an opportunity to become a party to the

proceedings by completing a sworn affidavit of parenthood and filing it with the court or the department.

(c) Notice and Service of Pleadings and Papers.

(1) Notice of Arraignment Hearings in Dependency Cases. Notice of the arraignment hearing must be served on all parties with the summons and petition. The document containing the notice to appear in a dependency arraignment hearing must contain, in type at least as large as the balance of the document, the following or substantially similar language: "FAILURE TO PERSONALLY APPEAR AT THE ARRAIGNMENT HEARING CONSTITUTES CONSENT TO THE ADJUDICATION OF THIS CHILD (OR THESE CHILDREN) AS A DEPENDENT CHILD (OR CHILDREN) AND MAY ULTIMATELY RESULT IN LOSS OF CUSTODY OF THIS CHILD (OR THESE CHILDREN)." Any preadoptive parents of the children and all participants, including the child's foster parents and relative caregivers, must be notified of the arraignment hearing.

(2) Notice of Assessment of Child Support. Other than as part of a disposition order, if the court, on its own motion or at the request of any party, seeks to impose or enforce a child support obligation on any parent, all parties and participants are entitled to reasonable notice that child support will be addressed at a future hearing.

(3) Notice of Hearings to Participants and Parties Whose Identity or Address are Known. Any preadoptive parents, all participants, including foster parents and relative caregivers, and parties whose identity and address are known must be notified of all proceedings and hearings subsequent to the initial hearing, unless otherwise provided by law. Notice to parents in proceedings involving shelter hearings and hearings resulting from medical emergencies must be that which is most likely to result in actual notice. It is the duty of the petitioner or moving party to notify any preadoptive parents, all participants, including foster parents and relative caretakers, and parties known to the petitioner or moving party of all hearings subsequent to the initial hearing, except hearings which must be noticed by the court. Additional notice is not required if notice was provided to the parties in writing by the court or is contained in prior court orders and those orders were provided to the participant or party. All foster or preadoptive parents must be provided at least 72 hours notice, verbally or in

writing, of all proceedings or hearings relating to children in their care or children they are seeking to adopt to ensure the ability to provide input to the court.

(4) Service of Pleadings, Orders, and Papers. Unless the court orders otherwise, every pleading, order, and paper filed in the action after the initial petition, shall be served on each party or the party's attorney. Nothing herein shall be construed to require that a plea be in writing or that an application for witness subpoena be served.

(5) Method of Service. When service is required or permitted to be made upon a party or participant represented by an attorney, service shall be made upon the attorney unless service upon the party or participant is ordered by the court.

(A) Service is excused if the identity or residence of the party or participant is unknown and a diligent search for that person has been completed in accordance with law.

(B) Service upon the attorney shall be made by delivering a copy to the attorney or by mailing it to the attorney's last known address.

(C) Delivery of a copy within this rule shall mean:

(i) handing it to the attorney;

(ii) leaving it at the attorney's office with the person in charge thereof;

(iii) if there is no one in charge of the office, leaving it a conspicuous place therein; or

(iv) transmitting it by facsimile to the attorney's or party's office with a cover sheet containing the sender's name, firm, address, telephone number, and facsimile number, the number of pages transmitted, and the recipient's facsimile number. When service is made by facsimile, a copy shall also be served by any other method permitted by this rule. Facsimile service occurs when transmission is complete.

(D) If the party or participant is not represented by an attorney, service of all pleadings or papers shall be upon the party or participant. Service may be made by mail to the party's or participant's permanent mailing address, if one has been provided to the court; to the last known address, if a permanent mailing address has not been provided to the court; or by leaving it at ~~their~~his or her usual place of abode with some person of their family above 15 years of age and informing such person of the contents.

(E) Service by mail shall be complete upon mailing.

(6) Filing. The filing of pleadings and other papers with the court as required by these rules shall be made by filing the original with the clerk of the court either before service or immediately thereafter. The court may permit the papers to be filed with it, in which event the filing date shall be noted thereon and the papers shall be transmitted to the office of the clerk.

(7) Certificate of Service. When any authorized person shall in substance certify:

"I certify that a copy/copies has/have been furnished to (insert names or names) by (delivery) (mail) (fax) on (date).

_____
Title"

this certificate shall be taken as prima facie proof of such service in compliance with all rules of court and law. The certificate must be signed by the attorney of record, clerk or deputy clerk, judicial assistant, or judge.

RULE 8.235. MOTIONS

(a) Motions in General. An application to the court for an order shall be made by motion which shall be in writing unless made during a hearing; shall be signed by the party making the motion or by the party's attorney; shall state with particularity the grounds therefor; and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion or in a written report to the court for a scheduled hearing provided the notice or report are served on the parties as required by law.

(b) Motion to Dismiss. Any party may file a motion to dismiss any petition, the allegations in the petition against a particular party, or other pleading, setting forth the grounds on which the motion is based. If a motion to dismiss the petition is granted ~~where~~when a child is being sheltered under an order, the child may be continued in shelter under previous order of the court upon the representation that a new or amended petition will be filed.

(c) Sworn Motion to Dismiss. Before the adjudicatory hearing the court may entertain a motion to dismiss the petition or the allegations in the petition against a particular party, on the ground that there are no material disputed facts and the undisputed facts do not establish a prima facie case of dependency. The facts on which such motion is based shall be specifically alleged and the motion sworn to by the party. The motion shall be filed a reasonable time before the date of the adjudicatory hearing. The opposing parties may traverse or demur to this motion. Factual matters alleged in it shall be deemed admitted unless specifically denied by the party. The motion shall be denied if the party files a written traverse that with specificity denies under oath the material fact or facts alleged in the motion to dismiss.

(d) Motion to Sever. A motion may be made for a severance of 2 or more counts of a multi-count petition, or for the severance of the cases of 2 or more children alleged to be dependent in the same petition. The court may grant motions for severance of jointly-brought cases for good cause shown.

Committee Notes

1992 Amendment. This rule allows any party to move for dismissal based on the grounds that there are no material facts in dispute and that these facts are not legally sufficient to prove dependency.

RULE 8.257. GENERAL MAGISTRATES

(a) Appointment. Judges of the circuit court may appoint as many general magistrates from among the members of The Florida Bar in the circuit as the judges find necessary, and the general magistrates shall continue in office until removed by the court. The order of appointment shall be recorded. Every person appointed as a general magistrate shall take the oath required of officers by the Constitution and the oath shall be recorded before the magistrate discharges any duties of that office.

(b) Referral.

(1) Consent. No matter shall be heard by a general magistrate without an appropriate order of referral and the consent to the referral of all parties. Consent, as defined in this rule, to a specific referral, once given, cannot be withdrawn without good cause shown before the hearing on the merits of the matter referred. Consent may be express or implied in accordance with the requirements of this rule.

(2) Objection. A written objection to the referral to a general magistrate must be filed within 10 days of the service of the order of referral. If the time set for the hearing is less than 10 days after service of the order of referral, the objection must be filed before commencement of the hearing. Failure to file a written objection within the applicable time period is deemed to be consent to the order of referral.

(3) Order.

(A) The order of referral shall contain the following language in bold type:

> **A REFERRAL TO A GENERAL MAGISTRATE REQUIRES THE CONSENT OF ALL PARTIES. YOU ARE ENTITLED TO HAVE THIS MATTER HEARD BEFORE A JUDGE. IF YOU DO NOT WANT TO HAVE THIS MATTER HEARD BEFORE THE GENERAL MAGISTRATE, YOU MUST FILE A WRITTEN OBJECTION TO THE REFERRAL WITHIN 10 DAYS OF THE TIME OF SERVICE OF THIS ORDER. IF THE TIME SET FOR THE HEARING IS LESS THAN 10**

DAYS AFTER THE SERVICE OF THIS ORDER, THE OBJECTION MUST BE MADE BEFORE THE HEARING. FAILURE TO FILE A WRITTEN OBJECTION WITHIN THE APPLICABLE TIME PERIOD IS DEEMED TO BE A CONSENT TO THE REFERRAL.

REVIEW OF THE REPORT AND RECOMMENDATIONS MADE BY THE GENERAL MAGISTRATE SHALL BE BY EXCEPTIONS AS PROVIDED IN FLORIDA RULE OF JUVENILE PROCEDURE 8.257(f). A RECORD, WHICH INCLUDES A TRANSCRIPT OF PROCEEDINGS, ELECTRONIC RECORDING OF PROCEEDINGS, OR STIPULATION BY THE PARTIES OF THE EVIDENCE CONSIDERED BY THE GENERAL MAGISTRATE AT THE PROCEEDINGS, WILL BE REQUIRED TO SUPPORT THE EXCEPTIONS.

(B) The order of referral shall state with specificity the matter or matters being referred. The order of referral shall also state whether electronic recording or a court reporter is provided by the court.

(4) Setting Hearing. When a referral is made to a general magistrate, any party or the general magistrate may set the action for hearing.

(c) General Powers and Duties. Every general magistrate shall perform all of the duties that pertain to the office according to the practice in chancery and rules of court and under the direction of the court. A general magistrate shall be empowered to administer oaths and conduct hearings, which may include the taking of evidence. All grounds for disqualification of a judge shall apply to general magistrates.

(d) Hearings.

(1) The general magistrate shall assign a time and place for proceedings as soon as reasonably possible after the referral is made and give notice to each of the parties either directly or by directing counsel to file and serve a notice of hearing. If any party fails to appear, the general magistrate may proceed ex parte or may adjourn the proceeding to a future

day, giving notice of the adjournment to the absent party. The general magistrate shall proceed with reasonable diligence in every referral and with the least delay practicable. Any party may apply to the court for an order to the general magistrate to speed the proceedings and to make the report and to certify to the court the reason for any delay.

(2) The general magistrate shall take testimony and establish a record which may be by electronic means as provided by Florida Rule of Judicial administration 2.535(g)(3) or by a court reporter. The parties may not waive this requirement.

(3) The general magistrate shall have authority to examine under oath the parties and all witnesses on all matters contained in the referral, to require production of all books, papers, writings, vouchers, and other documents applicable to it, and to examine on oath orally all witnesses produced by the parties. The general magistrate may take all actions concerning evidence that can be taken by the circuit court and in the same manner. The general magistrate shall have the same powers as a circuit judge to use communications equipment as defined and regulated by Florida Rule of Judicial Administration 2.530.

(4) The notice or order setting a matter for hearing shall state whether electronic recording or a court reporter is provided by the court. If the court provides electronic recording, the notice shall also state that any party may provide a court reporter at that party's expense, subject to the court's approval.

(e) Report.

(1) The general magistrate shall file a report that includes findings of fact, conclusions of law, and recommendations and serve copies on all parties. If a court reporter was present, the report shall contain the name and address of the reporter.

(2) The report and recommendations shall contain the following language in bold type:

SHOULD YOU WISH TO SEEK REVIEW OF THE REPORT AND RECOMMENDATIONS MADE BY THE

GENERAL MAGISTRATE, YOU MUST FILE EXCEPTIONS WITHIN 10 DAYS OF SERVICE OF THE REPORT AND RECOMMENDATIONS IN ACCORDANCE WITH FLORIDA RULE OF JUVENILE PROCEDURE 8.257(f). YOU WILL BE REQUIRED TO PROVIDE THE COURT WITH A RECORD SUFFICIENT TO SUPPORT YOUR EXCEPTIONS WITHIN 10 DAYS OF SERVICE OF THE REPORT AND RECOMMENDATIONS OR YOUR EXCEPTIONS WILL BE DENIED. A RECORD ORDINARILY INCLUDES A ~~WRITTEN~~ TRANSCRIPT OF ~~ALL RELEVANT~~ PROCEEDINGS, ELECTRONIC RECORDING OF PROCEEDINGS, OR STIPULATION BY THE PARTIES OF THE EVIDENCE CONSIDERED BY THE GENERAL MAGISTRATE AT THE PROCEEDINGS. THE PERSON SEEKING REVIEW MUST HAVE THE TRANSCRIPT PREPARED FOR THE COURT'S REVIEW.

(f) Exceptions. The parties may file exceptions to the report within 10 days from the time it is served on them. Any party may file cross-exceptions within 5 days from the service of the exceptions. However, the filing of cross-exceptions shall not delay the hearing on the exceptions unless good cause is shown. If no exceptions are filed within that period, the court shall take appropriate action on the report. If exceptions are filed, they shall be heard on reasonable notice by either party or the court.

(g) Record.

(1) For the purpose of the hearing on exceptions, a record, substantially in conformity with this rule, shall be provided to the court by the party seeking review. The record shall consist of

(A) the court file~~, including the transcript of the relevant proceedings before the general magistrate, and~~;

(B) all depositions and evidence presented to the general magistrate~~.~~; and

(C) the transcript of the proceedings, electronic recording of the proceedings, or stipulation by the parties of the evidence considered by the general magistrate at the proceedings.

(~~1~~2) The transcript of ~~all relevant~~the proceedings, electronic recording of the proceedings, or stipulation by the parties of the evidence considered by the general magistrate at the proceedings, if any, shall be delivered to the judge and provided to all other parties not less than 48 hours before the hearing on exceptions.

(~~2~~3) If less than a full transcript or electronic recording of the proceedings taken before the general magistrate is ordered prepared by the excepting party, that party shall promptly file a notice setting forth the portions of the transcript or electronic recording that have been ordered. The responding party shall be permitted to designate any additional portions of the transcript or electronic recording necessary to the adjudication of the issues raised in the exceptions or cross-exceptions.

(~~3~~4) The cost of the original and all copies of the transcript or electronic recording of the proceedings shall be borne initially by the party seeking review. Should any portion of the transcript or electronic recording be required as a result of a designation filed by the responding party, the party making the designation shall bear the initial cost of the additional transcript or electronic recording.

(h) Prohibition on Magistrate Presiding over Certain Hearings. Notwithstanding the provisions of this rule, a general magistrate shall not preside over a shelter hearing under section 39.402, Florida Statutes, an adjudicatory hearing under section 39.507, Florida Statutes, or an adjudicatory hearing under section 39.809, Florida Statutes.

RULE 8.265. MOTION FOR REHEARING

(a) Basis. After the court has entered an order, any party may move for rehearing upon one or more of the following grounds:

(1) That the court erred in the decision of any matter of law arising during the hearing.

(2) That a party did not receive a fair and impartial hearing.

(3) That any party required to be present at the hearing was not present.

(4) That there exists new and material evidence, which, if introduced at the hearing would probably have changed the court's decision and could not with reasonable diligence have been discovered before and produced at the hearing.

(5) That the court is without jurisdiction of the proceeding.

(6) That the judgment is contrary to the law and evidence.

(b) Time and Method.

(1) A motion for rehearing may be made and ruled upon immediately after the court announces its judgment but must be made within 10 days of the entry of the order.

(2) If the motion is made in writing, it shall be served as provided in these rules for service of other pleadings.

(3) A motion for rehearing shall not toll the time for the taking of an appeal. <u>The court shall rule on the motion for rehearing within 10 days of filing or it is deemed denied.</u>

(c) Court Action.

(1) A rehearing may be granted to all or any of the parties on all or any part of the issues. All orders granting a rehearing shall state the specific issues to be reheard.

(2) If the motion for rehearing is granted the court may vacate or modify the order or any part of it and allow additional proceedings as it deems just. It may enter a new judgment, and may order or continue the child in a shelter or out-of-home placement pending further proceedings.

(3) The court on its own initiative may vacate or modify any order within the time limitation provided in subdivision (b).

RULE 8.310. DEPENDENCY PETITIONS

(a) Contents.

(1) A dependency petition may be filed as provided by law. Each petition shall be entitled a petition for dependency and shall allege sufficient facts showing the child to be dependent based upon applicable law.

(2) The petition shall contain allegations as to the identity and residence of the parents or legal custodians, if known.

(3) The petition shall identify the age, sex, and name of the child. Two or more children may be the subject of the same petition.

(4) Two or more allegations of dependency may appear in the same petition, in separate counts. The petition need not contain allegations of acts or omissions by both parents.

(5) The petition must describe what voluntary services and/or dependency mediation the parents or legal custodians were offered and the outcome of each.

(b) Verification. The petition shall be signed stating under oath the signer's good faith in filing the petition. No objection to a petition on the grounds that it was not signed or verified, as herein provided, shall be entertained after a plea to the merits.

(c) Amendments. At any time prior to the conclusion of an adjudicatory hearing, an amended petition may be filed or the petition may be amended by motion; however, after a written answer or plan has been filed, amendments shall be permitted only with the permission of the court, unless all parties consent. Amendments shall be freely permitted in the interest of justice and the welfare of the child. A continuance may be granted on motion and a showing that the amendment prejudices or materially affects any party.

(d) Defects and Variances. No petition or any count thereof shall be dismissed, or any judgment vacated, on account of any defect in the form

of the petition or of misjoinder of counts. If the court is of the opinion that the petition is so vague, indistinct, and indefinite as to mislead the child, parent, or legal custodian and prejudice any of them in the preparation of a defense, the petitioner may be required to furnish a more definite statement.

(e) Voluntary Dismissal. The petitioner without leave of the court, at any time prior to entry of an order of adjudication, may request a voluntary dismissal of the petition or any allegations of the petition against a party by serving a notice requesting dismissal on all parties, or, if during a hearing, by so stating on the record. The petition or any allegations in the petition against a party shall be dismissed. ~~and~~ If the petition is dismissed, the court loses jurisdiction unless another party adopts the petition within 72 hours.

Committee Notes

1991 Amendment. (c) The time limit for amending a petition has been extended to be consistent with civil pleading procedures. The best interest of the child requires liberal amendments. The procedures for determining if a party has been prejudiced have not been changed.

(e) This section has been reworded to provide a procedure for notice to all parties before dismissal and to allow adoption of a petition by another party.

RULE 8.400. CASE PLAN DEVELOPMENT

(a) Case Planning Conference. The case plan must be developed in a face-to-face conference with the parents, the guardian ad litem, attorney ad litem and, if appropriate, the child and the temporary custodian of the child.

(b) Contents. The case plan must be written simply and clearly in English and the principal language of the parents, if possible. Each case plan must contain

(1) a description of the problem being addressed, including the parent's behavior or acts resulting in risk to the child and the reason for the intervention by the department;

(2) a permanency goal;

(3) if it is a concurrent plan, a description of the permanency goal of reunification with the parent or legal custodian and one of the remaining permanency goals;

(4) the date the compliance period expires; and

(5) a written notice to the parent that failure of the parent to substantially comply with the case plan may result in the termination of parental rights, and that a material breach of the case plan may result in the filing of a petition for termination of parental rights sooner than the expiration of the compliance period.

(c) Expiration of Case Plan. The case plan compliance period expires no later than 12 months after the date the child was initially removed from the home or the date the case plan was accepted by the court, whichever occurs first.

(d) Department Responsibility.

(1) The department shall prepare a draft of a case plan for each child receiving services under ~~F.S.~~ Chapter 39, Florida Statutes.

(2) The department shall document, in writing, a parent's unwillingness or inability to participate in the development of the case plan, provide the written documentation to the parent when available for the court record, and prepare a case plan.

(3) After the case plan has been developed, and before acceptance by the court, the department shall make the appropriate referrals for services that will allow the parents to begin the agreed-upon tasks and services immediately if the parents agree to begin compliance.

(4) The department must immediately give the parties, including the child if appropriate, a signed copy of the agreed-upon case plan.

(5) The department must prepare, but need not submit to the court, a case plan for a child who will be in care no longer than 30 days unless that child is placed in out of home care a second time within a 12-month period.

(6) The department must prepare a case plan for a child in out of home care within 60 days after the department removes the child from the home and shall submit the plan to the court before the disposition hearing for the court to review and approve.

(7) Not less than 3 business days before the disposition <u>or case plan review</u> hearing, the department must file a case plan with the court.

(8) After jurisdiction attaches, the department shall file with the court all case plans, including all case plans prepared before jurisdiction of the court attached. The department shall provide a copy of the case plans filed to all the parties whose whereabouts are known, not less than 3 business days before the disposition <u>or case plan review</u> hearing.

(e) Signature. The case plan must be signed by all parties except the child, if the child is not of an age or capacity to participate in the case planning process.

(f) Service. Each party, including the child, if appropriate, must be provided with a copy of the case plan not less than 3 business days before

the disposition or case plan review hearing. If the location of a parent is unknown, this fact must be documented in writing and included in the plan.

RULE 8.410. APPROVAL OF CASE PLANS

(a) Hearing. The court shall review the contents of the case plan at the disposition or case plan review hearing unless a continuance for the filing of the case plan has been granted by the court.

(b) Determinations by Court. At the hearing, the court shall determine if:

(1) The plan is consistent with the previous orders of the court placing the child in care.

(2) The plan is consistent with the requirements for the content of a case plan as provided by law.

(3) The parents were advised of their right to have counsel present at all prior hearings and the parents were advised of their right to participate in the preparation of the case plan and to have counsel or any other person assist in the preparation of the case plan.

(4) The case plan is meaningful and designed to address the facts, circumstances, and problems on which the court based its order of dependency for the child.

(5) The plan adequately addresses the goals and needs of the child.

(c) Amendment of Plan. During the hearing, if the court determines that the case plan does not meet statutory requirements and include previous court orders, it shall order the parties to make amendments to the plan. The amended plan must be submitted to the court within 30 days for another hearing and approval. A copy of the amended plan must be provided to each party, if the location of the party is known, at least 3 business days before filing with the court. If the parties do not agree on the final terms, the court shall order those conditions and tasks it believes must be accomplished to obtain permanency for the child. In addition, the court may order the department to provide those services necessary to assist in achieving the goal of the case plan.

(d) Entry of Findings. The court shall enter its findings with respect to the review of the case plan in writing and make specific findings on each element required by law to be included in a case plan

(e) Review Hearing. The court will set a hearing to review the performance of the parties to the case plan no later then 90 days after the disposition hearing or the hearing at which the case plan was approved, 6 months from the date on which the child was removed from the home, or 6 months from the date of the last judicial review, whichever comes first.

RULE 8.505. PROCESS AND SERVICE

(a) Personal Service. On the filing of a petition requesting the termination of parental rights, a copy of the petition and notice of the date, time, and place of the advisory hearing must be personally served on

(1) the parents;

(2) the legal custodians or caregivers of the child;

(3) if the natural parents are dead or unknown, a living relative of the child, unless on diligent search and inquiry no relative can be found;

(4) any person who has physical custody of the child;

(5) any grandparents entitled by law to notice of the adoption proceeding;

(6) any prospective parent identified by law;

(7) the guardian ad litem for the child or the representative of the guardian ad litem program, if the program has been appointed;

(8) the attorney ad litem for the child if one has been appointed; and

(9) any other person as provided by law.

(b) Contents. The document containing the notice to appear shall notify the required persons of the filing of the petition and must contain in type at least as large as the balance of the document the following or substantially similar language:

"FAILURE TO PERSONALLY APPEAR AT THE ADVISORY HEARING CONSTITUTES CONSENT TO THE TERMINATION OF PARENTAL RIGHTS OF THIS CHILD (THESE CHILDREN). IF YOU FAIL TO APPEAR ON THE DATE AND TIME SPECIFIED, YOU MAY LOSE ALL LEGAL RIGHTS AS A PARENT TO THE CHILD

OR CHILDREN NAMED IN THE PETITION ATTACHED TO THIS NOTICE."

(c) Constructive Service. Parties whose identities are known and on whom personal service of process cannot be effected shall be served by publication as provided by law. The notice of action shall contain the initials of the child and the child's date of birth. There shall be no other identifying information of the child in the notice of action. The notice of action shall include the full name and last known address of the person subject to the notice. The notice of action shall not contain the name or any other identifying information of the other parents or prospective parents who are not subject to the notice.

FORM 8.978(a). ORDER CONCERNING YOUTH'S ELIGIBILITY FOR FLORIDA'S TUITION AND FEE EXEMPTION.

ORDER CONCERNING ELIGIBILITY FOR FLORIDA'S TUITION AND FEE EXEMPTION

THIS CAUSE comes before the court to determine .....(name).....'s eligibility for the tuition and fee exemption under Chapter 1009, Florida Statutes, and the court being fully advised in the premises, it is

ORDERED AND ADJUDGED that .....(name)..... is eligible, under Chapter 1009, Florida Statutes, and therefore exempt from the payment of tuition and fees, including lab fees, at a school district that provides postsecondary career programs, community college, or state university.

ORDERED at ....., Florida, on .....(date).....

_____
Circuit Judge

Copies to:

FORM 8.982. NOTICE OF ACTION FOR ADVISORY HEARING

.....(Child(ren)'s initials and date(s) of birth).....

NOTICE OF ACTION AND OF ADVISORY HEARING FOR TERMINATION OF PARENTAL RIGHTS AND GUARDIANSHIP

STATE OF FLORIDA

TO: .....(name and address of person being summoned).....

A Petition for Termination of Parental Rights under oath has been filed in this court regarding the above-referenced child(ren). You are to appear before .....(judge)....., at .....(time and address of hearing)....., for a TERMINATION OF PARENTAL RIGHTS ADVISORY HEARING. You must appear on the date and at the time specified.

FAILURE TO PERSONALLY APPEAR AT THIS ADVISORY HEARING CONSTITUTES CONSENT TO THE TERMINATION OF PARENTAL RIGHTS TO THIS CHILD (THESE CHILDREN). IF YOU FAIL TO APPEAR ON THE DATE AND TIME SPECIFIED YOU MAY LOSE ALL LEGAL RIGHTS TO THE CHILD (OR CHILDREN) WHOSE INITIALS APPEAR ABOVE.

If you are a person with a disability who needs any accommodation to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact (name, address, telephone number) within two working days of your receipt of this summons. If you are hearing or voice impaired, call 711.

Witness my hand and seal of this court at .....(city, county, state)..... on .....(date).....

CLERK OF COURT

BY:_____

DEPUTY CLERK

AVISO Y CITACION PARA LA AUDIENCIA INFORMATIVA SOBRE LA TERMINACION DE LOS DERECHOS PATERNALES Y DE LA TUTELA

ESTADO DE LA FLORIDA

PARA:_____

(Nombre y direccion de la persona a ser citada)

CONSIDERANDO que se ha interpuesto en este Juzgado una solicitud bajo juramento para la terminacion de los derechos paternales con respecto al(os) nino(s) en referencia, adjuntandose copia de la misma. Mediante la presente se le ordena comparecer ante el _____

_____ (Juez)

a las _____ para una AUDIENCIA INFORMATIVA SOBRE LA

(hora y lugar de la audiencia)

TERMINACION DE LOS DERECHOS PATERNALES. Usted debera comparecer en le fecha y hora indicadas.

SI USTED NO COMPARECE PERSONALMENTE A LA AUDIENCIA INFORMATIVA, ESTO SIGNIFICARA QUE USTED ACCEDE A LA TERMINACION DE SUS DERECHOS PATERNALES CON RESPECTO A ESTE(OS) NINO(S). SI USTED NO COMPARECE EN LA FECHA Y HORA INDICADAS, USTED PODRA PERDER TODOS SUS DERECHOS LEGALES CON RESPECTO AL/LOS NINO(S) MENCIONADO(S) EN LA PETICION ADJUNTA A ESTE AVISO.

De acuerdo con la Ley de Americanos con Incapacidades de 1990 (ADA), las personas incapacitadas quienes, por sus incapacidades, necesitan acomodos especiales para participar en esto proceso deben ponerse en contacto con un coordinador de ADA en el no mas tarde de 2 dias laborables antes de tal proceso para recibir asistencia. El numero para el Servicio de Interpretacion de la Florida para Personas Sordas es el 771.

Firmado y sigilado en este Juzgado el

(ciudad, condado, estado) (fecha)

ESCRIBANO DEL TRIBUNAL

POR:

ESCRIBANO DELEGADO

MANDA AK AVTISMAN POU ENFOME-W SOU YON CHITA TANDE, POU YO ANILE DWA-W KM PARAN AK KM GADYEN.

LETA FLORID

POU: .....(non ak adrs moun yo voye manda-a).....

KOM, tandiske, gen yon demann smante pou anile dwa paran-yo, ki prezante devan tribinal-la, konsnan timoun ki nonmen nan lt sa-a, piwo-a, yon kopi dokiman-an kwoke nan dosye-a., yo bay ld pou prezante devan..... (Jij-la) ....., a..... (nan.l ak adrs chita tande-a)....., NAN YON CHITA TANDE POU YO ENFME-W, YO GEN LENTANSYON POU ANILE DWA-OU KM PARAN. Ou ft pou prezante nan dat ak l ki endike-a.

SI OU PA PREZANTE PSONLMAN NAN CHITA TANDE-A, POU YO ENFME-W, YO GEN LENTANSYON POU ANILE DWA-OU KM PARAN, SA KA LAKZ YO DESIDE OU KONSANTI TIMOUN SA-A (YO), BEZWEN PWOTEKSYON LETA EPI SA KA LAKZ OU PDI DWA-OU KM PARAN TIMOUN SA-A(YO), KI GEN NON YO MAKE NAN KOPI DEMANN-NAN, KI KWOKE NAN AVTISMAN-AN

An ako ak Lwa pou Ameriken ki Andikape yo de ane 1990 (ADA) a, moun ki andikape yo, ki poutet andikap yo an, bezwen de aranjman spesyal pou yo ka

patisipe nan deroulman yo, fet pou rantre an knotak ak koodinate ADA a nan pa pi ta ke non 2 jou travay ki vin anvan deroulman an pou yo ka resevwa asistans. Nimewo pou Sevis Tradiksyon nan la Florid pou moun ki soud se 771.

Mwen siyen non mwen e mete so mwen nan dokiman tribinal-la km temwen nan (vil, distrik, eta) , nan (dat)

GREFYE TRIBINAL-LA

PA: _____

ASISTAN GREFYE TRIBINAL-LA

APPENDIX C

Proposed rule	Reasons for change
RULE 8.010. DETENTION HEARING	
(a) When Required. [No change]	
(b) Time. The detention hearing shall be held within the time limits as provided by law. A child who is detained shall be given a hearing within 24 hours after being taken into custody.	Incorporates the provisions of section 985.255(3)(a), Florida Statutes, that a detained child be given a hearing within 24 hours.
(c) Place. [No change]	
(d) Notice. [No change]	
(e) Appointment of Counsel. At the detention hearing, the child shall be advised of the right to be represented by counsel. Counsel shall be appointed if the child qualifies, unless the child waives counsel in writing subject to the requirements of rule 8.165.	In response to NJDC Assessment, creates a new subdivision (e) requiring that child be advised of the right to counsel at the detention hearing and that counsel be appointed unless waived under *Rule* 8.165.
(ef) Advice of Rights. At the detention hearing the persons present shall be advised of the purpose of the hearing and the child shall be advised of:	Subsequent subdivisions renumbered because of creation of new subdivision (e).
(1) the nature of the charge for which he or she was taken into custody;	
~~(2) the right to be represented by counsel and~~	Deletes current subdivision that has been incorporated into new

~~if insolvent the right to appointed counsel;~~

(~~3~~2) that the child is not required to say anything and that anything said may be used against him or her;

(~~4~~3) if the child's parent, custodian, or counsel is not present, that he or she has a right to communicate with them and that, if necessary, reasonable means will be provided to do so; and

(~~5~~4) the reason continued detention is requested.

(~~f~~g) **Issues.** [No change in text]

(g~~h~~) **Probable Cause.** [No change in text]

subdivision (e).

Proposed rule	Reasons for change
RULE 8.070. ARRAIGNMENTS	Rule has been divided into two subdivision corresponding to activities that take place at arraignment.
(a) Appointment of Counsel. Prior to the adjudicatory hearing, the court may conduct a hearing to determine whether a guilty, nolo contendere, or not guilty plea to the petition shall be entered and whether the child is represented by counsel or entitled to appointed counsel as provided by law. Counsel shall be appointed if the child qualifies for such appointment and does not waive counsel in writing subject to the requirements of rule 8.165.	In response to NJDC Assessment, amends subdivision (a) to require appointment of counsel at the arraignment hearing if the child qualifies for appointment and does not waive counsel under *Rule* 8.165.
(b) Plea. The reading or statement as to the charge or charges may be waived by the child. If the child is represented by counsel, counsel may file a written plea of not guilty at or before arraignment and arraignment shall then be deemed waived. If a plea of guilty or nolo contendere is entered, the court shall proceed as set forth under rule 8.115, disposition hearings. If a plea of not guilty is entered, the court shall set an adjudicatory hearing within the period of time provided by law ~~and appoint counsel when required~~. ~~If the child is represented by counsel, counsel may file a written plea of not guilty at or before arraignment and thereupon arraignment shall be deemed waived.~~ The child is entitled to a reasonable time in which to prepare for trial.	Amendments conform to the NJDC Assessment and *Fla. R. Crim. P.* 3.160. New sentences have been added regarding reading of charges and filing of written plea agreements. Sentence has been added stating that child has "a reasonable time to prepare for trial."
Committee Notes	
[No change]	

Proposed rule	Reasons for change
RULE 8.080. ACCEPTANCE OF GUILTY OR NOLO CONTENDERE PLEA	
(a) Voluntariness. [No change]	
(b) Determination by Court. The court, when making this determination, should place the child under oath and shall address the child personally. The court shall determine that the child understands each of the following rights and consequences of entering a guilty or nolo contendere plea:	Amended in response to NJDC Assessment to ensure that child understands rights and consequences of guilty or nolo contendere plea.
(1) The nature of the charge to which the plea is offered and the possible dispositions available to the court.	
(2) If the child is not represented by an attorney, that the child has the right to be represented by an attorney at every stage of the proceedings and, if necessary, one will be appointed. Counsel shall be appointed if the child qualifies for such appointment and does not waive counsel in writing subject to the requirements of rule 8.165.	In response to NJDC Assessment, adds a requirement for appointment of counsel.
(3) That the child has the right to plead not guilty, or to persist in that plea if it had already been made, and that the child has the right to an adjudicatory hearing and at that hearing has the right to the assistance of counsel, the right to compel the attendance of witnesses on his or her behalf, the right to confront and cross-examine witnesses against him or her, and the right not to be compelled to incriminate himself or herself.	

(4) That, if the child pleads guilty or nolo contendere, without express reservation of the right to appeal, the right to appeal all matters relating to the judgment, including the issue of guilt or innocence, is relinquished, but the right to review by appropriate collateral attack is not impaired.

(5) That, if the child pleads guilty or nolo contendere, there will not be a further adjudicatory hearing of any kind, so that by pleading so the right to an adjudicatory hearing is waived.

(6) That, if the child pleads guilty or nolo contendere, the court may ask the child questions about the offense to which the child has pleaded, and, if those questions are answered under oath, on the record, the answers may later be used against the child in a prosecution for perjury.

(7) The complete terms of any plea agreement including specifically all obligations the child will incur as a result.

(8) That, if the child pleads guilty or nolo contendere, and the offense to which the child is pleading is a sexually violent offense or a sexually motivated offense, or if the child has been previously adjudicated for such an offense, the plea may subject the child to involuntary civil commitment as a sexually violent predator on completion of his or her sentence. It shall not be necessary for the trial judge to determine whether the present or prior offenses were sexually motivated, as this admonition shall be given to all children in all cases.

Created to conform to *Fla. R. Crim. P.* 3.172(c)(9) by advising child that a plea may subject the child to possible involuntary civil commitment as a sexual predator.

(c) Acknowledgment by Child. [No change]

(d) Of Record. [No change]

(e) When Binding. [No change]

(f) Withdrawal of Plea When Judge Does Not Concur. If the trial judge does not concur in a tendered plea of guilty or nolo contendere arising from negotiations, the plea may be withdrawn.

New subdivision (f) conforms to *Fla. R. Crim. P.* 3.172(h), allowing a plea to be withdrawn if the judge does not concur.

(~~f~~g) Failure to Follow Procedures. [No change in text.]

Renumbered because of creation of new subdivision (f).

Proposed rule	Reasons for change
RULE 8.100. GENERAL PROVISIONS FOR HEARINGS	
Unless otherwise provided, the following provisions apply to all hearings:	
(a) Presence of the Child. [No change]	
(b) Use of Restraints on the Child. Instruments of restraint, such as handcuffs, chains, irons, or straitjackets, may not be used on a child during a court proceeding and must be removed prior to the child's appearance before the court unless the court finds both that:	Amended to conform to NJDC Assessment by providing that restraints, such as handcuffs, chains, irons, or straitjackets, may not be used during a court appearance unless the use is required by one of three factors and there is no less restrictive means to prevent physical harm to the child or others or flight by the child.
(1) The use of restraints is necessary due to one of the following factors:	
(A) Instruments of restraint are necessary to prevent physical harm to the child or another person;	
(B) The child has a history of disruptive courtroom behavior that has placed others in potentially harmful situations or presents a substantial risk of inflicting physical harm on himself or herself or others as evidenced by recent behavior; or	
(C) There is a founded belief that the child presents a substantial risk of flight from the courtroom; and	

(2) There are no less restrictive alternatives to restraints that will prevent flight or physical harm to the child or another person, including, but not limited to, the presence of court personnel, law enforcement officers, or bailiffs.

(~~b~~c) Absence of the Child. [No change in text]

(~~c~~d) Invoking the Rule. [No change in text]

(~~d~~e) Continuances. [No change in text]

(~~e~~f) Record of Testimony. [No change in text[

(~~f~~g) Notice. [No change in text]

Subsequent subdivisions renumbered because of creation of new subdivision (b).

Proposed rule	Reasons for change
RULE 8.115. DISPOSITION HEARING	
(a) Information Available to Court. [No change]	
(b) Appointment of Counsel. Counsel shall be appointed at all disposition hearings, including cases transferred from other counties and restitution hearings, if the child qualifies for such appointment and does not waive counsel in writing as required by rule 8.165.	In conformance with NJDC Assessment, new subdivision (b) has been created to require that counsel be appointed at the disposition hearing, including hearings when the case has been transferred for disposition, if the child qualifies for appointment and counsel has not been waived under *Rule* 8.165.
(~~b~~c) Disclosure. [No change in text]	Subsequent subdivisions renumbered because of creation of new subdivision (b).
(~~c~~d) Disposition Order. The disposition order shall be prepared and distributed by the clerk of the court. Copies shall be provided to the child, defense attorney, state attorney, and department representative. Each case requires a separate disposition order. The order shall:	
(1) state the name and age of the child;	
(2) state the disposition of each count, specifying the charge title, degree of offense, and maximum penalty defined by statute and giving credit for time served in secure detention before disposition;	At the court's request, in response to *J.I.S. v. State*, 930 So. 2d 587 (Fla. 2006), this amendment requires that the disposition order list any credit for time served in secure detention before disposition.
(3) state general and specific conditions or sanctions;	
(4) make all findings of fact required by law;	

(5) state the date and time when issued and the county and court where issued; and

(6) be signed by the court with the title of office.

(~~d~~e) Fingerprints. [No change in text]

Committee Notes

[No change]

Proposed rule	Reasons for change
RULE 8.130. MOTION FOR REHEARING	
(a) Basis. [No change]	
(b) Time and Method.	
(1) A motion for rehearing may be made and ruled upon immediately after the court announces its judgment but must be made within 10 days of the entry of the order being challenged.	
(2) If the motion is made in writing, it shall be served as provided in these rules for service of other pleadings.	
(3) A motion for rehearing shall ~~not~~ toll the time for the taking of an appeal.	On a referral from the Court, the committee considered the effect of a motion for rehearing on the filing of an appeal. Subdivision (b)(3) has been amended to state that a motion for rehearing shall toll the time for taking an appeal, thus eliminating problems created by not obtaining a ruling on a motion for rehearing before the 30-day window for filing an appeal expires.
(c) Court Action. [No change]	

Proposed rule

Reasons for change

RULE 8.225. PROCESS, DILIGENT SEARCHES, AND SERVICE OF PLEADINGS AND PAPERS

(a) Summons and Subpoenas.

(1) Summons. [No change]

(2) Subpoenas. [No change]

(3) Service of Summons and Subpoenass to Persons Residing in the State. [No change]

(4) Service of Summons and Other Process to Persons Residing Outside of the State in Dependency Proceedings.

(A) Service of the summons and other process on parents, parties, participants, petitioners, or persons outside this state shall be in a manner reasonably calculated to give actual notice, and may be made:

(i) by personal delivery outside this state in a manner prescribed for service of process within this state;

(ii) in a manner prescribed by the law of the place in which service is made for service of process in that place in an action in any of its courts of general jurisdiction; or

~~(iii) by any form of mail addressed to the person to be served and requesting a receipt; or~~

(~~iv~~iii) as directed by the court. Service by publication shall not be required for dependency hearings.

(B) Notice under this rule shall be served, ~~mailed,~~ delivered, or last published at least 20 days before any hearing in this state.

(C) Proof of service outside this state may be made by affidavit of the person who made the service or in the manner prescribed by the law of this state, the order pursuant to which the service is made, or the law of the place in which the service is made. ~~If service is made by mail, proof may be in a receipt signed by the addressee or other evidence of delivery to the addressee.~~

(D) Personal appearance of any person in a hearing before the court eliminates the requirement for serving process upon that person.

(b) Paternity Inquiries and Diligent Search. [No change]

(c) Notice and Service of Pleadings and Papers.

(1) Notice of Arraignment Hearings in Dependency Cases. [No change]

Subdivisions (a)(4)(A)(iii), (a)(4)(B), and (a)(4)(C) have been amended to eliminate the use of mail to serve summons and other process on persons outside the state. This conforms to requirements for in-state service.

(2) Notice of Assessment of Child Support. Other than as part of a disposition order, if the court, on its own motion or at the request of any party, seeks to impose or enforce a child support obligation on any parent, all parties and participants are entitled to reasonable notice that child support will be addressed at a future hearing.

Grammatical correction.

(3) Notice of Hearings to Participants and Parties Whose Identity or Address are Known. [No change]

(4) Service of Pleadings, Orders, and Papers. [No change]

(5) Method of Service. [No change]

(A) [No change]

(B) [No change]

(C) [No change]

(D) If the party or participant is not represented by an attorney, service of all pleadings or papers shall be upon the party or participant. Service may be made by mail to the party's or participant's permanent mailing address, if one has been provided to the court; to the last known address, if a permanent mailing address has not been provided to the court; or by leaving it at ~~their~~his or her usual place of abode with some person of their family above 15 years of age and informing such person of the contents.

Grammatical correction.

(E) [No change]

(6) Filing. [No change]

(7) Certificate of Service. [No change]

Proposed rule	Reasons for change
RULE 8.235. MOTIONS	
(a) Motions in General. [No change]	
(b) Motion to Dismiss. Any party may file a motion to dismiss any petition<u>, the allegations in the petition against a particular party,</u> or other pleading, setting forth the grounds on which the motion is based. If a motion to dismiss <u>the petition</u> is granted ~~where~~<u>when</u> a child is being sheltered under an order, the child may be continued in shelter under previous order of the court upon the representation that a new or amended petition will be filed.	Amended to provide that a motion to dismiss may be to dismiss the petition or to dismiss the allegations against a particular party. Allows for dismissal of petition against a nonoffending parent. Amendment reflects current practice in dependency proceedings that is not provided for in rules. Grammatical correction.
(c) Sworn Motion to Dismiss. Before the adjudicatory hearing the court may entertain a motion to dismiss the petition <u>or the allegations in the petition against a particular party,</u> on the ground that there are no material disputed facts and the undisputed facts do not establish a prima facie case of dependency. The facts on which such motion is based shall be specifically alleged and the motion sworn to by the party. The motion shall be filed a reasonable time before the date of the adjudicatory hearing. The opposing parties may traverse or demur to this motion. Factual matters alleged in it shall be deemed admitted unless specifically denied by the party. The motion shall be denied if the party files a written traverse that with specificity denies under oath the material fact or facts alleged in the motion to dismiss.	The same change has been made for a sworn motion to dismiss.
(d) Motion to Sever. [No change]	

Committee Notes

[No change]

Proposed rule **Reasons for change**

RULE 8.257. GENERAL MAGISTRATES

(a) Appointment. [No change]

(b) Referral.

(1) Consent. [No change]

(2) Objection. [No change]

(3) Order.

(A) The order of referral shall contain the following language in bold type:

A REFERRAL TO A GENERAL MAGISTRATE REQUIRES THE CONSENT OF ALL PARTIES. YOU ARE ENTITLED TO HAVE THIS MATTER HEARD BEFORE A JUDGE. IF YOU DO NOT WANT TO HAVE THIS MATTER HEARD BEFORE THE GENERAL MAGISTRATE, YOU MUST FILE A WRITTEN OBJECTION TO THE REFERRAL WITHIN 10 DAYS OF THE TIME OF SERVICE OF THIS ORDER. IF THE TIME SET FOR THE HEARING IS LESS THAN 10 DAYS AFTER THE SERVICE OF THIS ORDER, THE OBJECTION MUST BE

MADE BEFORE THE HEARING. FAILURE TO FILE A WRITTEN OBJECTION WITHIN THE APPLICABLE TIME PERIOD IS DEEMED TO BE A CONSENT TO THE REFERRAL.

REVIEW OF THE REPORT AND RECOMMENDATIONS MADE BY THE GENERAL MAGISTRATE SHALL BE BY EXCEPTIONS AS PROVIDED IN FLORIDA RULE OF JUVENILE PROCEDURE 8.257(f). A RECORD, WHICH INCLUDES A TRANSCRIPT OF PROCEEDINGS, ELECTRONIC RECORDING OF PROCEEDINGS, OR STIPULATION BY THE PARTIES OF THE EVIDENCE CONSIDERED BY THE GENERAL MAGISTRATE AT THE PROCEEDINGS, WILL BE REQUIRED TO SUPPORT THE EXCEPTIONS.

Amended to permit a movant to provide a transcript, an electronic recording, or a stipulation by the parties of the evidence considered by the general magistrate when filing exceptions to the magistrate's report. The requirement to provide a transcript is costly to the party and can delay resolution of the exception and entry of a final order.

(B) [No change]

(4) Setting Hearing. [No change]

(c) General Powers and Duties. [No change]

(d) Hearings. [No change]

(e) Report.

(1) The general magistrate shall file a report that includes findings of fact, conclusions of law, and recommendations and serve copies on all parties. If a court reporter was present, the report shall contain the name and address of the reporter.

(2) The report and recommendations shall contain the following language in bold type:

SHOULD YOU WISH TO SEEK REVIEW OF THE REPORT AND RECOMMENDATIONS MADE BY THE GENERAL MAGISTRATE, YOU MUST FILE EXCEPTIONS WITHIN 10 DAYS OF SERVICE OF THE REPORT AND RECOMMENDATIONS IN ACCORDANCE WITH FLORIDA RULE OF JUVENILE PROCEDURE 8.257(f). YOU WILL BE REQUIRED TO PROVIDE THE COURT WITH A RECORD SUFFICIENT TO SUPPORT YOUR EXCEPTIONS WITHIN 10 DAYS OF SERVICE OF THE REPORT AND RECOMMENDATIONS OR YOUR EXCEPTIONS WILL BE DENIED. A RECORD ORDINARILY INCLUDES A ~~WRITTEN~~ TRANSCRIPT OF ~~ALL RELEVANT~~ PROCEEDINGS, ELECTRONIC RECORDING OF PROCEEDINGS, OR STIPULATION BY THE PARTIES OF THE EVIDENCE

Amended to permit a movant to provide a transcript, an electronic recording, or a stipulation by the parties of the evidence considered by the general magistrate when filing exceptions to the magistrate's report.

CONSIDERED BY THE GENERAL MAGISTRATE AT THE PROCEEDINGS. THE PERSON SEEKING REVIEW MUST HAVE THE TRANSCRIPT PREPARED FOR THE COURT'S REVIEW.

(f) Exceptions. [No change]

(g) Record.

(1) For the purpose of the hearing on exceptions, a record, substantially in conformity with this rule, shall be provided to the court by the party seeking review. The record shall consist of

(A) the court file~~, including the transcript of the relevant proceedings before the general magistrate, and~~;

(B) all depositions and evidence presented to the general magistrate~~.~~; and

(C) the transcript of the proceedings, electronic recording of the proceedings, or stipulation by the parties of the evidence considered by the general magistrate at the proceedings.

(~~1~~2) The transcript of ~~all relevant~~the proceedings, electronic recording of the proceedings, or stipulation by the parties of the evidence considered by the general magistrate at the proceedings, if any, shall be delivered

Amended to permit a movant to provide a transcript, an electronic recording, or a stipulation by the parties of the evidence considered by the general magistrate when filing exceptions to the magistrate's report.

to the judge and provided to all other parties not less than 48 hours before the hearing on exceptions.

(~~2~~3) If less than a full transcript or electronic recording of the proceedings taken before the general magistrate is ordered prepared by the excepting party, that party shall promptly file a notice setting forth the portions of the transcript or electronic recording that have been ordered. The responding party shall be permitted to designate any additional portions of the transcript or electronic recording necessary to the adjudication of the issues raised in the exceptions or cross-exceptions.

(~~3~~4) The cost of the original and all copies of the transcript or electronic recording of the proceedings shall be borne initially by the party seeking review. Should any portion of the transcript or electronic recording be required as a result of a designation filed by the responding party, the party making the designation shall bear the initial cost of the additional transcript or electronic recording.

(h) Prohibition on Magistrate Presiding over Certain Hearings. [No change]

Proposed rule	Reasons for change
RULE 8.265. MOTION FOR REHEARING	
(a) Basis. [No change]	
(b) Time and Method.	
(1) A motion for rehearing may be made and ruled upon immediately after the court announces its judgment but must be made within 10 days of the entry of the order.	
(2) If the motion is made in writing, it shall be served as provided in these rules for service of other pleadings.	
(3) A motion for rehearing shall not toll the time for the taking of an appeal. <u>The court shall rule on the motion for rehearing within 10 days of filing or it is deemed denied.</u>	Similar to the proposed amendment to *Rule* 8.130, this amendment addresses the problem of a ruling on a motion for rehearing not being issued before the 30-day window for filing an appeal has run. The amendment provides that the court must rule on a motion for rehearing within 10 days or it is deemed denied.
(c) Court Action. [No change]	

Proposed rule	Reasons for change
RULE 8.310. DEPENDENCY PETITIONS	
(a) Contents. [No change]	
(b) Verification. [No change]	
(c) Amendments. [No change]	
(d) Defects and Variances. [No change]	
(e) Voluntary Dismissal. The petitioner without leave of the court, at any time prior to entry of an order of adjudication, may request a voluntary dismissal of the petition or any allegations of the petition against a party by serving a notice requesting dismissal on all parties, or, if during a hearing, by so stating on the record. The petition or any allegations in the petition against a party shall be dismissed. ~~and~~ If the petition is dismissed, the court loses jurisdiction unless another party adopts the petition within 72 hours.	Similar to *Rule* 8.235, this amendment provides for dismissal of the petition or allegations against only one party.
Committee Notes	
[No change]	

Proposed rule	Reasons for change
RULE 8.400. CASE PLAN DEVELOPMENT	
(a) Case Planning Conference. [No change]	
(b) Contents. [No change]	
(c) Expiration of Case Plan. [No change]	
(d) Department Responsibility.	
(1) The department shall prepare a draft of a case plan for each child receiving services under ~~F.S.~~ Chapter 39, Florida Statutes.	Style correction
(2) The department shall document, in writing, a parent's unwillingness or inability to participate in the development of the case plan, provide the written documentation to the parent when available for the court record, and prepare a case plan.	
(3) After the case plan has been developed, and before acceptance by the court, the department shall make the appropriate referrals for services that will allow the parents to begin the agreed-upon tasks and services immediately if the parents agree to begin compliance.	
(4) The department must immediately give the parties, including the child if appropriate, a signed copy of the agreed-upon case plan.	

(5) The department must prepare, but need not submit to the court, a case plan for a child who will be in care no longer than 30 days unless that child is placed in out of home care a second time within a 12-month period.

(6) The department must prepare a case plan for a child in out of home care within 60 days after the department removes the child from the home and shall submit the plan to the court before the disposition hearing for the court to review and approve.

(7) Not less than 3 business days before the disposition or case plan review hearing, the department must file a case plan with the court.

These amendments address the situation when adjudication is withheld but a case plan must still be developed because the child is receiving services. The amendments clarify that a case plan review, rather than a disposition, hearing must be held to review the case plan.

(8) After jurisdiction attaches, the department shall file with the court all case plans, including all case plans prepared before jurisdiction of the court attached. The department shall provide a copy of the case plans filed to all the parties whose whereabouts are known, not less than 3 business days before the disposition or case plan review hearing.

(e) Signature. [No change]

(f) Service. Each party, including the child, if appropriate, must be provided with a copy of the case plan not less than 3 business days before the disposition or case plan review hearing. If the location of a parent is unknown, this fact must be documented in writing and included in the plan.

Proposed rule	Reasons for change
RULE 8.410. APPROVAL OF CASE PLANS	
(a) Hearing. The court shall review the contents of the case plan at the disposition or case plan review hearing unless a continuance for the filing of the case plan has been granted by the court.	Similar to the amendment to *Rule* 8.400, this amendment requires that the court review the contents of the case plan at the disposition or case plan review hearing.
(b) Determinations by Court. [No change]	
(c) Amendment of Plan. [No change]	
(d) Entry of Findings. [No change]	
(e) Review Hearing. [No change]	

Proposed rule	Reasons for change
RULE 8.505. PROCESS AND SERVICE **(a) Personal Service.** [No change] **(b) Contents.** [No change] **(c) Constructive Service.** Parties whose identities are known and on whom personal service of process cannot be effected shall be served by publication as provided by law. The notice of action shall contain the initials of the child and the child's date of birth. There shall be no other identifying information of the child in the notice of action. The notice of action shall include the full name and last known address of the person subject to the notice. The notice of action shall not contain the name or any other identifying information of the other parents or prospective parents who are not subject to the notice.	To prevent publication of confidential information, this rule has been amended to specify the information that must be included in a notice of action for service by publication in a termination of parental rights case. See also *Form* 8.982.