

**IN THE SUPREME COURT OF FLORIDA**

**IN RE: AMENDMENT OF FLORIDA  
RULE OF JUVENILE PROCEDURE 8.255      CASE NO.:**

**OUT-OF-CYCLE AMENDMENT TO RULE 8.255**

William W. Booth, Chair, Juvenile Court Rules Committee, and John F. Harkness, Jr., Executive Director, The Florida Bar, file this out-of-cycle request to amend *Fla. R. Juv. P. 8.255* under *Fla. R. Jud. Admin. 2.140(e)*. The proposal was approved by a committee vote of 21-0-2 and out-of-cycle filing was approved by a committee vote of 13-9-1. The proposal was reviewed and approved by the Executive Committee of the Florida Bar Board of Governors by a vote of 12-0. The proposed rule is attached in the full-page (*see* Appendix A) and full-column (*see* Appendix B) formats.

The Committee originally began work on this rule in February 2009 and an amendment was approved in February 2010. Notice of the proposed amendment was published in the February 15, 2010, edition of *The Florida Bar News* and posted on The Florida Bar's website. (*See* Appendix C.) One comment was received from Kanisha Taylor, Esq., MSW. (*See* Appendix D.) The committee considered Ms. Taylor's comment in which she expressed concern that permanency could be delayed if a court continued a hearing because the child was not present at the hearing. The committee appreciates this concern. However, the committee believes that children

have a right to be present at hearings at which judges determine their rights and future. The committee believes that a judge should be able to use his or her discretion to continue hearings if it is in the best interest of the child to continue the proceedings. The committee does not believe that judges would abuse this discretion by allowing this rule to be used to delay the proceedings and permanency for children.

While the rule package was being prepared for submission to the Court, it was discovered that only part of the rule had been considered when the amendments were approved and published in the *Bar News* and on The Florida Bar's website. (*See* Appendices C and D.) Accordingly, the Committee rescinded its previous action and began again with a corrected rule, which was approved in September 2010. It has not been published for comment a second time.

In Justice Barbara Pariente's dissent in *In re: Amendments to Florida Rule of Juvenile Procedure 8.255*, 3 So. 3d 1239, 1245 (Fla. 2009) (joined by Justices Quince and Lewis), she stated

Lastly, the committee advises that foster children are frequently absent from hearings on issues that directly affect them. If this is so, I would urge the Juvenile Court Rules Committee, aided by the GAL and other child advocacy groups,

to take steps to strengthen the rule to ensure that the child's presence with a meaningful opportunity to be heard is the rule, and not the exception.

*Id.* at 1245.

The committee proposes amendments to *Rule 8.255(b)* to strengthen the rule to ensure that children are present at hearings. The amendment requires the court to make an inquiry, if the child is not present at a hearing, to determine the reason for the child's absence. The committee further proposes that the court must determine if it is in the child's best interest to conduct the hearing without the child or to continue the hearing to allow the child to be present.

*Rule 8.255(b)* currently states: "The child has a right to be present at the hearing." Section 39.001, Florida Statutes, Purposes and intent, states in subdivision (1)(l) that it is a goal of Chapter 39, Florida Statutes:

To provide judicial and other procedures to assure due process through which *children*, parents, and guardians and other interested parties are assured fair hearings by a respectful and respected court or other tribunal and the recognition, protection, and enforcement of their constitutional and other legal rights, while ensuring that public safety interests and the

authority and dignity of the courts are adequately protected

(emphasis added).

Section 39.4085(19), Florida Statutes, states that it is a legislative goal for dependent children “[t]o be heard by the court, if appropriate, at all review hearings.” The presence of the child is also recognized in sections 39.6011(1)(a) (case plan development) and 39.701(2)(a), (5)(f), and (7)(a) (judicial review hearings).

Dependency proceedings are held for the benefit of children.

Although parties to the dependency proceedings under section 39.01(51), Florida Statutes, children are not routinely present for proceedings in which the court decides their future. Children need to be present at hearings so they can be heard. However, they are at the mercy of others to bring them to court.

The committee believes that the court should be directed to recognize when children are not present at a hearing and to ask the person responsible for transporting the children the reason for the children’s absence. The court must determine whether children should be heard prior to the court entering a ruling. Otherwise, the children’s right to be present as a party at hearings is meaningless. The committee believes that the proposed amendments will ensure that children are brought to court. The proposed amendments will

also ensure that the court will not make rulings without children being heard, unless the court first determines that the children's presence is not in their best interest. The committee respectfully requests this Court to adopt the proposed amendments to *Rule 8.255(b)*.

Respectfully submitted \_\_\_\_\_.

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## **APPENDIX A**



**RULE 8.255. GENERAL PROVISIONS FOR HEARINGS**

(a) **Presence of Counsel.** The department must be represented by an attorney at every stage of these proceedings.

(b) **Presence of Child.**

(1) The child has a right to be present at the all hearings unless the court finds that the child's mental or physical condition or age is such that a court appearance is not in the best interest of the child.

(2) If a child is not present at a hearing, the court shall inquire and determine the reason for the absence of the child. The court shall determine whether it is in the best interest of the child to conduct the hearing without the presence of the child or to continue the hearing to provide the child an opportunity to be present at the hearing.

(3) Any party may file a motion to require or excuse the presence of the child.

(c) **Separate Examinations.** The child and the parents, caregivers, or legal custodians of the child may be examined separately and apart from each other.

(d) **Examination of Child; Special Protections.**

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

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

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

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

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

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

(D) The child may be called to testify by means of closed-circuit television or by videotaping as provided by law.

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

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

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

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

## Committee Notes

**1991 Amendment.** (b) This change allows a child to be present instead of mandating the child's presence when the child's presence would not be in his or her best interest. The court is given the discretion to determine the need for the child to be present.

**1992 Amendment.** This change was made to reflect a moderated standard for in-camera examination of a child less rigid than the criminal law standard adopted by the committee in the 1991 rule revisions.

**2005 Amendment.** Subdivision (i) was deleted because provisions for general masters were transferred to rule 8.257.

## **APPENDIX B**

**Proposed rule**

**Reason for change**

**RULE 8.255. GENERAL PROVISIONS FOR HEARINGS**

(a) [No change]

**(b) Presence of Child.**

(1) The child has a right to be present at ~~the all~~ hearings ~~unless the court finds that the child's mental or physical condition or age is such that a court appearance is not in the best interest of the child.~~

(2) If a child is not present at a hearing, the court shall inquire and determine the reason for the absence of the child. The court shall determine whether it is in the best interest of the child to conduct the hearing without the presence of the child or to continue the hearing to provide the child an opportunity to be present at the hearing.

(3) Any party may file a motion to require or excuse the presence of the child.

(c) [No change]

(d) [No change]

(e) [No change]

(f) [No change]

Amended to ensure that the child has a meaningful opportunity to be present at all hearings.

(g) [No change]

(h) [No change]

**Committee Notes**

[No change]

## **APPENDIX C**

Published in February 15, 2010, Florida Bar *News*, at page 25.

**JUVENILE COURT RULES COMMITTEE  
OUT-OF-CYCLE AMENDMENT**

The Juvenile Court Rules Committee invites comment on a proposed out-of-cycle amendment to the Florida Rules of Juvenile Procedure shown below. The full text of the proposal can be found on The Florida Bar's website at [www.FloridaBar.org](http://www.FloridaBar.org). Interested persons have until March 15, 2010, to submit comments **electronically** to Charles H. Davis, Chair, Juvenile Court Rules Committee, at [charlesd@coj.net](mailto:charlesd@coj.net), with a copy to the committee's staff liaison at [esloyer@flabar.org](mailto:esloyer@flabar.org).

<b>RULE/FORM</b>	<b>VOTE</b>	<b>EXPLANATION</b>
8.255	28-0-2	Amends subdivision (b) to require that the court make an inquiry if the child is not present for a dependency hearing and determine if it is in the best interest of the child to conduct the hearing without the presence of the child or continue the hearing to allow the child to be present.



Published at:  
[http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/7C960E45470455C085257641005CCD8B/\\$FILE/Juv.%20Rules%20out%20of%20cycle%20amend%201-10.pdf?OpenElement](http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/7C960E45470455C085257641005CCD8B/$FILE/Juv.%20Rules%20out%20of%20cycle%20amend%201-10.pdf?OpenElement)

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(b) **Presence of Child.**

(1) ~~The child has a right to be present at theall hearings. The court may excuse the child's presence at athe hearing unlessif the court finds that thechild's mental or physical condition or age is such that a court appearance is not in the best interest of the child.~~

(2) If a child is not present at a hearing, the court shall inquire and determine the reason for the absence of the child. The court shall determine whether it is in the best interest of the child to conduct the hearing without the presence of the child or to continue the hearing to provide the child an opportunity to be present at the hearing.

(3) Any party may file a motion to require or excuse the presence of the child.

## **APPENDIX D**

Allowing the court to continue a hearing because the child is not present based solely on best interest is contradictory to the legislature's intent that children have timely permanency. The same burden that exist for parties to request for continuances under 39.0136 should remain throughout dependency proceedings no matter the reason for the continuance. While I understand the purpose of the amendment is to ensure that children are present, school, illness and court scheduling will make it almost impossible to ensure all verbal children are present at hearings.

Kanisha Taylor, MSW, Esq.

I certify that this rule was read against West's *Florida Rules of Court*  
– *State (2010 Revised Edition)*.

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