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September 28, 2011

FILED  
THOMAS D. HALL  
2011 OCT -3 AM 9:58  
CLERK, SUPREME COURT  
BY \_\_\_\_\_

Thomas D. Hall, Clerk  
Florida Supreme Court  
500 South Duval Street  
Tallahassee, Florida 32399-1925

RE: *In re Amendments to Florida Rule of Juvenile Procedure 8.255*, Case No. SC10-2010

Dear Mr. Hall:

This letter is in response to your letter of July 19, 2011, conveying the Court's request that the Juvenile Court Rules Committee consider whether its proposed amendment to *Fla. R. Juv. P.* 8.255 be further amended "to address whether the amendment to rule 8.255 should include a provision stating that, when the child is present at the hearing, the trial judge has a duty to inquire whether it is in the child's best interest to attend the hearing."

The Committee considered the Court's request at its September 22, 2011, meeting and voted 21-2-5 to revise its original proposal as shown on the attachment. The committee believes that the addition of subdivision (b)(2) makes clear that the trial court may excuse the child from any hearing or portion of it if it determines that the child's presence is not in the child's best interest. The Committee, therefore, wishes to substitute this proposed rule for the rule submitted with its original out-of-cycle proposal.

Please let me know if I can provide additional information or assistance.

Sincerely,

Joel M. Silvershein, Chair  
Juvenile Court Rules Committee

**RULE 8.255. GENERAL PROVISIONS FOR HEARINGS**

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(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 the child is present at the hearing, the court may excuse the child from any portion of the hearing when the court determines that it would not be in the child's best interest to remain.

(3) 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.

(34) 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.