

IN THE SUPREME COURT OF FLORIDA

**IN RE: AMENDMENTS TO THE
FLORIDA RULE OF JUVENILE
PROCEDURE 8.150**

CASE NO.: SC15-

**OUT-OF-CYCLE REPORT OF THE
JUVENILE COURT RULES COMMITTEE**

Deborah A. Schroth, Chair of the Juvenile Court Rules Committee (“Committee”), and John F. Harkness, Jr., Executive Director of The Florida Bar, file this out-of-cycle report under Florida Rules of Judicial Administration 2.140 to amend Florida Rule of Juvenile Procedure 8.150 to both conform to amendments to Chapter 39, Florida Statutes, as amended by Chapter 2014-162, and to make additional substantive amendments beyond the scope of the statutory changes.

As required by Rule 2.140, these proposed amendments were approved by the full Committee with a vote of 22-0-0 and by the Board of Governors of The Florida Bar by a vote of 36-0-0.

The proposed amendments were published for comment in the February 15, 2015, edition of *The Florida Bar News*. The publication notice is attached as Appendix C. No comments were received. The proposed amendments to the rule are found in Appendix A (full-page format) and Appendix B (two-column format). The session law is attached as Appendix D.

The Committee respectfully submits the proposed amendments for this Court’s consideration for the following reasons and in the following ways:

RULE 8.150. CONTEMPT

The rule governing contempt proceedings in juvenile cases is amended substantially to conform to the provisions of section 5, Chapter 2014-162, Laws of Florida, which amends section 985.037, Florida Statutes, governing procedures and sanctions for contempt in delinquency proceedings, and to effectuate due process in contempt proceedings.

New proposed subdivision (a) of Rule 8.150 defines contempt and clarifies that the rule applies to children, but if a child is already subject to the court’s

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jurisdiction and then turns 18, jurisdiction continues. Additionally, children who have been sentenced to secure detention for contempt may have their placement reviewed by motion of a party to the proceedings.

Subdivision (b), which was previously subdivision (a), proposes amendments to clarify that a child is entitled to a hearing and appointment of counsel when accused of direct contempt. Additionally, archaic terms such as “prior to” and “shall” have been replaced with, respectively, “before” and “must” throughout the subdivision to conform to *In re: Guidelines for Rules Submissions*, AOSC06-14. The Committee also proposes replacing the term “accused” with “child.”

The previous subdivision (b) is now designated as subdivision (c) and the references below reflect the amended numbering.

Newly proposed subdivision (c)(1) clarifies that in an indirect contempt proceeding a child is also entitled to counsel and that any waiver of counsel must comply with Rule 8.165, Providing Counsel to Parties.

Additional procedural protections are proposed in subdivisions (c)(2)–(c)(5) and (c)(7).

The proposed amendments to subdivision (c)(2) incorporate the substance of previous subdivision (c)(5) to limit the mandatory disqualification of the judge when the indirect contempt involves criticism of the judge only to circumstances in which the child files a motion to disqualify. The Committee opines that the previous rule placed an unnecessary burden on the courts by mandating disqualification. The Committee also proposes grammatical and style corrections and the substitution of “must” for “shall” and “child” for “accused” throughout the subdivision.

Proposed amendments to subdivision (c)(3) clarify the list of options available to a child when answering an indirect contempt charge, and also deletes the requirement for written answers.

Subdivision (c)(4) is retitled as “Detention Before the Hearing” and amended to limit the detention of a child charged with contempt before the contempt hearing to situations in which the court provides a written demonstrated belief that the child will fail to appear.

Subdivision (c)(5) is retitled as “Hearing” and specifies the child’s due process rights in an indirect contempt hearing. New proposed subdivision (c)(5)(A) details a child’s right to counsel. New proposed subdivision (c)(5)(B) details a child’s right to testify in his or her own defense. New proposed subdivision (c)(5)(C) details a child’s right to confront witnesses. New proposed subdivision (c)(5)(D) details a child’s right to subpoena and present witnesses. New proposed subdivision (c)(5)(E) details a child’s right to record a hearing and receive a copy of the recording. New proposed subdivision (c)(5)(F) details a child’s right to receive a transcript of the court proceeding. New proposed subdivision (c)(5)(G) details a child’s right to appeal.

The proposed rewording in subdivision (c)(6) has no substantive change and is for clarification purposes. The Committee also proposes replacing “shall” with “must.”

Subdivision (c)(7) proposes language requiring the court to consider all available and appropriate sentences, including alternative sanctions as referenced in the statute. Additionally, archaic terms such as “prior to” and “shall” have been replaced with, respectively, “before” and “must” throughout the subdivision to conform with *In re: Guidelines for Rules Submissions*, AOSC06-14. The Committee also proposes replacing the term “accused” with “child.”

Therefore, the Juvenile Court Rules Committee respectfully requests that the Court amend Florida Rule of Juvenile Procedure 8.150 as outlined in this report.

Respectfully submitted on April 17, 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 this rule has been read against West's *Florida Rules of Court, Vol. I — State* (2015 Edition).

/s/ Gregory A. Zhelesnik

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