

Proposed rule

Reasons for change

RULE 8.165. PROVIDING COUNSEL TO PARTIES

(a) **Duty of the Court.** The court shall advise the child of the child's right to counsel. The court shall appoint counsel as provided by law unless waived by the child at each stage of the proceeding. Waiver of counsel can occur only after the child has had a meaningful opportunity to confer with counsel regarding the child's right to counsel, the consequences of waiving counsel, and any other factors that would assist the child in making the decision to waive counsel. ~~This waiver shall be in writing if made at the time of a plea of guilty or no contest or at the adjudicatory hearing.~~

(b) **Waiver of Counsel.**

(1) The failure of a child to request appointment of counsel at a particular stage in the proceedings or the child's announced intention to plead guilty shall not, in itself, constitute a waiver of counsel at any subsequent stage of the proceedings.

(2) A child shall not be deemed to have waived the assistance of counsel until the entire process of offering counsel has been completed and a thorough inquiry into the child's comprehension of that offer and the capacity to make that choice intelligently and understandingly has been made.

(3) If the child is entering a plea to or being tried on a delinquent act, the written waiver shall also be submitted to the court in the presence of a parent, legal custodian, responsible adult relative, or attorney assigned by the court to assist the child,

This subdivision has been amended to require that child be given a meaningful opportunity to confer with an attorney before waiving counsel.

New subdivision (b)(3) has been added to require that when a child is entering a plea or being tried on a delinquent act, a written

who shall verify on the written waiver that the child's decision to waive counsel has been discussed with the child and appears to be knowing and voluntary.

(34) No waiver shall be accepted ~~whereif~~ it appears that the party is unable to make an intelligent and understanding choice because of mental condition, age, education, experience, the nature or complexity of the case, or other factors.

(45) If a waiver is accepted at any stage of the proceedings, the offer of assistance of counsel shall be renewed by the court at each subsequent stage of the proceedings at which the party appears without counsel.

waiver of counsel be submitted in the presence of a parent, legal custodian, responsible adult relative, or attorney assigned by the court to assist the child. That person must also verify that the child's decision to waive counsel has been discussed with the child and appears to be knowing and voluntary.

Both of these amendments were made in accordance with a recommendation of The Florida Bar Commission on the Legal Needs of Children (Recommendation 10, page 12, Final Report, June 2002). See Appendix A.

Both a majority and minority view on this rule are contained in the committee's report to the court.

Proposed rule

RULE 8.203. APPLICATION OF UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT

Any pleading filed commencing proceedings as set forth in rule 8.201 shall be accompanied by an affidavit, to the extent of affiant's personal knowledge, under the Uniform Child Custody Jurisdiction and Enforcement Act. Each party has a continuing duty to inform the court of any custody proceeding in this or any other state of which information is obtained during the proceeding.

Reasons for change

Amended to change name of the Act to the Uniform Child Custody Jurisdiction And Enforcement Act, in accordance with repeal of sections 61.1302 *et seq.*, Florida Statutes, and enactment of sections 61.501 *et seq.*, Florida Statutes, by Chapter 2002-65, Laws of Florida. See Appendix B.

Proposed rule

Reasons for change

RULE 8.240. COMPUTATION, CONTINUANCE, EXTENSION, AND ENLARGEMENT OF TIME

(a) **Computation.** In computing any period of time prescribed or allowed by these rules, except rules 8.300 and 8.305, by order of court, or by any applicable statute, the day of the act or event from which the designated period of time begins to run is not to be included. The last day of the period so computed shall be counted, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, a Sunday, nor a legal holiday. When the period of time prescribed or allowed shall be less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation.

Editorial changes.

(b) **Enlargement of Time.** When by these rules, or by a notice given ~~thereunder~~ them, or by order of court an act is required or allowed to be done at or within a specified time, the court for good cause shown, ~~and~~ within the limits established by law, ~~and subject to the provisions of subdivision (d) of this rule,~~ may at any time, in its discretion (1) with or without notice, order the period enlarged if a request ~~therefor~~ is made before the expiration of the period originally prescribed or as extended by a previous order, or (2) ~~upon~~ motion made and notice after the expiration of the specified period permit the act to be done ~~wherewhen~~ the failure to act was the result of excusable neglect, ~~but if~~ The court may not, except as provided by law or elsewhere

Amended to add a cross-reference to new subdivision (d). Editorial changes.

in these rules, extend the time for making a motion for new trial, a ~~motion for rehearing, or~~ vacation of judgment, or for taking an appeal. This rule shall not be construed to apply to shelter hearings.

(c) **Time for Service.**

(1) **Motions and Notice of Hearing.** A copy of any written motion ~~which~~^{that} may not be heard ex parte and a copy of the notice of ~~the~~ hearing ~~thereof~~ shall be served a reasonable time before the time specified for the hearing.

(2) [No change]

(d) **Continuances and Extensions of Time.**

(1) A motion for continuance, extension, or waiver of the time standards provided by law and found in this rule shall be in writing and signed by the requesting party. On a showing of good cause, the court shall allow a motion for continuance or extension to be made ore tenus at any time during the proceedings.

(2) A motion for continuance, extension, or waiver of the time standards provided by law shall not be made in advance of the particular circumstance or need that would warrant delay of the proceedings.

(3) A motion for continuance, extension, or waiver of the time standards provided by law shall state all of the facts that the movant contends entitle the movant to a continuance, extension, or waiver of time including:

Editorial changes.

A new subdivision has been added to create a procedure for a motion for continuance, extension, or waiver of time. This amendment conforms the rule to amendments to section 39.013(10), Florida Statutes, in section 1 of Chapter 2002-216, Laws of Florida. See Appendix C.

(A) the task that must be completed by the movant to preserve the rights of a party or the best interests of the child who is the subject of the proceedings;

(B) the minimum number of days absolutely necessary to complete this task; and

(C) the total number of days the proceedings have been continued at the request of any party within any 12-month period.

(4) Proceedings may not be continued or extended for more than a total of 60 days for all parties within any 12-month period. A continuance or extension of time standards beyond 60 days in any 12-month period may be granted only on a finding by the court of extraordinary circumstances and that the continuance or extension of time standards is necessary to preserve the constitutional rights of a party or that there is substantial evidence demonstrating that the child's best interests will be affirmatively harmed without the granting of a continuance or extension of time.

Proposed rule

Reasons for change

RULE 8.245. DISCOVERY

(a) [No change]

(b) **Required Disclosure.**

(1) At any time after the filing of a shelter petition, ~~ora~~ petition alleging a child to be a dependent child, or a petition for termination of parental rights, on written demand of any party, the party to whom the demand is directed shall disclose and permit inspecting, copying, testing, or photographing matters material to the cause. If the child had no living parent with intact parental rights at the time the dependency allegations arose, then the person who was serving as the legal custodian of the child at that time is entitled to obtain discovery during the pendency of a shelter or dependency petition.

Editorial change.

(2) The following information shall be disclosed by any party ~~up~~ upon demand:

Editorial change.

(A) [No change]

(B) The statement of any person furnished in compliance with the preceding paragraph. The term "statement" ~~as used herein~~ means a written statement made by ~~said~~this person and signed or otherwise adopted or approved by the person, or a stenographic, mechanical, ~~electrical~~electronic, or other recording, or a transcript ~~thereof~~of it, or ~~which~~that is a

Editorial changes.

substantially verbatim recital of an oral statement made by ~~said~~this person to an officer or agent of the state and recorded contemporaneously with the making of ~~such~~the oral statement. The court may prohibit any party from introducing in evidence the material not disclosed, ~~so as to~~ secure and maintain fairness in the just determination of the cause.

(C) [No change]

(D) Tangible papers or objects belonging to the demanding party ~~which~~that are to be used at the adjudicatory hearing.

Editorial change.

(E) [No change]

(3) The disclosures required by subdivision (a) of this rule shall be made within 10 days from the receipt of the demand ~~therefor~~for them. Disclosure may be made by allowing the requesting party to review the files of the party from whom discovery is requested after redaction of nondiscoverable information.

Editorial change.

(c) **Limitations on Disclosure.**

(1) ~~Upo~~On application, the court may deny or partially restrict disclosure authorized by this rule if it finds there is a substantial risk to any person of physical harm, intimidation, bribery, economic reprisals, or unnecessary annoyance or embarrassment resulting from ~~such~~the disclosure, ~~which~~that outweighs any usefulness of the disclosure to the party requesting it.

Editorial changes.

(2) [No change]

(d) [No change]

(e) **Production of Documents and Things Without Deposition.**

(1) [No change]

(2) [No change]

Editorial changes.

(3) **Subpoena.** If no objection is made by a party under subdivision (e)(2), an attorney of record in the action may issue a subpoena or the party desiring production shall deliver to the clerk for issuance a subpoena ~~together with~~ and a certificate of counsel or pro se party that no timely objection has been received from any party; ~~and~~ and the clerk shall issue the subpoena and deliver it to the party desiring production. The subpoena shall be identical to the copy attached to the notice, ~~and~~ shall specify that no testimony may be taken, and shall require only production of the documents or things specified in it. The subpoena may give the recipient an option to deliver or mail legible copies of the documents or things to the party serving the subpoena. The person ~~upon~~ upon whom the subpoena is served may condition the preparation of copies on the payment in advance of the reasonable costs of preparing the copies. The subpoena shall require production only in the county of the residence of the custodian or other person in possession of the documents or things or in the county where the documents or things are located or where the custodian or person in possession usually conducts business. If the person ~~upon~~ upon whom the subpoena is served objects at any time before the production of

the documents or things, the documents or things shall not be produced under this rule, and relief may be obtained under subdivision (g).

Editorial change.

(4) **Copies Furnished.** If the subpoena is complied with by delivery or mailing of copies as provided in subdivision (e)(3), the party receiving the copies shall furnish a legible copy of each item furnished to any other party who requests it upon the payment of the reasonable cost of preparing the copies.

(5) [No change]

(f) [No change]

(g) **Depositions.**

(1) **Time and Place.**

Editorial change.

(A) At any time after the filing of the petition alleging a child to be dependent or a petition for termination of parental rights, any party may take the deposition upon oral examination of any person who may have information relevant to the allegations of the petition.

Editorial changes.

(B) The deposition shall be taken in a building ~~wherein which~~ the adjudicatory hearing may be held, in ~~such another place as agreed upon~~ by the parties, or where the trial court may designate by special or general order. A resident of the state may be required to attend an examination only in the county ~~wherein which~~ he or she resides, is employed, or regularly transacts business in person.

(2) **Procedure.**

(A) The party taking the deposition shall give written notice to each other party. The notice shall state the time and place the deposition is to be taken and the name of each person to be examined.

~~(B) Upon application the court or its clerk shall issue subpoenas for the persons whose depositions are to be taken.~~ Subpoenas for taking depositions shall be issued by the clerk of the court, the court, or any attorney of record for a party.

(C) [No change]

(D) [No change]

(3) **Use of Deposition.** Any deposition taken ~~pursuant hereto~~ under this rule may be used at any hearing covered by these rules by any party for the following purposes:

(A) [No change]

(B) [No change]

(4) [No change]

(5) [No change]

(6) **Limitations on Use.** Except as provided in subdivision (3), no deposition shall be used or read in evidence when the attendance of the witness can be procured. If it ~~shall~~

This subdivision has been amended to allow the clerk, the court, or any attorney of record to issue subpoenas for the taking of depositions. The amendment conforms this subdivision to *Fla. R. Juv. P.* 8.225(a)(2) and *Fla. R. Civ. P.* 1.410(a). See Appendix D.

Editorial change.

Editorial changes.

appears to the court that any person whose deposition has been taken has absented himself or herself by procurement, inducements, or threats by or on behalf of any party, the deposition shall not be read in evidence on behalf of that party.

(h) Perpetuating Testimony Before Action or Pending Appeal.

(1) Before Action.

(A) Petition. A person who desires to perpetuate the person's own testimony or that of another person regarding any matter that may be cognizable in any court of this state may file a verified petition in the circuit court in the county of the residence of any expected adverse party. The petition shall be entitled in the name of the petitioner and shall show:

(i) [No change]

(ii) the subject matter of the expected action and the person's interest ~~therein~~ in it;

(iii) the facts ~~which~~ that the person desires to establish by the proposed testimony and the reasons for desiring to perpetuate it;

(iv) [No change]

(v) [No change]

(B) Notice and Service. The petitioner

Editorial change

Editorial change.

Editorial change.

Editorial changes.

shall ~~thereafter~~ serve a notice on each person named in the petition as an expected adverse party, ~~together~~ with a copy of the petition, stating that the petitioner will apply to the court at a time and place ~~therein~~ in the notice for an order described in the petition. At least 20 days before the date of the hearing, the notice shall be served either within or without the county in the manner provided by law for serving of summons, ~~but~~ However, if ~~such~~ service cannot with due diligence be made on any expected adverse party named in the petition, the court may ~~make an order for~~ service by publication or otherwise and shall appoint an attorney for persons not served in the manner provided by law for service of summons, ~~who~~ The attorney shall represent ~~them~~ the adverse party and, if ~~they are~~ he or she is not otherwise represented, shall cross-examine the deponent.

(C) **Order and Examination.** If the court is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it shall make an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and whether the deposition shall be taken on oral examination or written interrogatories. The deposition may then be taken in accordance with these rules and the court may make orders in accordance with the requirements of these rules. For the purpose of applying these rules to depositions for perpetuating testimony, each reference ~~therein~~ them to the court in which the action is pending shall be deemed to refer to the court in which the petition for ~~such~~ the deposition was filed.

(D) [No change]

(2) **Pending Appeal.** If an appeal has been

Editorial changes.

Editorial changes

taken from a judgment of any court or before the taking of an appeal if the time ~~therefor~~ it has not expired, the court in which the judgment was rendered may allow the taking of the depositions of witnesses to perpetuate their testimony for use in ~~the event of~~ further proceedings in the court. In such case, the party who desires to perpetuate the testimony may ~~make a motion~~ move for leave to take the deposition ~~upon~~ the same notice and service as if the action were pending in the court. The motion shall show the names and addresses of persons to be examined, ~~and~~ the substance of the testimony expected to be elicited from each, and the reasons for perpetuating the testimony. If the court finds that the perpetuation is proper to avoid a failure or delay in justice, it may make orders ~~of the character~~ as provided for by this rule and ~~thereupon~~ the deposition may then be taken and used in the same manner and under the same conditions as are prescribed in these rules for depositions taken in actions pending in the court.

(3) [No change]

(i) Rules Governing Depositions of Children Under 16.

(1) [No change]

(2) The court, after proper notice to all parties and an evidentiary hearing, based on good cause shown, may set conditions for the deposition of a child under the age of 16 including:

Editorial change.

(A) [No change]

(B) [No change]

(C) [No change]

(D) [No change]

(E) [No change]

(F) [No change]

(G) imposing any other conditions the court feels are necessary for the protection of the child.

Editorial change.

(3) [No change]

(4) [No change]

(j) **Supplemental Discovery.** If, subsequent to compliance with these rules, a party discovers additional witnesses, evidence, or material ~~which~~that the party would have been under a duty to disclose or produce at the time of ~~such~~the previous compliance, the party shall promptly disclose or produce such witnesses, evidence, or material in the same manner as required under these rules for initial discovery.

Editorial changes.

(k) **Sanctions.**

(1) If at any time during the course of the proceedings, it is brought to the attention of the court that a party has failed to comply with an applicable discovery rule or with an order issued ~~pursuant to~~under an applicable discovery rule, the court

Editorial change.

may:

(A) order ~~such~~the party to comply with the discovery or inspection of materials not previously disclosed or produced;

(B) [No change]

(C) [No change]

(D) [No change]

(E) enter ~~such an~~ order ~~as~~that it deems just under the circumstances.

(2) Willful violation by counsel of an applicable discovery rule or an order issued ~~pursuant thereto~~under it may subject counsel to appropriate sanction by the court.

Editorial change.

Editorial changes.

Editorial change.

Committee Notes

[No change]

Proposed rule

Reasons for change

RULE 8.255. GENERAL PROVISIONS FOR HEARINGS

(a) [No change]

(b) [No change]

(c) [No change]

(d) **Examination of Child; Special Protections.**

(1) [No change]

(2) **In-Camera Examination.**

(A) ~~Upo~~On motion and hearing, the child may be examined by the court outside the presence of other parties as provided by law. The court shall assure that proceedings are recorded, unless otherwise stipulated by the parties.

Editorial change.

(B) [No change]

(C) [No change]

(D) [No change]

(e) [No change]

(f) [No change]

(g) **Record.** 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 of testimony shall be preserved as required by law. Official records of testimony shall be transcribed only on order of the court.

Editorial change.

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

Editorial change.

~~(i) **Masters.** Pursuant to Florida Rule of Civil Procedure 1.490, both general and special masters may be appointed to hear issues involved in proceedings under this part.~~

Subdivision (i) has been deleted because of creation of *Fla. R. Juv. P.* 8.257, governing general masters.

Committee Notes

1991 Amendment. (b) This change allows a child to be present instead of mandating the child's presence when the child's presence would not be in his or her best interest. The court is given the discretion to determine the need for the child to be present.

1992 Amendment. This change was made to reflect a moderated standard for in-camera examination of a child less rigid than the criminal law standard adopted by the committee in the 1991 rule revisions.

2005 Amendment. Subdivision (i) was deleted because provisions for general masters were transferred to rule 8.257.

Proposed rule

RULE 8.257. GENERAL MASTERS

(a) **Appointment.** Judges of the circuit court may appoint as many general masters from among the members of The Florida Bar in the circuit as the judges find necessary, and the general masters shall continue in office until removed by the court. The order of appointment shall be recorded. Every person appointed as a general master shall take the oath required of officers by the Constitution and the oath shall be recorded before the master discharges any duties of that office.

(b) **Referral.**

(1) **Consent.** No matter shall be heard by a general master without an appropriate order of referral and the consent to the referral of all parties. Consent, as defined in this rule, to a specific referral, once given, cannot be withdrawn without good cause shown before the hearing on the merits of the matter referred. Consent may be express or implied in accordance with the requirements of this rule.

(2) **Objection.** A written objection to the referral to a general master must be filed within 10 days of the service of the order of referral. If the time set for the hearing is less than 10 days after service of the order of referral, the objection must be filed before commencement of the hearing. Failure to file a written objection within the applicable time period is deemed to be consent to the order of referral.

Reasons for change

At the court's request, a new rule has been created governing the use of general masters in dependency proceedings. See *Amendments to Florida Rules of Juvenile Procedure*, 827 So. 2d 219 (Fla. 2002). (Appendix E.) The rule is patterned after *Fla. Fam. L. R. P.* 12.490 and creates a procedure for referral to a master, consent by the parties, orders of referral, hearings before the master, the master's report, exceptions to the report, and creation of a record.

Changes have been made from the family law rule to adapt it to juvenile dependency proceedings as follows.

- (1) In subdivisions (b)(2) and (b)(3) the extension of time to object until the time a responsive pleading has been filed was deleted. Answers are not required in dependency proceedings. See § 39.505, Fla. Stat.; *Fla. R. Juv. P.* 8.325(a).
- (2) In subdivision (b)(3), the reference to *Fla. Fam. L. R. P. Form* 12.920(b) has been deleted.
- (3) The cross-reference in subdivision (b)(3)(A) has been changed.
- (4) In subdivision (b)(3)(B), the requirement that the order of referral contain the name of the master has been deleted. In many programs, there are multiple masters. By referring the case to the general master program rather than a specific master, a new order of referral will not be needed

(3) **Order.**

(A) The order of referral shall contain the following language in boldtype:

A REFERRAL TO A GENERAL MASTER REQUIRES THE CONSENT OF ALL PARTIES. YOU ARE ENTITLED TO HAVE THIS MATTER HEARD BEFORE A JUDGE. IF YOU DO NOT WANT TO HAVE THIS MATTER HEARD BEFORE THE GENERAL MASTER, YOU MUST FILE A WRITTEN OBJECTION TO THE REFERRAL WITHIN 10 DAYS OF THE TIME OF SERVICE OF THIS ORDER. IF THE TIME SET FOR THE HEARING IS LESS THAN 10 DAYS AFTER THE SERVICE OF THIS ORDER, THE OBJECTION MUST BE MADE BEFORE THE HEARING. FAILURE TO FILE A WRITTEN OBJECTION WITHIN THE APPLICABLE TIME PERIOD IS DEEMED TO BE A CONSENT TO THE REFERRAL.

REVIEW OF THE REPORT AND RECOMMENDATIONS MADE BY THE GENERAL MASTER SHALL BE BY EXCEPTIONS AS PROVIDED IN FLORIDA RULE OF JUVENILE PROCEDURE 8.257(f). A RECORD, WHICH INCLUDES A TRANSCRIPT OF PROCEEDINGS, WILL

if the master to whom the case is assigned is changed.

- (5) In subdivision (b)(3)(B), the requirement that the referral advise the party whether a court reporter must be provided by the party was eliminated. In most master programs, electronic recording devices are available in hearing rooms. There is no requirement that a party provide a court reporter.
- (6) In subdivisions (e) and (f), material has been rearranged. The notice regarding filing exceptions and the requirements for a transcript have also been moved from the notice of hearing to the master's report. The committee felt that this was the more appropriate place for the information. The remedy is now on the document the party may wish to object to, rather than a notice of hearing that may already have been discarded.
- (7) The cross-reference in subdivision (e)(2) has been changed.
- (8) Although the content of subdivision (g) is the same as *Rule* 12.490(g), the material has been arranged differently.

BE REQUIRED TO SUPPORT THE EXCEPTIONS.

(B) The order of referral shall state with specificity the matter or matters being referred. The order of referral shall also state whether electronic recording or a court reporter is provided by the court.

(4) **Setting Hearing.** When a referral is made to a general master, any party or the general master may set the action for hearing.

(c) **General Powers and Duties.** Every general master shall perform all of the duties that pertain to the office according to the practice in chancery and rules of court and under the direction of the court. A general master shall be empowered to administer oaths and conduct hearings, which may include the taking of evidence. All grounds for disqualification of a judge shall apply to general masters.

(d) **Hearings.**

(1) The general master shall assign a time and place for proceedings as soon as reasonably possible after the referral is made and give notice to each of the parties either directly or by directing counsel to file and serve a notice of hearing. If any party fails to appear, the general master may proceed ex parte or may adjourn the proceeding to a future day, giving notice to the absent party of the adjournment. The general master shall proceed with reasonable diligence in every referral and with the least delay practicable. Any party may apply to the court for an order to the

general master to speed the proceedings and to make the report and to certify to the court the reason for any delay.

(2) The general master shall take testimony and establish a record which may be by electronic means as provided by Florida Rule of Judicial Administration 2.070(g)(3) or by a court reporter. The parties may not waive this requirement.

(3) The general master shall have authority to examine under oath the parties and all witnesses on all matters contained in the referral, to require production of all books, papers, writings, vouchers, and other documents applicable to it, and to examine on oath orally all witnesses produced by the parties. The general master may take all actions concerning evidence that can be taken by the circuit court and in the same manner. The general master shall have the same powers as a circuit judge to use communications equipment as defined and regulated by Florida Rule of Judicial Administration 2.071.

(4) The notice or order setting a matter for hearing shall state whether electronic recording or a court reporter is provided by the court. If the court provides electronic recording, the notice shall also state that any party may provide a court reporter at that party's expense, subject to the court's approval.

(e) **Report.**

(1) The general master shall file a report that includes findings of fact, conclusions of law, and recommendations and serve copies on all parties. If a court reporter was present, the report shall contain the name and address of the reporter.

(2) The report and recommendations shall contain the following language in boldtype:

SHOULD YOU WISH TO SEEK REVIEW OF THE REPORT AND RECOMMENDATIONS MADE BY THE GENERAL MASTER, YOU MUST FILE EXCEPTIONS WITHIN 10 DAYS OF SERVICE OF THE REPORT AND RECOMMENDATIONS IN ACCORDANCE WITH FLORIDA RULE OF JUVENILE PROCEDURE 8.257(f). YOU WILL BE REQUIRED TO PROVIDE THE COURT WITH A RECORD SUFFICIENT TO SUPPORT YOUR EXCEPTIONS WITHIN 10 DAYS OF SERVICE OF THE REPORT AND RECOMMENDATIONS OR YOUR EXCEPTIONS WILL BE DENIED. A RECORD ORDINARILY INCLUDES A WRITTEN TRANSCRIPT OF ALL RELEVANT PROCEEDINGS. THE PERSON SEEKING REVIEW MUST HAVE THE TRANSCRIPT PREPARED FOR THE COURT'S REVIEW.

(f) **Exceptions.** The parties may serve exceptions to the report within 10 days from the time it is served on them. Any party may file cross-exceptions within 5 days from the service of the exceptions. However, the filing of cross-exceptions shall not delay the hearing on the exceptions unless good cause is shown. If no exceptions are filed within that period, the court shall take

appropriate action on the report. If exceptions are filed, they shall be heard on reasonable notice by either party or the court.

(g) **Record.** For the purpose of the hearing on exceptions, a record, substantially in conformity with this rule, shall be provided to the court by the party seeking review. The record shall consist of the court file, including the transcript of the relevant proceedings before the general master, and all depositions and evidence presented to the general master.

(1) The transcript of all relevant proceedings, if any, shall be delivered to the judge and provided to all other parties not less than 48 hours before the hearing on exceptions.

(2) If less than a full transcript of the proceedings taken before the general master is ordered prepared by the excepting party, that party shall promptly file a notice setting forth the portions of the transcript that have been ordered. The responding party shall be permitted to designate any additional portions of the transcript necessary to the adjudication of the issues raised in the exceptions or cross-exceptions.

(3) The cost of the original and all copies of the transcript of the proceedings shall be borne initially by the party seeking review. Should any portion of the transcript be required as a result of a designation filed by the responding party, the party making the designation shall bear the initial cost of the additional transcript.

Proposed rule

Reasons for change

RULE 8.290. DEPENDENCY MEDIATION

(a) [No change]

(b) [No change]

(c) **Compliance with Statutory Time Requirements.** Dependency mediation shall be conducted in compliance with the statutory time requirements for dependency matters ~~unless waived by all parties and approved by the court.~~

(d) **Referral.** Except as provided by this rule, all matters and issues described in ~~subsection~~subdivision (a)(1) may be referred to mediation. All referrals to mediation shall be in written form, shall advise the parties of their right to counsel, and shall set a date for hearing before the court to review the progress of the mediation. The mediator or mediation program shall be appointed by the court or stipulated to by the parties. ~~In the event~~If the court refers the matter to mediation, the mediation order shall address all applicable provisions of this rule. The mediation order shall be served on all parties and on counsel ~~pursuant to~~under the provisions of the Florida Rules of Juvenile Procedure.

(e) [No change]

(f) **Fees.** Dependency mediation referrals may be made to a mediator or mediation program ~~which~~that charges a fee. Any order of referral to a mediator or mediation program charging a fee shall advise the parties that they may timely object to mediation on

This amendment has been made to require dependency mediations to be conducted in accordance with statutory time standards for dependency cases. See, *e.g.*, §§ 39.601(7), 39.701(9)(f), Fla. Stat. Mediation is not listed as an exception to the time requirements in section 39.013(10), Florida Statutes.

Editorial changes.

Editorial changes.

grounds of financial hardship. ~~Upon~~ On the objection of a party or the court's own motion, the court may, after considering the objecting party's ability to pay and any other pertinent information, reduce or eliminate the fee.

(g) [No change]

(h) [No change]

(i) **Disqualification of the Mediator.** Any party may move to enter an order disqualifying a mediator for good cause. If the court rules that a mediator is disqualified from mediating a case, an order shall be entered ~~setting forth~~ with the name of a qualified replacement. Nothing in this provision shall preclude mediators from disqualifying themselves or refusing any assignment.

Editorial change.

(j) [No change]

(k) [No change]

(l) **Appearances.**

(1) [No change]

(2) **Physical Presence of Adult Parties and Participants.** Unless otherwise agreed to by the parties or ordered by the court, any party or participant ordered to mediation shall be physically present at the mediation conference. Persons representing an agency, department, or program must have full authority to enter into an agreement ~~which that~~ shall be binding on that agency, department, or program. In the discretion of the mediator,

Editorial change.

and with the agreement of the attending parties, dependency mediation may proceed in the absence of any party or participant ordered to mediation.

(3) [No change]

(4) [No change]

(5) **Sanctions for Failure to Appear.** If a party or participant ordered to mediation fails to appear at a duly-noticed mediation conference without good cause, the court, upon motion of any party or on its own motion, may impose sanctions. Sanctions against the party or participant failing to appear may include one or more of the following: contempt of court, an award of mediator fees, an award of attorney fees, an award of costs, or other remedies as deemed appropriate by the court.

Editorial change.

(m) [No change]

(n) [No change]

(o) **Report on Mediation.**

(1) If agreement is reached ~~as to~~on all or part of any matter or issue, including legal or factual issues to be determined by the court, ~~such~~the agreement shall be immediately reduced to writing, signed by the attending parties, and promptly submitted to the court by the mediator with copies to all parties and counsel.

Editorial change.

(2) [No change]

(p) **Court Hearing and Order ~~Upo~~On Mediated Agreement.** ~~Upo~~On receipt of a full or partial mediation agreement, the court shall hold a hearing and enter an order accepting or rejecting the agreement consistent with the best interest of the child. The court may modify the terms of the agreement with the consent of all parties to the agreement.

Editorial changes.

(q) **Imposition of Sanctions ~~Upo~~On Breach of Agreement.** In the event of any breach or failure to perform under the court-approved agreement, the court, ~~up~~on a motion of any party or ~~up~~on its own motion, may impose sanctions. The sanctions may include contempt of court, vacating the agreement, imposition of costs and attorney fees, or any other remedy—~~as~~ deemed appropriate by the court.

Editorial changes.

Committee Notes

[No change]

Proposed rule

Reasons for change

RULE 8.300. TAKING INTO CUSTODY

(a) **Affidavit.** An affidavit or verified petition may be filed ~~by any person~~ alleging facts under existing law sufficient to establish grounds to take a child into custody. The affidavit or verified petition shall:

(1) [no change]

(2) [no change]

(3) [no change]

(4) state the reasons ~~why~~ the child should be taken into custody.

(b) **Criteria for Order.** The court may issue an order to take a child into custody based on sworn testimony meeting the criteria ~~set forth~~ in subdivision (a).

(c) **Order.** The order to take into custody shall:

(1) [no change]

(2) [no change]

(3) [no change]

This amendment conforms the rule to section 39.401(1)(b), Florida Statutes.

Editorial change.

Editorial change.

(4) state the reasons ~~why~~ the child should be taken into custody;

(5) order that the child be ~~detained~~held in a suitable place pending ~~a shelter hearing as provided by law~~transfer of physical custody to an authorized agent of the department; and

(6) [no change]

Editorial change.

This subdivision has been amended to specify that an order to take a child into custody specify that the child be held in a suitable place pending transfer of custody to the Department of Children and Family Services. If a child is taken into custody by court order, there is no statutory requirement to return immediately to court for another order to detain the child. See § 39.401(2)(b), Fla. Stat.

Proposed rule

Reasons for change

RULE 8.305. SHELTER PETITION, HEARING, AND ORDER

(a) **Shelter Petition.** If a child has been or is to be removed from the home and maintained in an out-of-home placement for a ~~period longer~~more than 24 hours, the person requesting placement shall file a written petition ~~which~~that shall:

Editorial changes.

(1) [no change]

(2) [no change]

(3) [no change]

(4) [no change]

(5) state the reasons ~~why~~ the child needs to be placed in a shelter;

Editorial change.

(6) list the reasonable efforts, if any, that were made by the department to prevent or eliminate the need for the removal or continued removal of the child from the home or, if no such efforts were made, a description of the emergency ~~which existed~~ that prevented these efforts;

Editorial change.

(7) [no change]

(8) [no change]

(b) **Shelter Hearing.**

(1) [No change]

(2) The court shall conduct an informal hearing on the petition within the time limits ~~as~~ provided by law. The court shall determine at the hearing the existence of probable cause to believe the child is dependent and whether the other criteria provided by law for placement in a shelter have been met. The shelter hearing may be continued for up to 72 hours with the child remaining in shelter care if either:

Editorial change.

(A) the parents or legal custodians appear for the shelter hearing without legal counsel and request a continuance ~~in order~~ to consult with legal counsel; or

Editorial change.

(B) the court determines that additional time is necessary to obtain and review documents pertaining to the family ~~in order~~ to appropriately determine the risk to the child.

Editorial change.

(3) The issue of probable cause shall be determined in a ~~nonadversary~~ nonadversarial manner, applying the standard of proof necessary for an arrest warrant.

Editorial change.

(4) At the hearing, all interested persons present shall have an opportunity to be heard and present evidence on the criteria for placement ~~as~~ provided by law.

Editorial changes.

(5) The court may base its determination on a sworn complaint, testimony, or an affidavit and may hear all relevant and material evidence, including oral and written reports,

Editorial changes.

to the extent of its probative value even though it would not be competent at an adjudicatory hearing.

(6) The court shall advise the parent or legal custodian of:

(A) [no change]

(B) the reason ~~for the child being~~is in custody and why continued placement is requested;

(C) [no change]

(D) [no change]

Editorial change.

(7) The court shall appoint:

(A) a guardian ad litem to represent the child unless the court finds ~~such~~ representation is unnecessary;

(B) [no change]

(C) [no change]

Editorial change.

(8) [No change]

(9) If the shelter hearing is conducted by a judge other than ~~the juvenile court~~ a judge assigned to hear dependency cases, ~~the juvenile court~~ a judge assigned to hear dependency cases shall hold a shelter review on the status of the child within 2 working days after the shelter hearing.

This amendment clarifies that if a shelter hearing is conducted by a judge other than one assigned to hear dependency cases, a judge assigned to hear dependency cases must review the child's status

(c) **Shelter Order.** ~~The~~ An order granting shelter care must identify the parties present at the hearing and contain written findings that:

(1) [no change]

(2) placement in shelter care is in the best interest of the child~~(ren)~~;

(3) continuation of the child~~(ren)~~ in the home is contrary to the welfare of the child~~(ren)~~ because the home situation presents a substantial and immediate danger to the child~~(ren)~~'s physical, mental, or emotional health or safety that cannot be mitigated by the provision of preventive services;

(4) there is probable cause to believe the child~~(ren)~~ is~~are~~ dependent;

(5) the department has made reasonable efforts to prevent or eliminate the need for removal of the child~~(ren)~~ from the home;

(6) [no change]

(7) [no change]

(d) [No change]

within two working days. A “juvenile court judge” could be interpreted to mean a judge assigned to hear delinquency cases. See § 39.402(12), Fla. Stat.

Subdivision (c) has been amended to clarify that findings need only be made in an order granting shelter care. The previous version of the rule seemed to require findings if shelter care was denied. See § 39.402(8)(h), Fla. Stat.

Editorial change.

Editorial changes.

Editorial changes.

Editorial change.

Proposed rule

Reasons for change

RULE 8.315. ARRAIGNMENTS AND PREHEARING CONFERENCES

(a) **Arraignment.** ~~Prior to~~Before the adjudicatory hearing, the court shall conduct a hearing to determine whether an admission, consent, or denial to the petition shall be entered, and whether the parties are represented by counsel or are entitled to appointed counsel as provided by law. If an admission or consent is entered and no denial is entered by any other parent or legal custodian, the court shall schedule a disposition hearing to be conducted within 15 days. If a denial is entered, the court shall set an adjudicatory hearing within the period of time provided by law ~~or grant a continuance as provided by law~~ and appoint counsel when required.

(b) **Withdrawal of Plea.** The court may for good cause, at any time ~~prior to~~before the beginning of a disposition hearing, permit an admission of the allegations of the petition or a consent to dependency to be withdrawn and, if an adjudication has been entered ~~thereon~~, set aside ~~such~~the adjudication. In a subsequent adjudicatory hearing the court shall disregard an admission or consent that has been withdrawn.

(c) **Prehearing Conference.** ~~Prior to~~Before any adjudicatory hearing, the court may set or the parties may request that a prehearing conference be held to determine the order in which each party may present witnesses or evidence and the order in which cross-examination and argument shall occur. The court may

Subdivision (a) has been amended to add a requirement that no parent have entered a denial before the court may proceed directly from arraignment to disposition. The amendment covers situations when one parent consents to an adjudication of dependency but the other parent does not. If any parent denies the allegations of the petition, it is a denial of due process to move to disposition without an adjudicatory hearing. See §§ 39.506(1)–(2), Fla. Stat.

Sentence three in subdivision (a) has also been amended to delete “or grant a continuance as provided by law.” Continuances of arraignment hearings are not authorized by statute. See §§ 39.506(1)–(2), 39.507(1)(a), Fla. Stat. The adjudicatory hearing set at arraignment may be continued, but a motion for a continuance would be filed at another time.

Editorial changes.

Editorial changes.

also enter findings on the record of any stipulations entered into by the parties and consider any other matters ~~which~~that may aid in the conduct of the adjudicatory hearing.

(d) **Status Hearing.** Within 60 days of the filing of the petition, a status hearing shall be held with all parties present unless an adjudicatory or disposition hearing has ~~commenced~~begun. Subsequent status hearings shall be held every 30 days ~~thereafter~~ unless an adjudicatory or disposition hearing has ~~commenced~~begun.

Editorial changes.

Committee Notes

[No change]

Proposed rule

Reasons for change

RULE 8.325. ANSWERS AND PLEADINGS

(a) [No change]

(b) **Denial of Allegations.** If the parent or legal custodian denies the allegations of the petition ~~or~~, remains silent, or pleads evasively, the court shall enter a denial of dependency and ~~shall~~ set the case for an adjudicatory hearing.

Editorial changes.

(c) **Admission of or Consent to Dependency.** The parent or legal custodian may admit or consent to a finding of dependency. The court shall determine that any admission or consent to a finding of dependency is made voluntarily and with a full understanding of the nature of the allegations and the possible consequences of ~~such~~the admission or consent, and that the parent has been advised of the right to be represented by counsel. The court shall incorporate these findings into its order in addition to findings of fact specifying the act or acts causing dependency, by whom committed, and facts ~~upon~~ which the findings are based. If the answer admits the allegations of the petition it shall constitute consent to a predisposition study.

Editorial changes.

~~(d) **Stipulations.**~~

~~(1) Any party may submit a written stipulation before the adjudicatory hearing.~~

Subdivision (d), Stipulations, has been deleted. This provision was originally included in the juvenile rules to govern “Walker” plans and other plans and stipulations. These have been deleted from the dependency statutes.

~~(2) The stipulation may include findings of fact~~

~~which will be deemed admitted at any subsequent hearing.~~

~~(3) The stipulation shall be signed by all parties and shall include:~~

~~(A) a statement of the placement of the child and conditions of placement;~~

~~(B) the supervising agent;~~

~~(C) the responsibilities of the parties;~~

~~(D) the period of time that the stipulation shall remain in effect;~~

~~(E) the agreement of all parties; and~~

~~(F) the period of time within which the court shall review compliance.~~

~~(4) Violations of the conditions of the stipulation shall be presented to the court by a motion alleging a violation by any party during the pendency of the stipulation. If the court, after a hearing, finds a violation has occurred, it may take such action as is appropriate to enforce the stipulation, modify the stipulation by supplemental agreement, or set the case for hearing on the original petition.~~

~~(5) After the time period specified in the stipulation has expired, unless otherwise dismissed, the petition~~

~~may be dismissed on motion of any party participating in the stipulation after notice, hearing, and a finding of substantial compliance with the provisions and intent of the stipulation.~~

Committee Notes

~~**1992 Amendment.** This rule combines the previous provisions for plans and stipulations into one procedure entitled "stipulations."~~

The Committee Note has been deleted because it refers to deleted subdivision (d).

Proposed rule

Reasons for change

RULE 8.400. CASE PLANS

(a) **Department Responsibility.** At least 72 hours ~~prior to~~before the disposition hearing, but no later than 60 days after removal of a child from the home, the department or its agent must file with the court all case plans prepared before jurisdiction of the court attached and do one of the following:

Editorial change.

(1) File with the court a current case plan ~~which~~that was prepared in conference with the parents, any court appointed guardian ad litem, the attorney ad litem, and, if appropriate, the child, and signed by the parties involved.

Editorial change.

(2) [No change]

(3) Submit a motion requesting an extension of the time for filing the case plan for a period of not more than 30 days; ~~h~~However, this shall not preclude a party or any other agency or person participating in the preparation of the case plan from filing the motion.

Editorial change.

(A) [No change]

(B) The court shall hear all parties present, in person, by counsel, or both. The department at all times, however, shall be represented by an attorney. Only one 30-day extension may be granted ~~upon~~ upon a showing of good cause. In the

Editorial change.

order granting the continuance, the court shall set a hearing for review and acceptance of the case plan.

(b) **Amendments.**

(1) The case plan may be amended by:

~~(1A)~~ the parties at any time provided agreement is unanimous ~~by all parties~~, and the amendment is approved by the court;

~~(2B)~~ the court ~~upon~~ motion of a party after notice to all other parties; or

~~(3C)~~ the court.

(2) If any party objects to the amendment of the case plan, the court must conduct a hearing allowing each party to present evidence and information as permitted by rule 8.340(a).

(3) Any amendment granted by the court must be based on competent evidence.

(c) [No change]

Editorial change.

Editorial change.

This amendment adds new subdivisions (b)(2) and (b)(3) to clarify the procedure for amending a case plan. The Court in *M.W. v. Davis*, 756 So. 2d 90, 107 (Fla. 2000) (see Appendix F), noted the lack of guidance regarding the type of evidence required to amend a case plan. This language provides that guidance. See also §§ 39.601(9)(f), 39.603(2), 39.701(8), Fla. Stat.

Proposed rule

Reasons for change

RULE 8.410. APPROVAL OF CASE PLANS

(a) [No change]

(b) **Determinations by Court.** At the hearing, the court shall determine if:

(1) The plan is consistent with the previous orders of the court placing the child in care.

(2) The plan is consistent with the requirements for the content of a case plan as provided by law.

(3) The parents were advised of their right to have counsel present at all prior hearings and the parents were advised of their right to participate in the preparation of the case plan and to have counsel or any other person assist in the preparation of the case plan.

(4) The case plan is meaningful and designed to address the facts, circumstances, and problems upon which the court based its order of dependency for the child; ~~particularly, if the parents, caregivers, or legal custodians.~~ In case plans with a goal of reunification, the court shall also determine whether the parents have the ability to perform the tasks assigned to them and that the social service agency can provide the assistance necessary to the parents to reunite the family.

This subdivision was amended to clarify what findings the court must make in approving a case plan with a goal of reunification with the parents.

(5) [No change]

(c) **Amendment of Plan.** During the hearing, if the court determines that the case plan does not meet statutory requirements and include previous court orders, it shall order the parties to make amendments to the plan. The amended plan must be submitted to the court within 30 days for another hearing and approval. If the parties do not agree on the final terms, the court shall order those conditions and tasks it believes ~~the parents must accomplish for the return of~~must be accomplished to obtain permanency for the child. In addition, the court may order the department to provide those services necessary to assist in achieving the goal of the case plan.

(d) [No change]

(e) **Review Hearing.** The court will set a hearing to review the performance of the parties to the case plan no later than 90 days after the disposition hearing or the hearing ~~in~~at which the case plan was approved, ~~or~~ 6 months from the date on which the child was removed from the home, or 6 months from the date of the last judicial review, whichever comes first.

Committee Notes

~~**1991 Adoption.** This rule provides for judicial review of performance agreements and permanent placement plans consistent with law. It requires a hearing within 45 days, lists the criteria the court must consider in reviewing the agreement or plan, and provides procedures following the hearing.~~

This subdivision was amended to change “goals for reunification” to “goals for permanency” for the child. Not all case plans have a goal of reunification. See §§ 39.601(3)(a), (3)(l), Fla. Stat. (case plan to describe “permanency goals” for child).

Editorial changes.

The committee note has been deleted because it is no longer relevant.

Proposed rule

Reasons for change

RULE 8.415. JUDICIAL REVIEW OF DEPENDENCY CASES

(a) [No change]

(b) [No change]

(c) [No change]

(1) [no change]

(2) that the case plan be continued to permit the parents or social service agency ~~time~~ to complete the tasks assigned to them in the agreement; or

Editorial change.

(3) [no change]

(d) **Service.** A copy of the report containing recommendations and, if not previously provided by the court, a notice of review hearing shall be served on all persons who are required by law to be served at least 72 hours ~~prior to~~before the judicial review hearing.

Editorial change.

(e) [No change]

(f) **Court Action.**

(1) The court shall hold a hearing to review the

Editorial changes.

compliance of the parties with the case plan and to determine what assigned tasks were and were not accomplished and the reasons for ~~their~~any nonachievement.

(2) [No change]

(3) If the court finds that the social service agency has not complied with its obligations, the court may find the social service agency to be in contempt, shall order the social service agency to submit its plan for compliance with the case plan, and shall require the social service agency to show why the child could not ~~safely~~ be safely returned to the home of the parents. If the court finds that the child could not be safely returned to the parents, it shall extend the case plan for a period of not more than 6 months to allow the social service agency to comply with its obligations under the case plan.

Editorial changes.

(4) [No change]

(5) When a child is returned to the parents, the court shall not terminate its jurisdiction over the child until 6 months after the return. Based on a report of the department and any other relevant factors, the court shall then determine whether ~~the~~ jurisdiction should be continued or terminated; if its jurisdiction is to be terminated, it shall enter an order to that effect.

Editorial changes.

(6) When a child has not been returned to the parent, but has been permanently committed to the department ~~or to a licensed child-placing agency willing to receive the child~~ for subsequent adoption, the court shall continue to hold judicial

This subdivision has been amended to remove the provision for commitment of the child to a licensed child-placing agency for adoption. The amendment conforms the rule to section 39.812(1),

review hearings on the status of the child at least every 6 months until the adoption is finalized. ~~Such~~These hearings shall be held in accordance with these rules.

(7) The court shall enter a written order upon the conclusion of the review hearing including a statement of the facts, those findings it was directed to determine by law, a determination of the future course of the proceedings, and the date, time, and place of the next hearing.

(g) [No change]

Committee Notes

[No change]

Florida Statutes as amended by section 5 of Chapter 2001-3, Laws of Florida. (See Appendix G.) After a termination of parental rights, the child is committed to the Department of Children and Family Services, which may then place the child with a licensed child-placing agency. See also §§ 39.811(2), (4), Fla. Stat. Editorial changes.

Editorial change.

Proposed rule

Reasons for change

RULE 8.500. PETITION

(a) Initiation of Proceedings.

(1) All proceedings seeking the termination of parental rights to a child shall be initiated by the filing of an original petition in the pending dependency action, if any.

(2) A petition for termination of parental rights may be filed at any time by the department, the guardian ad litem, ~~a licensed child-placing agency,~~ or any person having knowledge of the facts. Each petition shall be entitled a petition for termination of parental rights.

(3) When provided by law, a separate petition for dependency need not be filed.

(b) [No change]

(c) **Verification.** The petition shall be signed under oath stating the good faith of the petitioner in filing it. No objection to a petition on the grounds that it was not signed or verified; ~~as herein provided~~required; shall be entertained after a plea to the merits.

(d) **Amendments.** At any time before the conclusion of an adjudicatory hearing, an amended petition may be filed or the petition may be amended by motion. However, after a written answer has been filed or the adjudicatory hearing has commenced,

The rule has been amended to delete a licensed child-placing agency from the list of those who may file a petition to terminate parental rights. The amendment conforms the rule to section 39.802(1), Florida Statutes. See § 2, Ch. 2001-3, Laws of Fla. (See Appendix G.)

Editorial changes.

Editorial change.

amendments shall be permitted only with the permission of the court unless all parties consent. Amendments shall be freely permitted in the interest of justice and the welfare of the child. A continuance shall be granted upon motion and a showing that the amendment prejudices or materially affects any party.

(e) **Defects and Variances.** No petition or any count ~~thereof~~ it shall be dismissed, or any judgment vacated, ~~on account~~ because of any defect in the form of the petition or of misjoinder of counts. If the court is of the opinion that the petition is so vague, indistinct, and indefinite as to mislead the parent and prejudice him or her in the preparation of a defense, the petitioner will be required to furnish a more definite statement.

Editorial changes.

(f) [No change]

(g) **Parental Consent.**

(1) [No change]

(2) If, ~~prior to~~ before the filing of the petition for termination of parental rights, the parents have consented to the termination of parental rights and executed surrenders and waivers of notice of hearing as provided by law, this shall be alleged in the petition and copies shall be attached to the petition and presented to the court.

Editorial change.

(3) If the parents appear and enter an oral consent on the record to the termination of parental rights, the court shall determine the basis ~~upon~~ which a factual finding may be

Editorial change.

made and shall incorporate these findings into its order of disposition.

Committee Notes

~~**1991 Adoption.** This is an entirely new part consistent with the restructuring of chapter 39, Florida Statutes, which now contains a separate part on termination of parental rights. These rules closely track the rules in Part B., Dependency, except for areas that are significant only in termination of parental rights proceedings such as provisions for an advisory hearing within 14 days and the requirement that a petition show proof of admission or consent, if alleged.~~

The Committee Note has been deleted because it is no longer relevant.

Proposed rule

Reasons for change

RULE 8.505. PROCESS AND SERVICE

(a) **Personal Service.** Upon the filing of a petition requesting the termination of parental rights, a copy of the petition and notice of the date, time, and place of the advisory hearing must be personally served on

Editorial change.

(1) the parents;

(2) the legal custodians or caregivers of the child;

(3) if the natural parents are dead or unknown, a living relative of the child, unless upon diligent search and inquiry no relative can be found;

Editorial change.

(4) any person who has physical custody of the child;

(5) any grandparents entitled by law to ~~priority~~ notice of the adoption proceeding for adoption;

This subdivision has been amended to require notice of adoption proceedings to grandparents as provided by law. The amendment conforms the rule to section 63.0425(1), Florida Statutes, as amended by section 6, Chapter 2003-58, Laws of Florida. (See Appendix H.)

(6) any prospective parent identified by law;

(7) the guardian ad litem for the child or the representative of the guardian ad litem program, if the program has been appointed;

(8) the attorney ad litem for the child if one has

been appointed; and

(9) any other person as provided by law.

(b) [No change]

(c) **Constructive Service.** Parties whose identities are known and upon whom personal service of process cannot be effected shall be served by publication as provided by law.

(d) **Waiver of Service.** Service of process may be waived, as provided by law, ~~with regard to~~for persons who have executed a written surrender of the child~~(ren)~~ to ~~a licensed child-placing agency or the department.~~

This subdivision has been amended to clarify that service need only be made on parties whose identities are know. The amendment conforms the rule to sections 39.803(1) and (4), Florida Statutes.

The reference to “licensed child-placing agency” has been removed. The amendment conforms the rule to sections 39.811(2) and 39.812(1), Florida Statutes. See §§ 4-5, Ch. 2001-3, Laws of Fla. (Appendix G.) Editorial changes have also been made.

Proposed rule

Reasons for change

RULE 8.510. ADVISORY HEARING AND PRETRIAL STATUS CONFERENCES

(a) Advisory Hearing.

(1) An advisory hearing on the petition to terminate parental rights must be held as soon as possible after service of process can be effected, but no less than 72 hours following service of process. Personal appearance of any person at the advisory hearing eliminates the time requirement for serving process on that person.

(2) The court must:

(A) advise the parents of their right to counsel and appoint counsel in accordance with legal requirements;

(B) determine whether an admission, consent, or denial to the petition shall be entered; and

(C) appoint a guardian ad litem if one has not already been appointed.

(3) If a parent served with notice fails to personally appear at the advisory hearing, the court shall ~~proceed as provided by law~~ enter a consent to the termination of parental rights petition for the parent who failed to personally appear.

Amended to require failure to *personally* appear and to specify actions to be taken by court. The amendment conforms the rule to sections 39.801(3)(a) and (3)(d), Florida Statutes.

(4) If an admission or consent is entered by all parents for a named child included in the petition for termination of parental rights and the court finds that termination of parental rights is in the best interest of the child, the court shall proceed to disposition alternatives as provided by law.

(5) If a denial is entered, the court shall set an adjudicatory hearing within the period of time provided by law or grant a continuance until the parties have sufficient time to proceed to an adjudicatory hearing.

(b) [No change]

(c) [No change]

Amended to clarify the procedure for entry of admissions or consents to termination of parental rights. Termination of parental rights requires a two-prong determination by the court. The best interest of the child is the second prong. See § 39.802(4), Fla. Stat.

Editorial change.

Proposed rule

Reasons for change

RULE 8.515. PROVIDING COUNSEL TO PARTIES

(a) **Duty of the Court.**

(1) At each hearing, the court shall advise unrepresented parents of their right to have counsel present, unless the parents have voluntarily executed a written surrender of the child and consent to the entry of a court order terminating parental rights.

(2) [No change]

(3) [No change]

(4) [No change]

(5) [No change]

(b) [No change]

Amended to delete the requirement to offer counsel if the parents have executed voluntary consents to termination of parental rights. The amendment conforms the rule to section 39.013(9)(d), Florida Statutes.

Committee Notes

~~1992 Amendment.~~ Substitution of the word "counsel" maintains consistency. Deleting the word "all" makes it clear that counsel need not be appointed for all parties.

The committee note has been deleted because it is no longer relevant.

Proposed rule

Reasons for change

RULE 8.525. ADJUDICATORY HEARINGS

(a) **Hearing by Judge.** The adjudicatory hearing shall be conducted by the judge without a jury ~~utilizing~~using the rules of evidence ~~in use in~~for civil cases. At this hearing the court shall determine whether the elements required by law for termination of parental rights have been established by clear and convincing evidence.

Editorial changes.

(b) [No change]

(c) [No change]

(d) **Presence of Parties.** All parties have the right to be present at all termination hearings. A party may appear in person or, at the discretion of the court for good cause shown, by an audio or audiovisual device. No party shall be excluded from any hearing unless so ordered by the court for disruptive behavior or as provided by law. If a parent appears for the advisory hearing and the court orders that parent to personally appear at the adjudicatory hearing for the petition for termination of parental rights, stating the date, time, and location of ~~said~~this hearing, then failure of that parent to personally appear at the adjudicatory hearing shall constitute consent for termination of parental rights.

Editorial change.

(e) [No change]

(f) [No change]

(g) **Joint and Separate Hearings.** When 2 or more children are the subject of a petition for termination of parental rights, the hearings may be held simultaneously ~~when~~if the children are related to each other or involved in the same case, unless the court orders separate hearings.

(h) [No change]

(i) **Final Judgment.**

(1) **Terminating Parental Rights.** If the court finds after all of the evidence has been presented that the elements and one of the grounds for termination of parental rights have been established by clear and convincing evidence, the court shall enter a final judgment terminating parental rights and proceed with dispositional alternatives as provided by law. The order must contain the findings of fact and conclusions of law ~~upon~~ upon which the decision was based. The parties may stipulate, or the court may order, that parents or relatives of the parent whose rights are terminated be allowed to maintain some contact with the child. If the court orders continued contact, the nature and frequency of ~~such~~this contact must be ~~set forth~~stated in a written order. The visitation order may be reviewed on motion of any party, including a prospective adoptive parent, and must be reviewed by the court at the time the child is ~~adopted~~ placed for adoption.

(2) [No change]

(3) [No change]

Editorial change.

Amended to change the end of the last sentence to read “placed for adoption” rather than “adopted.” This amendment conforms the rule to section 39.811(7)(b), Florida Statutes. Editorial changes have also been made.

Reasons for change

Editorial change.

Editorial change.

Editorial change.

This subdivision has been amended to add a sentence stating that the petition for adoption must be filed in the court that entered the judgment terminating parental rights unless a motion for a change of venue is granted. The amendment conforms the rule to section 39.812(5), Florida Statutes. Editorial changes have also been made.

Proposed rule

RULE 8.535. POST-DISPOSITION HEARINGS

(a) **Initial Hearing.** If the court terminates parental rights, a post-disposition hearing must be set within 30 days after the date of disposition. At the hearing, the department or licensed child-placing agency shall provide to the court a plan for permanency for the child.

(b) **Subsequent Hearings.** Following the initial post-disposition hearing, the court shall hold hearings every 6 months to review progress being made toward permanency for the child until the child is adopted or reaches the age of 18, whichever occurs first. Review hearings for alternative forms of permanent placement shall be held as provided by law.

(c) **Continuing Jurisdiction.** The court ~~which~~that terminated the parental rights ~~of~~to a child under chapter 39, Florida Statutes, shall retain exclusive jurisdiction in all matters pertaining to the child's adoption under chapter 63, Florida Statutes. The petition for adoption must be filed in the division of the circuit court that entered the judgment terminating parental rights, unless a motion for change of venue is granted as provided by law.

Reasons for change

Amended to change name of the Act to the Uniform Child Custody Jurisdiction And Enforcement Act, in accordance with repeal of sections 61.1302 *et seq.*, Florida Statutes, and enactment of sections 61.501 *et seq.*, Florida Statutes, by Chapter 2002-65, Laws of Florida. (Appendix B.)

Proposed rule

**RULE 8.603. APPLICATION OF UNIFORM CHILD
CUSTODY JURISDICTION AND
ENFORCEMENT ACT**

Any pleading filed commencing proceedings as set forth in rule 8.601 shall be accompanied by an affidavit, to the extent of affiant's personal knowledge, under the Uniform Child Custody Jurisdiction and Enforcement Act. Each party has a continuing duty to inform the court of any custody, dependency, or children in need of services proceeding in this or any other state of which the party obtains information during the proceeding.

FORM 8.908. SUMMONS

SUMMONS

STATE OF FLORIDA

TO,a child/children..... and,parent(s)/custodian.....:

Whereas a petition under oath has been filed in this court alleging the above-namedchild/children..... to be under the laws of the State of Florida, a copy of which was attached hereto;

Now, therefore, this is to command you ~~You are~~ to appear before the Honorable, Circuit Judge, at m., on(date)....., at the county courthouse of County, at, Florida, ~~and there be in attendance at~~for the hearing of the said this petition. Theparent(s)/custodian..... ~~is/are~~ required to produce thechild/children..... at ~~said~~that time and place unless thechild/children..... ~~is/are~~ in detention or shelter care at ~~said~~that time.

If you are a person with a disability who needs any accommodation to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact(name, address, telephone number)..... within two working days of your receipt of this summons. If you are hearing or voice impaired, call 711.

You may be held in contempt of court if you fail to appear.

WITNESS my hand and seal of this court at County, Florida, on(date).....

....., Clerk of Circuit Court

..... County, Florida

By: _____ D.C.

UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT AFFIDAVIT

UNIFORM CHILD CUSTODY JURISDICTION
AND ENFORCEMENT ACT AFFIDAVIT

1. In the past five years the child resided at the following addresses with the following persons:

| | | |
|-------------------|---------------------|--|
|(dates)..... |(address)..... |(custodian).....(present address)..... |
|(dates)..... |(address)..... |(custodian).....(present address)..... |

2. Affianthas/has not..... participated as a party or witness in other litigation concerning the custody of the child in this or any other state. Specifically, the name of the other case(s) and affiant's involvement were

3. Affiantdoes/does not..... have any information of any custody proceeding concerning the child pending in this or any other state. Specifically, the name of any other custody case and the location of its court are

4. Affiantdoes/does not..... know of any person(s) whois/is not..... a party to this proceeding and who has physical custody of the child or claims to have custody or visitation rights with respect to the child.

.....(name).....(address).....

Affiant

FORM 8.959. SUMMONS FOR DEPENDENCY ARRAIGNMENT

SUMMONS and NOTICE OF HEARING

STATE OF FLORIDA

TO:(name and address of person being summoned).....

~~WHEREAS~~.....(pPetitioner's name)..... has filed in this court a petition, alleging under oath that the above-named child(ren) is/are dependent under the laws of the State of Florida, ~~a copy of which is attached~~, and requesting that a summons issue in due course requiring that you appear before this court to be dealt with according to law. A copy of the petition is attached to this summons.

~~NOW, therefore, y~~You are ~~commanded~~ to appear before this Court at(location of hearing)....., at(time and date of hearing).....

FAILURE TO PERSONALLY APPEAR AT THE ARRAIGNMENT HEARING CONSTITUTES CONSENT TO THE ADJUDICATION OF THIS CHILD (OR CHILDREN) AS A DEPENDENT CHILD (OR CHILDREN) AND MAY ULTIMATELY RESULT IN LOSS OF CUSTODY OF THIS CHILD (OR CHILDREN).

IF YOU FAIL TO APPEAR YOU MAY BE HELD IN CONTEMPT OF COURT.

If you are a person with a disability who needs any accommodation to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact(name, address, telephone number)..... within two working days of your receipt of this summons. If you are hearing or voice impaired, call 711.

Witness my hand and seal of this court at(city, county, and state)....., on(date).....

CLERK OF COURT

BY: _____
DEPUTY CLERK

**NOTIFICACIÓN y CITACIÓN
PARA LA AUDIENCIA**

ESTADO DE LA FLORIDA

PARA: _____
(Nombre y dirección de la persona a ser citada)

CONSIDERANDO, que _____

(Nombre del(a) demandante)

ha interpuesto en este Juzgado una petición en la cual alega bajo juramento la dependencia del(los) niño(s) según las leyes del Estado de la Florida, adjuntándose copia de la misma, y está solicitando la emisión oportuna de una citación para exigir su comparecencia ante este juzgado para tratar el asunto conforme a la ley.

POR LO TANTO, se le ordena comparecer ante este Juzgado en _____
(lugar de la audiencia)

a las _____
(hora y fecha de la audiencia)

SI USTED NO COMPARECE PERSONALMENTE A LA AUDIENCIA INCOATORIA, ESTO SIGNIFICARÁ QUE USTED ACCEDE A LA ADJUDICACIÓN DE DEPENDENCIA DE ESTE(OS) NIÑO(S) Y FINALMENTE, PODRÁ RESULTAR EN LA PERDIDA DE LA TUTELA DEL(OS) NIÑO(S).

SI USTED NO COMPARECE, SE LO PODRÁ JUZGAR EN DESACATO DEL TRIBUNAL.

De acuerdo con la Ley de Americanos con Incapacidades de 1990 (ADA), las personas incapacitadas quienes, por sus icapacidades, necesitan acomodados especiales para participar en esto proceso deben ponerse en contacto con un coordinador de ADA en el no mas tarde de 2 dias laborables antes de tal proceso para recibir asistencia. El numero para el Servicio de Interpretación de la Florida para Personas Sordas es el 1-800-955-8771.

Firmado y sigilado en este Juzgado en _____ el _____
(ciudad, condado , estado) (fecha)

ESCRIBANO DEL TRIBUNAL

POR: _____
ESCRIBANO DELEGADO

**MANDA AK AVÈTISMAN POU
YON CHITA TANDE**

Leta Florid

POU:(non ak adrès pou moun yo voye manda-a).....

ΚÒM, tantiske,(non pati ki fé demann-nan).... fé yon demann devan tribinal-la, epi li sèmanete timoun-nan(yo), swa dizan bezwen pwoteksyon leta dapre règ lalwa nan Leta Florid, yon kopi enfòmasyon sou akizasyon-an kwoke nan lèt sa-a. Yo mande pou yo sèvi-w ak yon manda touswit, ki pou fose-w prezante devan tribinal la pou yo ka koresponn avèk ou, dapre lalwa.

ALÒ, pou sa yo kòmande-w pou prezante devan tribinal sa-a, ki nan, (adrès tribinal-la), a
(nan dat ak lè, chita tandè-a)

SI OU PA PREZANTE PESONÈLMAN NAN CHITA TANDE-A, POU YO KA AVÈTI-W AK AKIZASYON OFISYÈL-LA, SA KA LAKÒZ YO DESIDE OU KONSANTI TIMOUN-NAN(YO), BEZWEN PWOTEKSYON LETA, EPI LI KA LAKÒZ OU PÈDI DWA-OU KÒM PARAN TIMOUN SA-A(YO).

SI OU PA PREZANTE, YO GEN DWA CHAJE-W, KÒMKWA OU MANKE TRIBINAL LA DEGA.

An akò ak Lwa pou Ameriken ki Andikape yo de ane 1990 (ADA) a, moun ki andikape yo, ki poutèt andikap yo an, bezwen de aranjman spesyal pou yo ka patisipe nan deroulman yo, fèt pou rantre an knotak ak koòdinatè ADA a nan pa pi ta ke non 2 jou travay ki vin anvan deroulman an pou yo ka resevwa asistans. Nimewo pou Sèvis Tradiksyon nan la Florid pou moun ki soud se 771.

Mwen siyen non mwen, epi mete so mwen, nan dokiman tribinal-la sa-a, kòm temwen, nan (vil, distrik, eta), nan (dat).....

GREFYE TRIBINAL-LA

PA: _____
ASISTAN GREFYE TRIBINAL-LA

FORM 8.960. SHELTER PETITION

**AFFIDAVIT AND PETITION FOR
PLACEMENT IN SHELTER**

COMES NOW, the undersigned, who being first duly sworn says:

1. On(date).... at a.m./p.m. the above named minor child(ren) was/were found within the jurisdiction of this court.

.... The child(ren) was/were taken into custody by

.... The child(ren) need(s) to be taken into protective custody.

2. The name, age, and residence of this/these child(ren) is/are:

| Name | Birth date <u>Birth date</u> | Sex | Address |
|-------|---|-------|---------|
| | | | |
| | | | |
| | | | |

3. The name, relationship to the child(ren), and address of the child(ren)'s parents or other legal custodian(s) is/are:

| Name | Relationship | Address |
|-------|--------------|---------|
| | | |
| | | |

4. The following individuals who were listed in #3 above have been notified in the following manner of the date, time, and location of this hearing:

| Name | Manner Notified |
|-------|-----------------|
| | |
| | |
| | |

The following individuals who were listed in #3 above have not been notified of this hearing:

| Name | Reason |
|-------|--------|
| | |

.....
.....

5. There is probable cause that the child(ren)
- a. has/have been abused, abandoned, or neglected or is/are in imminent danger of illness or injury as a result of abuse, abandonment, or neglect;
 - b. was/were with a parent or legal custodian who has materially violated a condition of placement imposed by the court;
 - c. has/have no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care;

because

6. The provision of appropriate and available services will not eliminate the need for placement of the child(ren) in shelter care because:

- a. an emergency existed in which the child(ren) could not safely remain in the home;
- b. the home situation presents a substantial and immediate danger to the child(ren) which cannot be mitigated by the provision of preventive services;
- c. the child(ren) could not be protected in the home despite the provision of the following services and efforts made by the Department of Children and Family Services to prevent or eliminate the need for placement in shelter care:
- d. The child(ren) cannot safely remain at home because there are no preventive services that can ensure the safety of the child(ren).

7. The child(ren) is/are in need of and the petitioner requests the appointment of a guardian ad litem.

8. The petitioner requests that the parents, if able, be ordered to pay fees for the care, support, and maintenance of the child(ren) as established by the department under chapter 39, Florida Statutes.

9. The petitioner requests that the parents be ordered to provide to the Department of Children and Family Services and the Department of Revenue financial information necessary to accurately calculate child support under section 61.30, Florida Statutes, within 28 days of this order.

10. This affidavit and petition is filed in good faith and under oath.

WHEREFORE, the affiant requests that this court order that this/these child(ren) be placed in the custody of the department until further order of this court and that the place of such custody shall be:

..... at the discretion of the Department of Children and Family Services;

..... at the home of a responsible adult relative,, whose address is

..... other

Moving Party

.....attorney's name.....

.....address and telephone number.....

.....Florida Bar number.....

Verification

NOTICE TO PARENTS/GUARDIANS/LEGAL CUSTODIANS

A date and time for an arraignment hearing is normally set at this shelter hearing. If one is not set or if there are questions, you should contact the Juvenile Court Clerk's office at A copy of the Petition for Dependency will be given to you or to your attorney, if you have one. A copy will also be available in the clerk's office. You have a right to have an attorney represent you at this hearing and during the dependency proceedings and an attorney will be appointed for you if you request an attorney and the court finds that you are unable to afford an attorney.

If you are a person with a disability who needs any accommodation to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact(name, address, telephone number)..... within two working days of your receipt of this summons. If you are hearing or voice impaired, call 711.

FORM 8.979. SUMMONS FOR ADVISORY HEARING

**SUMMONS AND NOTICE OF ADVISORY
HEARING FOR TERMINATION OF
PARENTAL RIGHTS AND GUARDIANSHIP**

STATE OF FLORIDA

TO:(name and address of person being summoned).....

~~WHEREAS~~ a Petition for Termination of Parental Rights under oath has been filed in this court regarding the above-referenced child(ren), a copy of which is attached. ~~Y~~You are hereby ~~com-~~manded to appear before(judge)....., at(time and location of hearing)....., for a TERMINATION OF PARENTAL RIGHTS ADVISORY HEARING. You must appear on the date and at the time specified.

FAILURE TO PERSONALLY APPEAR AT THIS ADVISORY HEARING CONSTITUTES CONSENT TO THE TERMINATION OF PARENTAL RIGHTS TO THIS CHILD (THESE CHILDREN). IF YOU FAIL TO APPEAR ON THE DATE AND TIME SPECIFIED YOU MAY LOSE ALL LEGAL RIGHTS TO THE CHILD (OR CHILDREN) NAMED IN THE PETITION ATTACHED TO THIS NOTICE.

If you are a person with a disability who needs any accommodation to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact(name, address, telephone number)..... within two working days of your receipt of this summons. If you are hearing or voice impaired, call 711.

Witness my hand and seal of this court at(city, county, state)..... on(date).....

CLERK OF COURT

BY: _____
DEPUTY CLERK

**AVISO Y CITACIÓN PARA LA AUDIENCIA
INFORMATIVA SOBRE LA
TERMINACIÓN DE LOS DERECHOS
PATERNALES Y DE LA TUTELA**

ESTADO DE LA FLORIDA

PARA: _____
(Nombre y dirección de la persona a ser citada)

CONSIDERANDO que se ha interpuesto en este Juzgado una solicitud bajo juramento para la terminación de los derechos paternales con respecto al(os) niño(s) en referencia, adjuntándose copia de la misma. Mediante la presente se le ordena comparecer ante el _____ a las _____
(Juez)
_____ para una
(hora y lugar de la audiencia)

AUDIENCIA INFORMATIVA SOBRE LA TERMINACIÓN DE LOS DERECHOS PATERNALES. Usted deberá comparecer en la fecha y hora indicadas.

SI USTED NO COMPARECE PERSONALMENTE A LA AUDIENCIA INFORMATIVA, ESTO SIGNIFICARÁ QUE USTED ACCEDE A LA TERMINACIÓN DE SUS DERECHOS PATERNALES CON RESPECTO A ESTE(OS) NIÑO(S). SI USTED NO COMPARECE EN LA FECHA Y HORA INDICADAS, USTED PODRÁ PERDER TODOS SUS DERECHOS LEGALES CON RESPECTO AL/LOS NIÑO(S) MENCIONADO(S) EN LA PETICIÓN ADJUNTA A ESTE AVISO.

De acuerdo con la Ley de Americanos con Incapacidades de 1990 (ADA), las personas incapacitadas quienes, por sus icapacidades, necesitan acomodados especiales para participar en esto proceso deben ponerse en contacto con un coordinador de ADA en el no mas tarde de 2 dias laborables antes de tal proceso para recibir asistencia. El numero para el Servicio de Interpretación de la Florida para Personas Sordas es el 771.

Firmado y sigilado en este Juzgado _____ el _____
(ciudad, condado, estado) (fecha)

ESCRIBANO DEL TRIBUNAL

POR: _____
ESCRIBANO DELEGADO

MANDA AK AVÈTISMAN POU ENFOME-W SOU YON CHITA TANDE, POU YO ANILE DWA-W KÒM PARAN AK KÒM GADYEN

Leta Florid

POU:(non ak adrès moun yo voye manda-a).....

