

IN THE SUPREME COURT OF FLORIDA

IN RE AMENDMENTS TO THE
FLORIDA RULES OF JUVENILE
PROCEDURE

CASE NO.: SC 15-

THREE-YEAR CYCLE REPORT OF
THE JUVENILE COURT RULES COMMITTEE

Deborah A. Schroth, Chair, Juvenile Court Rules Committee (“the committee”), and John F. Harkness, Jr., Executive Director, The Florida Bar, file this three-year cycle report of the Juvenile Court Rules Committee under Florida Rules of Judicial Administration 2.140(b)(1). All rules and forms have been approved by the full committee and, as required by Rule 2.140(b)(2), approved by The Florida Bar Board of Governors. The voting record of the committee and board are found in Appendix A. As required by Rule 2.140(b)(2), the proposed amendments were published for comment in the July 1, 2014, issue of *The Florida Bar News* and posted on The Florida Bar’s website (*see* Appendix D).

One comment was received, from the Honorable Mary Polson, a circuit judge in Okaloosa County (*see* Appendix E). She pointed out that proposed Florida Rules of Juvenile Procedure 8.870(b)(1) should more closely reflect the wording of the corresponding statute, section 984.151(7), Florida Statutes. The committee considered her suggestion at its October 16, 2014, meeting and voted 21-0 to make the suggested change. As required by Rule 2.140(b)(2), the amended rule was submitted to the Board of Governors and approved by a vote of 38-0. The amended rule was also published in the November 15, 2014, *Florida Bar News* and posted on the Bar’s website (*see* Appendix D). No additional comments were received.

The amended rules and forms are found in Appendices B (full page) and C (two-column). The reasons for the proposed amendments are as follows:

Rule 8.075, Pleas. The amendment to this rule creates a new subdivision (f), Withdrawal of Plea After Disposition. This amendment would allow a child who plead guilty or nolo contendere to a delinquency charge to withdraw that plea within 30 days after rendition of the sentence. The amendment conforms the juvenile rule to the adult criminal rule (*see* Fla. R. Crim. P. 3.170(I)). Existing subdivision (e) has been retitled Withdrawal of Plea Before Disposition, to

RECEIVED, 01/20/2015 12:18:43 PM, Clerk, Supreme Court

distinguish it from the new subdivision (f). Existing subdivision (f) has been renumbered (g). The specific statutory citation in subdivision (fg) has been replaced with “as provided by law.” The committee’s general style is to avoid specific statutory citations that may be amended and then require a rule amendment.

Rule 8.165, Providing Counsel to Parties. Subdivision (b)(3) has been amended to create a new second sentence. The new sentence provides that the attorney assigned to assist a child who is choosing to waive counsel should verify both on the written waiver and on the record “that the child’s decision to waive counsel has been discussed with the child and appears to be knowing and voluntary.” This amendment clarifies that it is the attorney, and not the parent, legal custodian, or responsible adult relative, who signs and verifies the child’s waiver of counsel. Having the attorney sign the waiver provides a safeguard to the child, because the attorney has a better understanding of what constitutes a knowing and voluntary waiver.

Rule 8.315, Arraignment and Prehearing Conferences, and Rule 8.332, Order Finding Dependency. The amendments to Rules 8.315 and 8.322 are intended to create uniformity throughout the state in situations in which a court finds a child dependent based on one parent’s plea, but allegations regarding the other parent remain unresolved. Under section 39.401(3)(c), Florida Statutes, a dependency petition may contain allegations as to one or both parents. The parents must enter a plea of admission, consent, or denial as to the allegations of the petition at the arraignment hearing. § 39.506(1), Fla. Stat.

There are many occasions when one parent enters a plea of consent to the allegations of the dependency petition, but the other parent denies the allegations of the dependency petition and requests an adjudicatory hearing. There are also instances when one parent enters a plea of consent to the dependency petition and the other parent’s location is unknown. Consequently, the statutes require that the Department of Children and Families (“the department”) conduct a diligent search to locate the absent parent. § 39.503(5), Fla. Stat. Diligent searches can take months to complete. Furthermore, there are occasions when a parent moves frequently and cannot be successfully served with the dependency petition. All of these situations cause significant delays to a finding of dependency and acceptance of a case plan and, consequently, delays permanency for the child.

Relatives who have custody of dependent children are eligible for enhanced cash assistance from the department through the Relative Caregiver Program after the court enters orders of adjudication and disposition. § 39.5085, Fla. Stat. Delays in the court entering orders can significantly impact a relative's ability to provide for a child.

Some circuit courts will not enter a finding of dependency based on one parent and will not proceed to disposition when the allegations regarding the other parent remain unresolved. However, some courts will enter an order finding dependency based on one parent, proceed to disposition, and reserve ruling on findings of dependency regarding the other parent for resolution on a later date.

The committee adopted the latter approach and requests that the Court adopt these amendments to prevent delays to permanency for children.

Subdivision (a) of Rule 8.315 has been amended for clarity to create new subdivisions. Subdivision (a)(2) has been amended to add requirements that if an admission or consent is entered, the court must enter a written order finding dependency. The court must also schedule a disposition hearing within 15 days. New subdivision (a)(3) provides a procedure if one parent enters an admission or consent and the other parent enters a denial. New subdivision (a)(4) creates a procedure for situations in which one parent has entered an admission or consent and the identity or location of the other parent is unknown. New subdivision (a)(5) amends existing language in subdivision (a) to provide that if the court enters a written finding of dependency, the court must schedule a disposition hearing within 15 days. Subdivision (c) has also been amended to provide that at the prehearing conference the court may consider "any other matters that may aid in the conduct of the adjudicatory hearing to prevent any undue delay in the adjudicatory hearing."

In Rule 8.332, subdivision (b) has also been amended to provide new subdivisions. New subdivision (b)(1) has new language requiring that the court schedule a disposition hearing within 30 days of the last day of the adjudicatory hearing. New subdivision (b)(2) governs situations in which the court makes findings that only one parent has contributed to the dependency status of the child but the allegations against the other parent remain unresolved. The court must enter a written order finding dependency as to the one parent and reserve ruling on the other parent's contributions to the dependency of the child. New subdivision (b)(3) clarifies that the court may enter an order of dependency even if the child remains

in or is returned to the home. Subdivision (b)(4) provides that there shall be only one order adjudicating the child dependent. Subdivision (d) has been amended to add a statement that the parents must also be advised that a consequence of their failure to substantially comply with the case plan is that the child's out-of-home placement may become permanent. Editorial changes have been made in subdivision (e).

Rule 8.345, Post-disposition Relief. Subdivision (a) has been amended to add the department and the child to the list of those who may object to a change of the child's placement. The rule originally presumed the department was the movant. The amendment allows the department to object if it is not the party moving for the change of placement. The child was added to the list of those who may object because the child is most affected by a move.

Rules 8.850–8.865. In *Sockwell v. State*, 123 So. 3d 585 (Fla. 2d DCA 2012), Judge Alternbernd mentioned twice the lack of rules relating to truancy proceedings under section 984.151, Florida Statutes (*see* Appendix F). In response, the committee has created a set of procedural rules to govern truancy proceedings. Rule 8.850 (Applicability) provides that these rules govern only proceedings instituted under section 984.151, Florida Statutes. Rule 8.855 (Commencement of Proceedings) provides procedures for filing of a truancy petition, provides for use of a general or special magistrate to hear these proceedings, and provides for issuance of a summons. Rule 8.860 (Petition) governs the contents of the petition and requires that it be sworn to by the superintendent of the school system or his or her designee. Rule 8.865 (Hearings) governs hearings, including setting time and attendance requirements. Rule 8.870 (Order) governs the order requiring the child to attend school and provides other sanctions that the court may impose. This rule also provides for procedures if a child does not complete sanctions, allows the court to order the parent, guardian, or legal custodian of the child to be required to participate in sanctions, and provides for enforcement by contempt. The committee believes that these rules will prevent the procedural deficiencies found in the truancy proceedings in *Sockwell*.

Form 8.962, Motion for Injunction and Form 8.962, Injunction Order. The committee is recommending that these two forms be deleted. Because of the 2012 revisions to section 39.504, Florida Statutes, the forms no longer conform to statutory requirements. Injunctions are rarely used in dependency and when they are they are filed by attorneys for the department. The forms in the juvenile rules

are not mandatory and these forms, if retained in the rules, would be only minimally useful. The committee recommends deletion of these two forms.

In In re: Implementation of Committee on Privacy and Court Records Recommendations — Amendments to the Florida Rules of Civil Procedure; the Florida Rules of Judicial Administration; the Florida Rules of Criminal Procedure; the Florida Probate Rules; the Florida Small Claims Rules; the Florida Rules of Appellate Procedure; and the Florida Family Law Rules of Procedure, 78 So. 3d 1045 (Fla. 2011), n.31, the Court asked “the rules committees, as part of their regular-cycle review, to conduct a thorough review of rules and forms not amended here to determine whether any of those rules or forms should be amended to ensure consistency with the amendments we adopt here.” The committee has reviewed the rules and forms and determined that no further action is needed.

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

Respectfully submitted January 20, 2015.

/s/ Deborah A. Schroth

Chair

Juvenile Court Rules Committee

921 Davis Street, Ste. 360B

Jacksonville, FL 32209-6817

850/524-5815

deborah.schroth@myflfamilies.com

Florida Bar No. 290629

/s/ John F. Harkness, Jr.

Executive Director

The Florida Bar

651 East Jefferson Street

Tallahassee, FL 32399-2300

850/561-5600

jharkness@flabar.org

Florida Bar No. 123390

CERTIFICATE OF SERVICE

I certify that this report was served by e-mail on January 20, 2015, to:

Hon. Mary Polson

1940 Lewis Turner Blvd.

Ste. 3-440

Fort Walton Beach, FL 32547

judge.polson@flcourts1.gov

Hon. Chris Altenbernd

1700 North Tampa Street

#308

Tampa, FL 33602-2648

altenbec@flcourts.org

/s/ Gregory Allan Zhelesnik
Gregory Allan Zhelesnik, Staff Liaison
Juvenile Court Rules Committee
The Florida Bar
651 East Jefferson Street
Tallahassee, FL 32399-2300
gzhelesnik@flabar.org
Florida Bar No. 52969

CERTIFICATE OF COMPLIANCE

I certify that this report meets the font requirements of Fla. R. App. P. 9.120(a)(2).

I certify that these rules have been read against West's *Florida Rules of Court, Vol. I— State* (2014 Revised ed.)

/s/ Ellen H. Sloyer
Senior Rules Liaison
The Florida Bar
651 East Jefferson Street
Tallahassee, FL 32399-2300
850/561-5709
esloyer@flabar.org