

IN THE SUPREME COURT OF FLORIDA

**IN RE: AMENDMENTS TO
FLORIDA RULE OF
APPELLATE PROCEDURE 9.146 AND
FLORIDA RULES OF
JUVENILE PROCEDURE**

CASE NO.: 16-553

**JOINT RESPONSE TO COMMENTS OF THE
APPELLATE COURT RULES COMMITTEE
AND THE JUVENILE COURT RULES COMMITTEE**

The Honorable T. Kent Wetherell, II, Chair of the Appellate Court Rules Committee (“ACRC”), Robert William Mason, Chair of the Juvenile Court Rules Committee (“JCRC”), and John F. Harkness, Jr., Executive Director of The Florida Bar, in conjunction with the Honorable Sandra Robbins, Chair of the Select Committee on Claims of Ineffective Assistance of Counsel in Termination of Parental Rights Proceedings (“Select Committee”), file this joint response to comments.

COMMENTS

In response to the Court’s publication of the proposed amendments in the May 1, 2016, edition of *The Florida Bar News*, comments were received from Ryan Thomas Truskoski; The Florida Bar’s Public Interest Law Section; Florida’s Children First and the University of Miami Children and Youth Clinic; Jeanne T. Tate; Kristin A. Norse, Chris W. Altenbernd, and Thomas D. Hall; and the Statewide Guardian ad Litem Office.

The Select Committee considered the comments at a meeting held on June 2, 2016, and recommended several additional amendments based upon the comments. The additional amendments were approved by the JCRC (by a vote of 21-1-2) and the ACRC (by a vote of 43-2) at their respective meetings on June 16 and June 17, 2016, and the Executive Committee of The Florida Bar’s Board of Governors (by a vote of 8-0). The additional amendments are detailed below.

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A number of the comments addressed the proper scope of the proposed

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amendments, *i.e.*, whether the rules should “broadly” apply to all indigent parents or whether the rules should “narrowly” apply only in cases with indigent parents who have court-appointed counsel. Specifically, Ryan Thomas Truskoski, The Florida Bar’s Public Interest Law Section, and the Florida’s Children First and the University of Miami Children and Youth Law Clinic’s comments all encouraged the Court to adopt the “broad” version of the rules. Jeanne T. Tate and the Statewide Guardian ad Litem office encouraged the Court to adopt the “narrow” version of the rules.

As thoroughly discussed in the original joint report, the Select Committee proposed the “narrow” version of the rules based on its understanding of the Court’s direction based on the Committee’s reading of the Court’s letters and *J.B. v. Florida Department of Children and Families*, 170 So. 3d 780 (Fla. 2015) (hereinafter “*J.B.*”). The JCRC favored the “broad” version of the rules by a vote of 19-2-3 and the ACRC unanimously approved the “narrow” version of the rules proposed by the Select Committee. Thereafter, in the February 4, 2016, letter from the Court, in response to the Committees’ request for guidance, the Court asked the Committees to “present both sets of proposals, with complete explanations and votes of the committees and the Board of Governors *for each committee’s preferred set of amendments.*” (Emphasis added.)

The original joint report included both the “broad” and “narrow” versions of the rules, and as noted above, comments were received favoring each version. The Committees do not offer any additional reasoning or amendments based on these comments as this issue was vigorously debated and each option was thoroughly explained in the original report that framed the issue for resolution by the Court.

TIMING OF FILING THE MOTION CLAIMING INEFFECTIVE ASSISTANCE OF COUNSEL

Mr. Truskoski, The Florida Bar’s Public Interest Law Section, and the Florida’s Children First and University of Miami Children and Youth Law Clinic’s comments all indicate a preference for allowing parents more time (30 days instead of 20 days) to file the claim of ineffective assistance of counsel. This issue was previously vigorously debated by the Select Committee. The Committees believe that no additional amendments are necessary as the 20-day time frame for filing is consistent with the Court’s opinion in *J.B.*

ADDITIONAL CONCERNS

Mr. Truskoski and Florida’s Children First and University of Miami

Children and Youth Law Clinic suggested that parents should not be obligated to file the motion claiming ineffective assistance of counsel on a pro se basis. Concerns were raised that any additional amendments may add length to the process. The Select Committee determined that no additional amendments are necessary as requiring appellate counsel to assist a parent in filing a claim of ineffective assistance of counsel would be inconsistent with the Court's opinion in *J.B.*

Mr. Truskoski also suggested that appellate counsel should be able to file a motion to relinquish jurisdiction for trial court consideration. This issue was vigorously debated by the Select Committee. The Committees believe any additional amendments would be inconsistent with the Court's opinion in *J.B.*

Additionally, Mr. Truskoski noted an inconsistency with the proposed amendments to Florida Rule of Appellate Procedure Rule 9.146(i)(2) (Appeal Proceedings in Juvenile Dependency and Termination of Parental Rights Cases and Cases Involving Families and Children in Need of Service). The Committees propose an additional amendment to the rule to address the inconsistency. The additional proposed amendment will be discussed in depth below.

The comment from Florida's Children First and University of Miami Children and Youth Law Clinic further suggested that ineffective assistance of counsel claims should be expanded to all parts of dependency proceedings. This concept was debated vigorously on the committee level and the Committees believe that amendments to address this concern would be outside the scope of the Court's referral.

The Committees reviewed Jeanne T. Tate's comments and determined that no additional amendment to its proposal is currently necessary.

The comments from the Statewide Guardian ad Litem Office contain suggestions that were previously vigorously debated. The Committees believe that its original submission is consistent with the Court's opinion in *J.B.*

DEEMED DENIED

In their comment, Kristin A. Norse, Chris W. Altenbernd, and Thomas D. Hall suggested amendments to subdivisions (f) and (o) of Florida Rule of Juvenile Procedure 8.530. They shared concerns that subdivisions (f) and (o) "conflict with Florida Rule of Appellate Procedure 9.020(i), which consistently defines rendition of an order based on the 'filing of a signed, written order.' The date of rendition is,

of course, critical to the timing for filing a notice of appeal.” (See Norse, Altenbernd, Hall Comment Page 1.)

Ms. Norse, Mr. Altenbernd, and Mr. Hall also described recent amendments to the Florida Rules of Criminal Procedure that remove “deemed denied” language from the rules set. (See *In re Amendments to the Florida Rules of Criminal Procedure*, 167 So. 3d 395, 396 (Fla. 2015).)

The Committees believe that this concern is well taken and propose amendments to address the concern.

Ms. Norse, Mr. Altenbernd, and Mr. Hall also noted that the Committee’s original proposal used the phrase “tolling” which may be confusing. The Committees believe that “toll” is the correct terminology and decline to delete the word in subdivision (f).

PROPOSED RULE AMENDMENTS

RULE 8.530. PARENT’S MOTION CLAIMING INEFFECTIVE ASSISTANCE OF COUNSEL FOLLOWING ORDER TERMINATING PARENTAL RIGHTS

or

RULE 8.530. PARENT’S MOTION CLAIMING INEFFECTIVE ASSISTANCE OF COURT-APPOINTED COUNSEL FOLLOWING ORDER TERMINATING PARENTAL RIGHTS

The Committees recommend deleting the originally proposed subdivision title for subdivision (f) and in its place title the subdivision “Time for Appeal.” Additionally, the Committees suggest deleting the originally proposed language for subdivision (f) and in its place include “[t]he timely filing of a motion claiming ineffective assistance of [court-appointed] counsel shall toll rendition of the order terminating parental rights for purposes of appeal until the circuit court enters a signed, written order disposing of the motion.” The newly proposed amendment makes the subdivision easier to read and removes the time requirement to avoid conflict with other parts of the rule.

The Committees also propose renaming subdivision (o) as “Entry of an Order.” Additionally, the Committees suggest deleting the originally proposed

language for subdivision (o) and in its place include “[w]ithin 50 days from entry of the written order terminating parental rights, the trial court shall file a signed, written order ruling on the motion.” This will remove the “deemed denied” language from the rule and will provide the courts with an exact date for the purposes of determining rendition.

RULE 9.146. APPEAL PROCEEDINGS IN JUVENILE DEPENDENCY AND TERMINATION OF PARENTAL RIGHTS CASES AND CASES INVOLVING FAMILIES AND CHILDREN IN NEED OF SERVICES

The Committees agree with Mr. Truskoski that the last portion of originally proposed subdivision (i)(2) is confusing. In response, the Committees propose deleting “, except as provided by Florida Rule of Juvenile Procedure 8.530” to clear up any confusion. Additionally, the Committees propose replacing “enters” with “files” to strictly adhere to the definition of rendition in Florida Rule of Appellate Procedure 9.020(i).

The Committees would also like to take this opportunity to address a scrivener’s error in the originally proposed subdivision (i)(4)(C). As proposed in the original filing, there is a reference to Florida Rule of Juvenile Procedure 8.518. The correct rule reference should be to proposed Florida Rule of Juvenile Procedure 8.530.

WHEREFORE, the Appellate Court Rules Committee and the Juvenile Court Rules Committee respectfully request the Court adopt one set of the proposed rules and forms regarding claims of ineffective assistance of counsel in termination of parental rights proceedings as detailed within its original joint report. The Committees also respectfully request the Court adopt the additional amendments detailed in this joint response to comment.

Respectfully submitted on June 29, 2016.

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was furnished by e-mail, via the e-portal, on June 29, 2016, to:

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CERTIFICATION OF COMPLIANCE

I certify that these rules were read against West’s *Florida Rules of Court—State* (2016 Edition).

I certify that this report was prepared in compliance with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

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