

IN THE SUPREME COURT OF FLORIDA

**IN RE: AMENDMENTS TO THE FLORIDA
RULES OF JUVENILE PROCEDURE
(THREE-YEAR CYCLE)**

CASE NO.: SCO9-141

**RESPONSE OF THE JUVENILE COURT RULES COMMITTEE
TO COMMENTS OF FAMILY LAW RULES COMMITTEE**

David Silverstein, Chair, Juvenile Court Rules Committee (JCRC), and John F. Harkness, Jr., Executive Director, The Florida Bar, file this response to comments of the Family Law Rules Committee (FLRC) filed in the above case. The response was considered by the Committee on an e-mail vote and approved by a vote of 20-2-3.

Following filing of the Committee's three-year cycle report on January 28, 2009, a summary of the proposed amendments was published for comment in the March 1, 2009, Florida Bar *News* and posted on The Florida Bar's website, with a requirement that comments be filed with the Court on or before April 1, 2009. This Court granted the FLRC an extension to file comments until April 22, 2009. The FLRC filed comments on April 22, 2009.

The FLRC opposed the recommended changes to *Rule 8.257*. The FLRC objects to a court's consideration of an electronic recording as part of the record in a hearing on an exception to the report and recommendations of

a general magistrate.¹ The FLRC incorrectly assumes that the court and opposing parties would be burdened with reviewing lengthy hearings. The FLRC concedes that proceedings before general magistrates may last as little as 15 minutes. The FLRC believes that many of the hearings before the general magistrates, such as a trial, would last hours or days. However, many hearings before general magistrates do not last hours or days. Instead, general magistrates regularly conduct judicial review hearings and status conference. Both of these types of hearings typically are not lengthy. In addition, general magistrates are not allowed to hear dependency or termination of parental rights trials as the FLRC claims. *See Rule 8.257(h)*.

There are adequate procedures in place to address fears of the court reviewing lengthy recordings. Parties could stipulate that the court hear only portions of the recording if the hearing is lengthy. The reviewing court has the discretion to request that a party provide a written transcript or that the parties attempt to stipulate to the evidence presented to the general magistrate to avoid the court having to listen to a lengthy hearing. *See § 90.612, Fla. Stat.(2008)*. If the hearing is lengthy, an opposing party, or the

¹ The FLRC believes that the current rule allows parties to stipulate to the evidence presented before the general magistrate. The current rule does not mention a stipulation of the parties. Thus, the JCRC assumes that the FLRC does not object to the proposed rule allowing the record to include a stipulation of the parties of the evidence presented to the general magistrate.

court on its own motion, could grant a continuance to allow more time to review the recording.

The FLRC suggests that there is no effective means to direct the court's attention to relevant portions of the recorded hearing. Finding relevant portions of recordings is simple. A party could use the tape counter for taped recordings and the hours, minutes, and seconds for computerized recordings.

The FLRC asserts that the court and the opposing party would not know what playback equipment is necessary until a party submits the recording. The JCRC specifically used the term "electronic recording" to account for advances in technology. The audio recorded formats for dependency hearings are either audiotape or digitized computer files that can be copied on multiple formats, including CDs, DVDs, hard drives, and flash drives. If the court or opposing party did not have the equipment to review the recording, the court could require the proponent to provide the recording in an acceptable format or make playback equipment available. *See* § 90.612, *Fla. Stat. (2008)*.

The FLRC questions the method for filing a recording with the court. Currently, most dependency court proceedings are electronically recorded. These recordings are already stored by the court, the clerk, or official court

reporter. Additionally, recordings are filed with the court as evidence in proceedings. Therefore, the FLRC's fears of equipment issues and difficulties in filing and storing electronic recordings are unfounded. Surely, there are existing methods to store and track the filing of recordings that address the FCRC's environmental concerns. Litigants should be able to file recordings simply by placing the recording in an envelope and properly identifying the recording. The JCRC does not believe it is necessary or advisable for the JCRC to develop procedures for filing, tracking, and storing electronic recordings of hearings.

The FCRC questions the accuracy and authenticity of electronic recordings. The parties who were present at the general magistrate hearing should be able to authenticate the recording. The FCRC suggests that parties would intentionally edit recordings and commit a fraud upon the court. The JCRC believes that this would be unlikely. Regardless, to address these remote concerns, the JCRC would not object to this Court defining "electronic recordings" to include only recordings authorized by the court.

The FCRC believes that under the JCRC proposal, appellate courts would be required to listen to electronic recordings of general magistrate proceedings. The JCRC does not agree. Currently, all electronically

recorded hearings that are appealed to the district courts of appeal are transcribed. Thus, the FCRC's argument is without merit.

The JCRC did not intend to make a substantive change to the rule by removing the words "all relevant" from the reference in the rule to "all relevant proceedings". The JCRC believes that any transcript or electronic recording would have to be relevant to the issues before the reviewing court. The JCRC does not have an objection to this court retaining the reference to "relevant proceedings" such that the language in the proposed rule should read, "transcript of all relevant proceedings, electronic recording of all relevant proceedings, etc...."

The JCRC understands the concerns of the FCRC. However, the JCRC is not recommending a change to the general magistrate provisions in the Family Court Rules. The JCRC made the proposal to address the unique circumstances of dependency proceedings.

Dependency proceedings are very different than family court proceedings. The court holds multiple hearings throughout each dependency case. It is critical for issues to be resolved as expeditiously as possible so children can achieve permanency in a timely manner. The inclusion of an electronic recording in the record in an exception hearing would allow the court to resolve matters quickly and inexpensively. This expedited process

would be a great benefit to the litigants and the children. Parties should not have to consider the time and costs before challenging a general magistrate report and recommendation. Further, a recording of a hearing is more accurate than a court reporter's interpretation of the recording. Thus, the JCRC respectfully requests that this Court adopt proposed Rule 8.257.

Respectfully submitted _____.

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