

IN THE SUPREME COURT OF FLORIDA

**IN RE: AMENDMENTS TO THE
FLORIDA RULES OF JUVENILE
PROCEDURE**

CASE NO.: SC15-

**FAST-TRACK AMENDMENTS TO THE FLORIDA RULES
OF JUVENILE PROCEDURE TO CONFORM TO 2014
LEGISLATIVE AMENDMENTS**

Deborah A. Schroth, Chair, Juvenile Court Rules Committee, and John F. Harkness, Jr., Executive Director, The Florida Bar, file this fast-track report under Florida Rule of Judicial Administration 2.140(e) to amend the Florida Rules of Juvenile Procedure to conform to amendments to Chapter 39, Florida Statutes, by Chapters 2014-166, 2014-224, and 2014-277, Laws of Florida.

As required by Rule 2.140(e), the proposed amendments have been approved by both the full committee and the Board of Governors of The Florida Bar. The voting records of the Committee and the Board of Governors are found in Appendix A.

Because this is a fast-track report, the proposed amendments have not been published for comment before their submission to the Court. The proposed rules and forms are found in Appendix B (full-page) and Appendix C (two-column). The session laws are attached as Appendix D.

Chapter 2014-166, Laws of Florida, creates section 409.1454, Florida Statutes, which creates a pilot project to assist children in licensed out-of-home care to secure driver's licenses and motor vehicle insurance. This law also adds a requirement for the content of judicial review hearings for children 17 years of age.

Chapter 2014-224, Laws of Florida, amends multiple provisions of Chapter 39, Florida Statutes. The provisions particularly relevant to this report modify requirements concerning shelter petitions and shelter orders as to safety plans, placement of siblings in the same out-of-home placements, and adds topics for the court to address in judicial review hearings.

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Chapter 2014-227, Laws of Florida, creates section 39.0135, Florida Statutes. The statute, in subdivision 2, mandates appointment of an attorney for certain children in dependency proceedings.

Amendments made to the rules and forms are as follows:

Rule 8.231, Providing Counsel to Dependent Children with Special Needs. Section 1, Chapter 2014-227, Laws of Florida, creates section 39.01305, Florida Statutes, which provides for court appointment of counsel for children in specific situations. The procedure is complicated by the fact that the statute requires the trial court to first check with the Guardian ad Litem Program to determine whether there is any counsel available and willing to represent the child without seeking statutory fees or costs. (*See* Rule 8.231(a)(1).) The proposed new rule creates a procedure for appointment of legal counsel in conformance with the statute.

Rule 8.305, Shelter Petition, Hearing, and Order. This rule governs the documents necessary for a shelter hearing and the conduct of that hearing. Section 12, Chapter 2014-224, Laws of Florida, amended section 39.402, Florida Statutes, governing placement in shelter. The new statutory requirements for shelter orders mandate a ruling on whether the Department of Children and Families (the department) made reasonable efforts to place siblings together when sheltering them in out-of-home care, unless the siblings are placed together, or it is not in the best interest of each child to be placed together. When siblings are not placed together, it is also necessary for the court to rule on sibling visitation and to ensure that the department provides justification if the visitation will not commence within 72 hours. The rule has been amended to conform to these statutory amendments. (*See* Rules 8.305(a)(8)–(a)(9), (c)(3)–(c)(4).)

Rule 8.310, Dependency Petitions. Section 13, Chapter 2014-224, Laws of Florida, amends section 39.501, Florida Statutes, to require the dependency petition to contain information as to whether the parent had fully complied with any safety plan that was agreed to by the parent or parents and the department. This rule now incorporates that requirement. (*See* Rule 8.310(a)(5).)

Rule 8.350, Placement of Children into Residential Treatment after Adjudication of Dependency. Section 1, Chapter 2014-227, Laws of Florida, requires the appointment of legal counsel for any dependent child placed in or being considered for placement in a residential treatment center, without qualification. (*See* discussion of Rule 8.231, above.) The existing rule requires

counsel to be appointed only when the dependent child disagrees with the proposed placement in a residential treatment center. This rule is being amended to require that all children in this situation will have legal counsel appointed when the child is being considered for placement in residential treatment. This change then necessitates modification to other procedural aspects of the existing rule and to reflect that the child will have legal counsel from the beginning of the proceeding. (*See* Rule 8.350(a)(9).)

Rule 8.355, Administration of Psychotropic Medication to a Foster Child in Shelter Care or in Foster Care When Parental Consent Has Not Been Obtained. Section 1, Chapter 2014-227, Laws of Florida, also requires the appointment of legal counsel for any dependent child who does not assent to taking psychotropic medication when such medication is prescribed. The existing rule requires modification to reflect that the child is being appointed legal counsel specifically because of the failure to assent to the medication. (*See* Rules 8.355(a)(1)(C) and (a)(2).) The existence of legal counsel for the child makes it clear to all parties that the court should conduct a hearing on the department's motion to authorize the medication because of the child's failure to assent, and no additional motion or objection should need to be filed to trigger the hearing. (*See* Rule 8.355(b)(2).)

Rule 8.415, Judicial Review of Dependency Cases. This rule provides procedures for the conduct of judicial review hearings as prescribed by section 39.701, Florida Statutes. This statute has been amended by two separate laws this year. Section 1, Chapter 2014-166, Laws of Florida, now requires the dependency court to remove the disabilities of nonage of any child 17 years of age pursuant to sections 743.045 and 743.047, Florida Statutes. (*See* Rule 8.415(b)(3).

Section 17, Chapter 2014-224, Laws of Florida, amends section 39.701(3)(a), Florida Statutes, to require the court in this same judicial review hearing to remove the disabilities of nonage of any child 17 years of age under section 743.044, 743.045, and 743.046, Florida Statutes, and to remove any other disability of nonage when it is in the child's best interest. (*See* Rule 8.415(b)(3).) Section 17 also amends section 39.701, Florida Statutes, to require the court in every judicial review hearing for children under the age of 18 to inquire as to contacts between separated siblings and efforts made to reunite separated siblings. (*See* Rule 8.415(f)(1).)

Form 8.960, Shelter Petition. The proposed amendments to the form capture the changes that are being proposed to Rule 8.305, to include the required information as to the placement of siblings, the efforts made to place them in the same placement, and visitation arrangements when they are placed apart.

Form 8.961, Shelter Order. The proposed amendments to this form also capture the changes that are being proposed to Rule 8.305, as discussed above.

Forms for Orders on Judicial Review. There are now four proposed forms for Orders on Judicial Review because section 39.701, Florida Statutes, delineates specific requirements for review hearings for children younger than 18 (§ 39.701(2), Fla. Stat.), two different review hearings for children 17 years of age (§§ 39.7092(3)(a), (3)(d), Fla. Stat.), and a different judicial review hearing for young adults in foster care (§ 39.701(4), Fla. Stat.). Although many of the requirements are similar for children under the age of 18, each of these different hearings includes requirements that pertain solely to the specific age of the child whose case is being reviewed. In addition to capturing these legislative requirements, it is proposed, for each of these four forms, that the introductory paragraph reciting those persons appearing before the court be identical.

Form 8.970, Order on Judicial Review. This is the form that is to be used for judicial review hearings for children under the age of 17. The form has been amended to conform to the proposed changes to Rule 8.415, to include the required information as to the placement of siblings, the efforts made to place them in the same placement, and visitation arrangements when they are placed apart.

Form 8.973A, Order on Judicial Review for Child Over Age 17. The form has been amended to conform to the proposed changes to Rule 8.415, to include the new requirements as to the placement of siblings.

Form 8.973B, Order on Last Judicial Review Before Child Reaches Age 18. This form has been amended to conform to the proposed changes to Rule 8.415, to include the new requirements as to the placement of siblings.

Form 8.973C, Order on Judicial Review for Young Adults in Extended Foster Care. The form has been amended to conform to the proposed changes to Rule 8.415, to include the new requirements as to the placement of siblings.

Therefore, the Juvenile Court Rules Committee requests that the Court amend the Florida Rules of Juvenile Procedure as outlined in this report.

Respectfully submitted January 29, 2015:

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CERTIFICATE OF COMPLIANCE

I certify that this document complies with the font requirements of Fla. R. App. P. 9.210(a)(2).

I certify that these rules and forms have been read against West's *Florida Rules of Court* (2014 Revised Edition).

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