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DEBBIE CAUSSEAU

JUL 26 1999

IN THE SUPREME COURT OF  
FLORIDA CLERK, SUPREME COURT  
By \_\_\_\_\_

SUPREME COURT NO.: 84,021

IN RE: AMENDMENT TO THE FLORIDA  
RULE OF JUVENILE PROCEDURE  
8.100(a)

RESPONSE OF THE JUVENILE  
COURT RULES COMMITTEE

COMES NOW the Juvenile Court Rules Committee, by and through the undersigned vice-chair, and responds to this Court's opinion of April 29, 1999 and directions therein as follows.

1. In its opinion in Amendment to Florida Rule of Juvenile Procedure 8.100(a), 24 Fla. L. Weekly S196 (Fla., April 30, 1999) this Court adopted on an interim basis an amendment to Rule 8.100:

"RULE 8.100 GENERAL PROVISIONS FOR HEARINGS  
Unless otherwise provided, the following provisions apply to all hearings:  
(a) Presence of the Child. The child shall be present unless the court finds that the child's mental or physical condition is such that a court appearance is not in the child's best interests, except that the child's presence may be either in person or by electronic audiovisual device in the discretion of the Court for detention hearings."

Id. at S197. This rules committee remains opposed to the interim change permitting the trial courts to conduct detention

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hearings by audiovisual means that do not require the Child to be personally present before the court.

2. The rule change was discussed in the delinquency subcommittee and the rules committee as a whole. Several suggestions were made to address perceived problems with the rule should it be adopted on a permanent basis. By a vote of 15-0-1, the committee suggests the following amendments:

(a) Presence of the Child. The child shall be present unless the court finds that the child's mental or physical condition is such that a court appearance is not in the child's best interests.

(1) The child's presence at a detention hearing may be either in person or by electronic audiovisual device.

(2) During the audiovisual detention hearing for any child who is represented by counsel or for whom counsel is appointed counsel must be allowed to be physically present with the child in the same location as the child.

(3) During the audiovisual detention hearing the child's parents or guardians shall have the opportunity to be physically present with the child in the same location as the child.

3. The committee's concern regarding subsection (2) is a belief that it is important that the rule provide physical

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access to the child, by counsel, during the hearing. Our proposed amendment would ensure that no audiovisual system could be established that would limit counsel's ability to be with the child during the hearing. It is the committee's view that because each child has a constitutional right to be represented by counsel, that guarantee means that the child cannot be denied the physical presence of an attorney. A minority view, primarily defense counsel, advocated that the rule should mandate the physical presence of counsel with the child. That proposal was rejected by the delinquency subcommittee and the committee as a whole.

4. The committee also believes that it is important that each child's parents or guardians have the opportunity to be physically present with the child during the hearing. Thus, we have proposed subsection (3) that mandates the opportunity for parents and guardians to be present with the children. We believe that one of the most important factors in the detention/release decision making process is the interaction between parents and children. If parents are present in one location and children in another, there is no meaningful opportunity for communication between parents and children.

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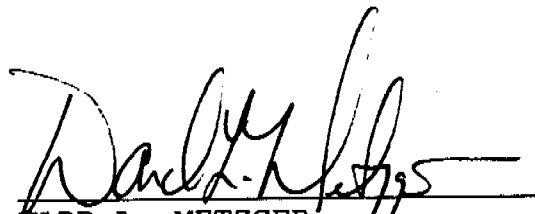
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There is also no opportunity for the court to observe any parent/child interactions. Therefore, we suggest that should the rule be adopted on a permanent basis, this Court should require those circuits implementing an audiovisual detention process to ensure that parents or guardians can be physically present with their children during those hearings.


Wherefore, the Juvenile Court Rules Committee, while remaining opposed to audiovisual detention hearings, respectfully requests this Court to implement the amendments recommended by this committee should the rule be adopted permanently.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U. S. Mail to: Honorable Melanie G. May, Circuit Judge, and Honorable Robert O. Collins, Administrative Judge, Juvenile Division, Seventeenth Judicial Circuit, Fort Lauderdale, Florida; Honorable F. Dennis Alvarez, Chief Judge, and David A. Rowland, Court Counsel, Thirteenth Judicial Circuit, Tampa, Florida; Honorable Susan F. Schaeffer, Chief Judge, and David Trammell, Deputy Court Administrator, Fifth Judicial Circuit, Ocala, Florida; Honorable Paul B. Kanarek, Chief Judge, Nineteenth Judicial Circuit, Vero Beach, Florida; Edith G. Osman, President, The Florida Bar, Miami, Florida and Nancy A. Daniels, Public Defender, Second Judicial Circuit, Tallahassee, Florida, this 26th day of July, 1999.

Ellen Stoya

**RULE 8.100. GENERAL PROVISIONS FOR HEARINGS**

Unless otherwise provided, the following provisions apply to all hearings:

(a) **Presence of the Child.** The child shall be present unless the court finds that the child's mental or physical condition is such that a court appearance is not in the child's best interests, ~~except that the child's presence may be either in person or by electronic audiovisual device in the discretion of the Court for detention hearings.~~

(1) The child's presence at a detention hearing may be either in person or by electronic audiovisual device.

(2) During the audiovisual detention hearing for any child who is represented by counsel or for whom counsel is appointed, counsel must be allowed to be physically present with the child in the same location as the child.

(3) During the audiovisual detention hearing, the child's parents or guardians shall have the opportunity to be physically present with the child in the same location as the child.

(b) **Absence of the Child.** If the child is present at the beginning of a hearing and during the progress of the hearing voluntarily absents himself or herself from the presence of the court without leave of the court, or is removed from the presence of the court because of disruptive conduct during the hearing, the hearing shall not be postponed or delayed, but shall proceed in all respects as if the child were present in court at all times.

(c) **Invoking the Rule.** Prior to the examination of any witness the court may, and on the request of any party in an adjudicatory hearing 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.

(d) **Continuances.** The court may grant a continuance before or during a hearing for good cause shown by any party.

(e) **Record of Testimony.** 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 shall be preserved for 5 years from the date of the hearing.

Official records of testimony shall be transcribed only upon order of the court.

(f) **Notice.** When these rules do not require a specific notice, all parties will be given reasonable notice of any hearing.

**Current rule**

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**Proposed rule**

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(2) During the audiovisual detention hearing for any child who is represented by counsel or for whom counsel is appointed, counsel must be allowed to be physically present with the child in the same location as the child.

**Reason for change**

*Subdivision (a)(2): The committee believes that it is important that counsel have access to the child during the hearing. This amendment assures that no audiovisual system could be established to limit counsel's ability to be present with the child during the detention hearing. Because the child has a constitutional right to be represented by counsel, the child should not be denied the physical presence of an attorney during the detention hearing. A minority view, rejected by the committee, held that the rule should mandate presence of counsel with the child.*

*Subdivision (a)(3): The committee believes that the child's parents or guardians should have the opportunity to be present with the child during the detention hearing. An important part of the detention decision is the court's observation of the interaction between the parents and child. The parent's presence in the courtroom with the judge and the child's presence at the detention center makes interaction between parent and child impossible.*



(c) **Invoking the Rule.** Prior to the examination of any witness the court may, and on the request of any party in an adjudicatory hearing 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.

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