

# Supreme Court of Florida

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No. SC04-97

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## AMENDMENTS TO THE FLORIDA RULES OF JUVENILE PROCEDURE.

[January 27, 2005]

### CORRECTED OPINION

PARIENTE, C. J.

We have for consideration the biennial report of proposed rule changes filed by The Florida Bar's Juvenile Court Rules Committee (Rules Committee), in accordance with Florida Rule of Judicial Administration 2.130(c)(4). We have jurisdiction. See art. V, § 2(a), Fla. Const.

### **BACKGROUND**

The Rules Committee proposes amendments to Florida Rules of Juvenile Procedure 8.165, Providing Counsel to Parties; 8.203, Application of Uniform Child Custody Jurisdiction Act; 8.240, Computation and Enlargement of Time; 8.245, Discovery; 8.255, General Provisions for Hearings; 8.290, Dependency Mediation; 8.300, Taking Into Custody; 8.305, Shelter Petition, Hearing, and

Order; 8.315, Arraignments and Prehearing Conferences; 8.325, Answers and Pleadings; 8.400, Case Plans; 8.410, Approval of Case Plans; 8.415, Judicial Review of Dependency Cases; 8.500, Petition; 8.505, Process and Service; 8.510, Advisory Hearing and Pretrial Status Conferences; 8.515, Providing Counsel to Parties; 8.525, Adjudicatory Hearings; 8.535, Post-Disposition Hearings; and 8.603, Application of Uniform Child Custody Jurisdiction Act. Further, the Rules Committee proposes amendments to forms 8.908, Summons; 8.911, Uniform Child Custody Jurisdiction Act Affidavit; 8.959, Summons for Dependency Arraignment; 8.960, Shelter Petition; and 8.979, Summons for Advisory Hearing. Finally, the Rules Committee proposes new rule 8.257, General Magistrates, governing the use of general magistrates in dependency proceedings.<sup>1</sup> In accordance with Florida Rule of Judicial Administration 2.130(c)(2), the Rules Committee submitted its proposals to the Board of Governors of The Florida Bar and published the proposals for comment. The Board of Governors unanimously

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1. The Rules Committee initially proposed new rule 8.257, General Masters. However, the 2004 Legislature passed chapter 2004-11, Laws of Florida, which redesignates "masters" and "general or special masters" as "general or special magistrates." This act took effect on October 1, 2004. See ch. 2004-11, § 104, Laws of Fla. Because the amendments proposed by the Rules Committee will become effective after this date, the Rules Committee sought to amend its petition to substitute "magistrate" for "master" in proposed rule 8.257. On April 29, 2004, the Court granted the Rules Committee's motion to amend its petition.

approved the proposed changes. After the proposals were filed with the Court, we published the proposals for comment. The Court received one comment in support of the Rules Committee's proposal to amend rule 8.315, Arraignments and Prehearing Conferences.

## **ANALYSIS**

After considering the proposed amendments and hearing oral argument, we adopt almost all of the Rules Committee's amendments as proposed. However, as explained more fully below, we decline to adopt certain proposed amendments to rule 8.165, Providing Counsel to Parties, at this time. Rather than describe each amendment, we focus on the more significant amendments and the amendments that we believe warrant explanation.

### **I. RULE 8.165--PROVIDING COUNSEL TO PARTIES**

Rule 8.165, Providing Counsel to Parties, is the procedural rule that effectuates the constitutional right that each juvenile has to counsel. The rule differs in certain material ways from the companion procedural rule governing counsel for adults.<sup>2</sup>

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2. Florida of Rule of Criminal Procedure 3.111(d)(3) provides that "[r]egardless of the defendant's legal skills or the complexity of the case, the court shall not deny a defendant's unequivocal request to represent himself or herself, if the court makes a determination of record that the defendant has made a knowing and intelligent waiver of the right to counsel." In contrast, Florida Rule of Juvenile

The Rules Committee proposes to amend rule 8.165 in three ways. First, it proposes that the rule require that a child be given a meaningful opportunity to confer with an attorney before waiving counsel in a delinquency proceeding. Second, it proposes that the rule require that the waiver always be in writing, as opposed to the current language of the rule that requires a juvenile's waiver to be in writing only if the waiver is made at the time of a guilty or no contest plea or at the adjudicatory hearing. Third, the Rules Committee proposes a new rule subdivision, (b)(3), to require that when a child is entering a plea or being tried for a delinquent act, a written waiver of counsel be submitted to the court in the presence of a parent, a legal custodian, a responsible adult relative, or an attorney who has conferred with the child pursuant to subdivision (a) of the rule. Under this new subdivision, the aforementioned individual must also verify that he or she has discussed the decision to waive counsel with the child and that the child's decision to waive counsel appears to be knowing and voluntary.

The proposed amendments to rule 8.165 are based upon the unanimous recommendation of The Florida Bar Commission on the Legal Needs of Children

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Procedure 8.165(b)(3) precludes the acceptance of a waiver of counsel "where 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."

(the Commission). The Commission, which was an interdisciplinary statewide commission appointed by The Florida Bar, took testimony and considered how to improve the legal needs of children. The Commission's stated mission was to recommend ways "to help children who appear in Florida's courtrooms in any capacity, whether as victims, witnesses, defendants, or respondents." Final Report of The Florida Bar Commission on the Legal Needs of Children, 3 (2002). In its report, the Commission noted that a "disturbing number" of children waive their right to counsel in delinquency proceedings. See id. at 5. The three amendments to rule 8.165 were the only suggested rule amendments among the Commission's many recommendations.

A substantial majority of the Rules Committee voted to adopt the Commission's proposed amendments to rule 8.165. In recommending that the Court adopt the proposed amendments, the Rules Committee noted "that the Commission was concerned with the large number of children who waive their right to an attorney, thus making the 'right to an attorney' in delinquency proceedings in Florida illusory." The Rules Committee further stated that the purpose of the amendments is to implement a juvenile's constitutional right to counsel. The Rules Committee expressed the belief that the proposal would reduce the reversals on appeal that occur because a trial court has failed to ensure that a

juvenile's waiver of counsel is knowing and voluntary.

It is important to note that the Steering Committee on Families and Children in the Court (the Steering Committee) voted to support the Rules Committee's proposals as well. As one of its many tasks, the Steering Committee is charged with reviewing issues related to the availability of representation of children as reported by The Florida Bar Commission on the Legal Needs of Children and the Senate Interim Report on the Legal Needs of Children, and considering recommendations within the province of this Court. In addition to the Steering Committee's support, the Florida Public Defender Association (FPDA) has also endorsed the amendments to rule 8.165. At oral argument, Ward Metzger, speaking on behalf of the FPDA, stated that the public defenders have agreed to consult with juveniles prior to any waiver of counsel. After oral argument, in a motion to provide additional information and comments, Metzger further stated that the public defenders do not construe the proposed amendment to rule 8.165(a) to require appointment within the meaning of chapter 27, Florida Statutes (2004). Although the public defenders stated that they do not anticipate a direct fiscal impact because in many circuits these procedures are already being followed, supplemental comments filed by the FPDA indicate that at least two circuits, the Sixth and the Twelfth, may experience a significant fiscal impact, including the

need for additional employees, should rule 8.165 be amended as proposed.<sup>3</sup>

In considering the proposed amendments to rule 8.165, the Court considered the history of juvenile representation in delinquency proceedings in Florida. Prior to 1967, juvenile court was widely viewed as not requiring the procedural formalities generally afforded defendants in criminal and civil proceedings. See In re Gault, 387 U.S. 1, 15 (1967) ("The apparent rigidities, technicalities, and harshness which [earlier courts] observed in both substantive and procedural criminal law were . . . discarded [in juvenile proceedings]"). However, in 1967, recognizing the lack of procedural protections for children in these settings, the United States Supreme Court held that juveniles in delinquency proceedings have a right to counsel:

The juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense and to prepare and submit it. The child requires the guiding hand of counsel at every step in the proceedings against him.

Id. at 36 (footnote omitted) (emphasis added). In Florida, this right was subsequently codified in section 985.203(1), Florida Statutes (2004), which states that a child is entitled to representation by legal counsel at all stages of any

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3. This impact could be related to the fact that in the Sixth and the Twelfth Circuits, the current percentages of unrepresented children are quite high—50% and 75%, respectively.

delinquency proceeding.

Some of the procedural protections afforded juveniles during a delinquency proceeding, including a juvenile's right to counsel, are largely premised on the notion that juveniles have only a limited understanding of the justice system. See State v. T.G., 800 So. 2d 204, 211 (Fla. 2001) ("[I]t is extremely doubtful that any child of limited experience can possibly comprehend the importance of counsel."). In light of a juvenile's potentially limited understanding of trial procedure, this Court has further noted that "the waiver of counsel inquiry is especially significant in juvenile cases because children may not fully comprehend the importance of counsel or the consequences of waiving the right to counsel." Id. at 212. Therefore, "courts should be even more careful when accepting a waiver of counsel from juveniles." Id. at 211.

Notwithstanding this Court's previously noted concerns regarding a juvenile's potentially unknowing and involuntary waiver of counsel, there are numerous recent examples of judges improperly accepting juveniles' waivers of counsel, resulting in reversal on appeal. See, e.g., State v. B.P., 810 So. 2d 918 (Fla. 2002) (approving district court's decision holding that even absent a motion to withdraw a plea, failure to advise a juvenile of right to counsel in accordance with rule 8.165 is reviewable and correctable on appeal and finding that the denial of

counsel constituted fundamental error); F.K.H. v. State, 841 So. 2d 645 (Fla. 2d DCA 2003) (reversing and remanding a determination of delinquency and placement of juvenile on probation where trial court failed to inquire into juvenile's waiver of counsel at the plea hearing and failed to renew an offer of counsel at the disposition hearing); E.C.M. v. State, 835 So. 2d 1280 (Fla. 2d DCA 2003) (finding that trial court committed reversible error when it failed to advise juvenile of right to counsel at restitution hearing even though the juvenile had previously waived counsel at arraignment); D.A. v. State, 831 So. 2d 815 (Fla. 4th DCA 2002) (finding that trial judge failed to conduct a thorough and proper inquiry to determine juvenile's comprehension of the offer of appointed counsel prior to accepting waiver of counsel); M.Q. v. State, 818 So. 2d 615 (Fla. 5th DCA 2002) (finding that although judge made an offer of counsel at hearing, inquiry was insufficient to satisfy the rule as to what juvenile's substantive rights were, as well as whether juvenile knowingly waived them); S.A. v. State, 816 So. 2d 1201 (Fla. 4th DCA 2002) (reversing commitment and remanding for new plea hearing where trial court failed to adequately inquire into juvenile's waiver of right to counsel as required by Florida Rule of Juvenile Procedure 8.165(b)(2)); T.M. v. State, 811 So. 2d 837 (Fla. 4th DCA 2002) (finding that trial judge fundamentally erred in failing to conduct a proper inquiry regarding juvenile's waiver of counsel prior to

accepting plea); J.M.B. v. State, 800 So. 2d 317, 319 (Fla. 2d DCA 2001) (recognizing "that the juvenile court judge must contend with an unusually heavy docket, and was dealing, in this case, with a juvenile who was no stranger to the ways of the juvenile justice system," but finding that trial court erred in failing to renew the offer of counsel at each stage of the proceedings); V.S.J. v. State, 793 So. 2d 104 (Fla. 2d DCA 2001) (finding that although court inquired about the voluntariness of juvenile's plea, it did not conduct a thorough inquiry concerning the intelligence of juvenile's waiver of counsel); G.E.F. v. State, 782 So. 2d 951 (Fla. 2d DCA 2001) (finding that although trial court made an abbreviated inquiry regarding waiver of counsel, the inquiry failed to satisfy the requirements of rule 8.165). Considering the apparently low appeal rate of juvenile adjudications and dispositions, these examples may reveal only a small fraction of a potentially significant trend in delinquency proceedings as documented by the Commission.<sup>4</sup> Additionally, a recent assessment of Florida's juvenile delinquency courts has produced evidence suggesting that juveniles may be unaware of both their various

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4. See, e.g., Mary Berkheiser, The Fiction of Juvenile Right to Counsel: Waiver in the Juvenile Courts, 54 Fla. L. Rev. 577, 633 (2002) (discussing a 1996 study of the ABA Juvenile Justice Center finding that the practice of taking appeals in juvenile proceedings was "lacking in most jurisdictions," as well as noting that "[n]early one-half of juvenile public defenders and more than three quarters of appointed lawyers authorized to file appeals reported that they had taken no appeals in the preceding year").

rights in the courts and the judge's role in informing a juvenile about his or her right to counsel.<sup>5</sup> The general presumption of a juvenile's limited understanding of court proceedings has even led public defenders in some counties to adopt an informal agreement with trial courts in their jurisdictions by which the public defenders consult with juvenile defendants to ensure that each juvenile's waiver is knowing and voluntary.<sup>6</sup>

Although we believe that consultation with an attorney prior to waiving counsel is an important additional safeguard designed to protect a juvenile's constitutional right to counsel, we are also mindful of the potential financial impact of this requirement. We note that one of the recommendations of the

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5. In April 2003, the Office of Court Improvement, which is part of the Office of the State Courts Administrator, pursuant to a directive by the Chief Justice of the Florida Supreme Court, studied and published an assessment on the juvenile court process that discussed in part juveniles' ability to understand court proceedings. See Office of the State Courts Administrator, Florida's Juvenile Delinquency Court Assessment (2003). Part of the study utilized interviews with a small sample of juveniles. Id. at 37. Many of the juveniles interviewed, including those who stated they were aware of the reason why they were in court, exhibited limited knowledge of the courtroom participants. Id. at 38. Moreover, none of the juveniles interviewed expected the judge to discuss their various rights to counsel and a trial. Id.

6. At oral argument, Ward Metzger, a practicing assistant public defender in the Fourth Circuit, noted that the courts in his jurisdiction have adopted such an informal arrangement. Similarly, Circuit Court Judge Lynn Tepper, appearing at oral argument on behalf of the Steering Committee, stated that she maintains such a procedure in her courtroom.

representation subcommittee that was adopted by the full Commission on the Legal Needs of Children was to encourage efforts seeking legislative changes that would "create" a right to a prewaiver consultation and authorize the public defender to provide the required consultation. In fact, in its June 2002 Final Report, the Commission specifically recommended:

5. Florida law should specifically create a right for children to consult counsel, short of outright appointment for the duration of the case, in the following instances:
  - a. Regarding waiver of counsel or other right or legal interest in a delinquency proceeding, prior to the appointment of the Public Defender by a judge, or at any time thereafter where waiver is sought;

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6. Florida law should specifically authorize the Public Defender to provide the consultation services outlined in #5 above. This recommendation would necessitate the legislature appropriating additional funds for the Public Defender to adequately provide consultation services.

These two recommended changes in the law could be made by amending sections 985.203(1) and 27.51, Florida Statutes (2004).

Because of the potential financial impact of the amendment to rule 8.165(a) regarding consultation with attorneys and our desire to work cooperatively with the Legislature, we urge the Legislature to consider the Commission's recommendations. We also strongly urge that the voluntary practice that exists in

many jurisdictions in which consultation with an attorney takes place be continued and, where possible, expanded in the interim.

We thus decline to adopt at this time the portion of rule 8.165(a) regarding consultation with an attorney prior to a waiver. We emphasize that we are not rejecting this proposed amendment to rule 8.165(a), but are merely deferring its consideration. We intend to readdress the adoption of the amendment to rule 8.165(a) at a future time following the conclusion of the legislative session. We further take this opportunity to reinforce that it is critical for delinquency judges to ensure that any waiver of counsel by a child is knowingly and voluntarily given, especially prior to accepting a plea of guilty or nolo contendere.

However, we unanimously adopt the amendment to rule 8.165(a) requiring a written waiver, and new rule 8.165(b)(3), which requires that when a child is entering a plea or being tried for a delinquent act, a written waiver of counsel 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. As noted earlier, under this new subdivision, the aforementioned individual must also verify that the child's decision to waive counsel has been discussed and appears to be knowing and voluntary.

We hope, as does the Rules Committee and the Commission on the Legal Needs of Children, that these additional procedural safeguards will enhance a juvenile's ability to make a knowing and voluntary waiver of counsel, thereby preserving and protecting that juvenile's constitutional rights. We also hope that the Legislature will consider our request on the issue of consultation with an attorney before waiver in juvenile delinquency proceedings.

## **II. RULE 8.257--GENERAL MAGISTRATES**

New rule 8.257, General Magistrates, is created to govern the use of general magistrates in juvenile dependency proceedings. In the last regular-cycle amendment proceedings, the role of general and special masters (now renamed general and special magistrates) in juvenile proceedings was at issue. See Amendments to Florida Rules of Juvenile Procedure, 827 So. 2d 219, 220 (Fla. 2002) ("Amendments"). In Amendments, the Rules Committee proposed an amendment to rule 8.255, General Provisions for Hearings, that would prohibit general and special masters from conducting specific dependency hearings—namely, shelter hearings, contested dependency adjudicatory hearings, disposition hearings, and contested termination of parental rights adjudicatory hearings. The Court determined that in light of the Revision 7/Article V funding

issues that were being considered by the Court,<sup>7</sup> it should not limit the role of general masters, except to prohibit masters from hearing certain proceedings that are required by law to be heard by a judge, until the Court could consider the impact that those funding issues would have on the administration of juvenile justice:

As we have stated, Florida's children are our greatest resource, and adequate funding of juvenile judicial proceedings is of paramount importance:

Florida's oft-repeated pledge that "our children come first" cannot ring hollow in—of all places—our halls of justice. Judges, prosecutors, public defenders and others serving in the juvenile system cannot hope to make a difference in the life of a single troubled child if they must contend with staggering caseloads made worse by the maldistribution of judicial resources.

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7. As explained by the Court in Amendments:

On November 3, 1998, the voters of the State of Florida passed Revision 7 which amended article V of the Florida Constitution. Revision 7 made significant changes in the way the Florida courts are to be funded under article V, section 14 of the Florida Constitution. The revision clarifies which portions of the judicial system will be the funding responsibility of the State, and which will be the funding responsibility of the counties. The Legislature intends for the amendment to article V, section 14 to be effectuated on or before July 1, 2004. See § 29.003(5), Fla. Stat. (2001).

827 So. 2d at 221 n.1.

See Amendment to Florida Rule of Juvenile Procedure 8.100(a), 753 So.2d 541, 545 (Fla.1999). We hesitate to take actions that could have a significant impact on the Florida judicial system's ability to provide timely and efficient adjudication of juvenile dependency proceedings without considering the "big picture" of how funding for our judicial system will be allocated under the Revision 7 implementation. Therefore, we decline to limit the role of masters in juvenile proceedings by a rule of procedure until this Court has had time to consider the impact—practically and financially—that Revision 7 will have on the administration of juvenile justice.

Amendments, 827 So. 2d at 221.

In Amendments, the Court further noted that "there is no formal procedure in place for obtaining the parties' consent to refer a dependency or termination of parental rights matter to a master." Id. at 222. For this reason, the Court made the following referral to the Juvenile Court Rules Committee:

[B]ecause we believe that a formal procedure for obtaining the parties' consent to referral to a master in dependency and termination of parental rights proceedings is necessary, and because other rules of court currently have such a procedure in place, see, e.g., Fla. Fam. L.R.P. 12.490(b), we refer this matter back to the Committee for consideration of a rule of juvenile procedure for obtaining the parties' consent.

Id. at 222.

The Rules Committee patterned new rule 8.257 after Florida Family Law Rule of Procedure 12.490, General Magistrates. Subdivision (a) addresses the appointment of magistrates. Subdivision (b) addresses consenting to a magistrate, objecting to a magistrate, and the contents of the order of referral. Subdivision (c)

addresses the general powers and duties of a general magistrate. Subdivision (d) addresses the proceeding of a hearing before a general magistrate, including whether electronic reporting or a court reporter is being provided by the court. Subdivision (e) addresses the content and service of the magistrate's report. Subdivision (f) addresses the service of exceptions to the magistrate's report. Finally, subdivision (g) addresses the provision of the record to the court for a hearing on exceptions.

The Steering Committee expressed concern regarding new rule 8.257 because it felt that there were a number of outstanding issues related to the use of general magistrates in family court generally that it is still studying. One such issue is how to resolve policy considerations involved in the referral of final proceedings to general magistrates, such as adjudicatory hearings (which, as noted earlier, was at issue in Amendments).

While we recognize that the Steering Committee may have ongoing concerns with the use of general magistrates in certain proceedings, we feel that these concerns should not preclude adoption of this rule because it sets forth integral procedures of appointing a magistrate, consenting to a magistrate, and conducting the hearing before a magistrate. Accordingly, although the role of

magistrates in juvenile proceedings may need to be reviewed and possibly amended in the future, we adopt rule 8.257 as proposed at this time.<sup>8</sup>

### **III. CASE PLANS**

Rule 8.400, Case Plans, is amended to add new subdivisions (b)(2) and (b)(3) to clarify the procedure for amending case plans. In M.W. v. Davis, 756 So. 2d 90, 107 (Fla. 2000), this Court noted the lack of guidance regarding the type of evidence required to amend a case plan. The amendment to rule 8.400 provides that any amendments must be based on competent evidence, and if any party objects to the amendment of a case plan, the court must conduct a hearing allowing each party to present evidence and information as permitted by rule 8.340(a), Disposition Hearings; Information Available to Court.

Subdivision (b)(4) of rule 8.410, Approval of Case Plans, is amended to clarify what findings a court must make in approving a case plan with a goal of reunification with the parents. We further amend subdivision (c), Amendment of Plan, to refer to "goals for permanency" as opposed to reunification of the child with the parents.

### **IV. RULE AMENDMENTS NECESSARY TO BRING THE RULES INTO CONFORMANCE WITH THE FLORIDA STATUTES**

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8. In light of our adoption of new rule 8.257, we delete rule 8.255(i), Masters.

Rule 8.240, Computation and Enlargement of Time, is amended to add new subdivision (d), Continuances and Extensions of Time, to create a procedure for filing a motion for continuance, extension, or waiver of time in dependency and termination of parental rights proceedings. This amendment conforms the rule to section 39.013(10), Florida Statutes (2004).

Rule 8.290, Dependency Mediation, is amended to delete the language "unless waived by all parties and approved by the court," from subdivision (c), Compliance with Statutory Time Requirements, which currently provides that "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." This amendment requires dependency mediations to comply with statutory time requirements.

Subdivision (f)(6) of rule 8.415, Judicial Review of Dependency Cases, is amended to remove a provision that allows commitment of a child to a licensed child-placing agency for adoption. This amendment conforms the rule to section 39.812(1), Florida Statutes (2004).

We amend subdivision (a)(2) of rule 8.500, Petition, to delete "a licensed child-placing agency" from the list of those who may file a petition to terminate parental rights, thereby conforming the rule to section 39.802(1), Florida Statutes

(2004), which was amended in 2001 to remove "licensed child-placing agency" from the list. See ch. 2001-03, § 2, at 7, Laws of Fla.

Subdivision (a)(5) of rule 8.505, Process and Service, is amended to require notice to grandparents of termination of parental rights pending adoption proceedings as provided by law. The amendment conforms the rule to section 63.0425(1), Florida Statutes (2004). We further amend subdivision (c), Constructive Service, of rule 8.505 to clarify that service is only required for parties whose identities are known, in conformance with section 39.803(1) and (4), Florida Statutes (2004). We further amend subdivision (d), Waiver of Service, of rule 8.505 to remove the reference to commitment of a child to a licensed child placing agency. This amendment conforms the rule to sections 39.811(2) and 39.812(1), Florida Statutes (2004).

We amend subdivision (a)(3) of rule 8.510, Advisory Hearing and Pretrial Status Conferences, to specify that the court shall enter a consent to the termination of parental rights petition for the parent who failed to personally appear at the advisory hearing on the termination of parental rights petition. The amendment brings the rule into conformance with section 39.801(3)(a) and (3)(d), Florida Statutes (2004). We also amend subdivision (a)(4) of rule 8.510 to clarify the procedure for entry of admissions or consents to termination of parental rights.

Subdivision (a)(1) of rule 8.515, Providing Counsel to Parties, is amended to delete the requirement to offer counsel if the parties have executed voluntary surrenders to terminate their parental rights. This amendment conforms the rule to section 39.013(9), Florida Statutes (2004).

Subdivision (c), Continuing Jurisdiction, of rule 8.535, Post-Disposition Hearings, is 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 (2004).

#### **V. MISCELLANEOUS RULE CHANGES RE: JUVENILE DEPENDENCY**

Subdivision (g)(2)(B) of rule 8.245, Discovery, is amended to allow the clerk, court, or any attorney of record to issue subpoenas for taking depositions. This amendment conforms the rule to Florida Rule of Juvenile Procedure 8.225(a)(2) and Florida Rule of Civil Procedure 1.410(a).

Subdivision (b)(9) of rule 8.305, Shelter Petition, Hearing, and Order, is amended to clarify 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 within two working days. As currently written, the rule refers to the "juvenile court judge," and this language could include a judge

that hears delinquency cases. In addition, we amend subdivision (c), Shelter Order, of rule 8.305 to clarify that findings need to be made only in an order granting shelter care, pursuant to section 39.402(8)(h), Florida Statutes (2004).

In rule 8.315, Arraignments and Prehearing Conferences, the second sentence of subdivision (a) is amended to read "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 any parent or legal custodian denies the allegations of the dependency petition, it is a denial of due process to move to disposition without an adjudicatory hearing. See Monteiro v. State, 477 So. 2d 45, 45-46 (Fla. 3d DCA 1985) (finding that where one of the parents denied the allegations in the dependency petition, the trial court's action in adjudicating the child dependent without an adjudicatory hearing violated the non-consenting mother's due process rights under the United States and Florida Constitutions).

We further amend subdivision (a) of rule 8.315 by striking the language stating that the court may grant a continuance as provided by law when a denial of the allegations of a dependency petition is entered at the arraignment. In proposing the aforementioned amendment, the committee clarified that this change is intended to eliminate language regarding continuances throughout the rules in

favor of having all language regarding continuances contained in rule 8.240, Computation and Enlargement of Time.

Rule 8.325, Answers and Pleadings, is amended to delete subdivision (d), Stipulations, which addresses stipulations to the placement of a dependent child. In amending this rule, it is not our intent to prohibit parties from entering into any type of stipulation, just stipulations to the placement of a dependent child.

Finally, we amend forms 8.908, Summons, 8.959, Summons for Dependency Arraignment, 8.960, Shelter Petition, and 8.979, Summons for Advisory Hearing, to add language regarding the provision of assistance to persons with disabilities.

Accordingly, we amend the Florida Rules of Juvenile Procedure as reflected in the appendix to this opinion. New language is indicated by underscoring; deletions are indicated by struck-through type. Committee notes are included for explanation and guidance only and are not adopted as an official part of the rules. The amendments shall become effective immediately.

It is so ordered.

WELLS, QUINCE, CANTERO, and BELL, JJ., concur.  
ANSTEAD, J., concurs in part and dissents in part with an opinion.  
LEWIS, J., concurs in part and dissents in part with an opinion, in which ANSTEAD, J., concurs.

THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER THE EFFECTIVE DATE OF THESE AMENDMENTS

ANSTEAD, J., concurring in part and dissenting in part.

While I agree with virtually all of the observations of Justice Lewis in his separate opinion, I write to separately acknowledge the wisdom and constructive effort of the majority in deferring consideration of the issue of entitlement to counsel while seeking assistance from the Legislature in fully implementing and funding this constitutional imperative. In its discussion of this issue, the majority has presented a compelling case for action by both this Court and the Legislature to insure the integrity and reliability of the waiver process. There is no question that all three branches of government should be working together in seeing that children whose lives may be dramatically and permanently altered by a decision to waive counsel in juvenile proceedings are afforded access to counsel before making that critically important decision. I join the majority in urging the Legislature to help make this access clear.

The juvenile system stands as our society's commitment to do everything in its power to rescue and rehabilitate our children before they achieve majority, and are subject to the severe and unforgiving sanctions of the adult penal system. Explicit in this juvenile scheme for treating children differently is the recognition

of the immaturity of the child offender in assessing her culpability; as well as the hope that with proper correction and guidance the child's future will be saved; and society will gain as well by restoring the child on a path to becoming a productive citizen.

The recognition of the immaturity of the child is at the core of this juvenile scheme, and its importance cannot be discounted in our assessment of the child's constitutional right to counsel and the child's informed waiver of that right. As the majority opinion makes clear, we have consistently recognized that there is a very real and substantial difference between the capacity of a competent adult to waive an entitlement to counsel and the capacity of an immature child to make such a critical decision. In fact, the majority opinion cites to numerous instances when this difference has been overlooked, only to cause later and more costly problems in the system. Because of this difference in capacity based on the lack of maturity implicit in the disability of non-age, it is absolutely essential that we broadly construe the child's constitutional right to counsel to include consultation with counsel at this critical stage of the proceedings where waiver of counsel is being considered. As our experience makes clear, the immaturity of the child may often include an anxiety and immediate desire to waive any entitlements in order to obtain the short term (and often short-sighted), goal of just having the matter

resolved. In other words, to get it over with. While that choice may still be made, it should only be done with full awareness of its consequences, both short term and long. That is all that the Commission on the Legal Needs of Children and the numerous other child advocates participating in these proceedings seek in asking for assistance from this Court and the Legislature.

LEWIS, J., concurring in part and dissenting in part.

While I concur with a portion of the majority opinion, I write separately to dissent with regard to the emasculating of the protection which would have been afforded under rule 8.165 as proposed, which would have permitted a juvenile to waive counsel only after the child had a meaningful opportunity to confer with an attorney regarding his or her right to counsel. In my view, the procedural step would neither exceed the parameters of the public defender's grant of authority, nor unduly overburden Florida's public defenders with unworkable responsibilities. The majority now pays only "lip-service" to protecting children and the exclamations of concern ring hollow when actions are analyzed. In my view, the concerns voiced by the majority do not withstand scrutiny upon examination of the relevant statutory provisions and the enormous benefit to be gained from the amendment.

The proposed amendments to rule 8.165 rejected today were not only entirely proper, but also necessary to effectuate a meaningful constitutional right to counsel held by each of Florida's minors. The majority proclaims the right but amputates the procedural rule. Moreover, I agree with Justice Anstead's assessment of the vulnerability of children in the state's juvenile justice system, and concomitant need to construe their constitutional right to counsel broadly to include consultation prior to waiving that right. I cannot, however, join Justice Anstead in his praise for the majority's decision and failure to act on this important issue at this time.

The Rules Committee has clearly identified a troubling problem common in juvenile delinquency proceedings. We are told and the majority seems to agree that far too often, juveniles navigate the procedural waters of Florida's juvenile judicial system alone, and all too often waive the assistance of counsel prior to entering pleas without first consulting with an attorney to ensure an appreciation of the gravity of the charges against them, the scope of potential consequences, the benefits of proceeding with the advice of counsel, and the potential for impact in the future. Indeed, the majority opinion even notes that the general presumption of a juvenile's limited understanding of court proceedings has already generated informal arrangements between trial courts and public defenders whereby the

public defenders as knowledgeable officers of the judicial system consult with juvenile defendants to ensure that each child's waiver of counsel is knowing and voluntary. See Majority op. at 11-12.

Pursuant to the proposed amendments rejected by the Court today, a child involved in a delinquency proceeding who wishes to waive counsel would have done so "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." Two-Year Cycle Report of the Juvenile Court Rules Committee at 21. Further, such child would have been required to submit a written waiver "in the presence of a parent, legal custodian, responsible adult relative, or attorney who has conferred with the child . . . who shall verify . . . that the child's decision to waive counsel has been discussed with the child and appears to be knowing and voluntary." Id. at 21-22.

Given that far too many children involved in delinquency proceedings appear before the court unaccompanied by a parent or legal guardian, and even far fewer with private counsel, the task of consulting with these children regarding the waiver of counsel apparently, in many instances, would have fallen by default to public defenders. This may have also occurred in circumstances in which the

child's parents actually had the means to obtain private counsel. Some have expressed concern that mandating such consultation may contravene the Florida statutory provision governing the parameters of authority of public defenders, which specifically prohibits a court from appointing "the public defender to represent, even on a temporary basis, any person who is not indigent." § 27.51(2), Fla. Stat. (2004) (emphasis supplied). The lack of authority to engage in these consultations engenders another problem—an asserted lack of funding. For, if the consultations would exceed the public defender's authority, the argument goes, they cannot and should not be funded from state resources.

However, a brief review of the laws governing juvenile proceedings and the assignment of public defenders reveals that public defenders have indeed had authority to consult with accused minors as contemplated by the proposed amended rule, and that a process is in place for assessing any costs and fees associated with the consultation against the child's nonindigent parents or guardian. To begin, Chapter 985 of the Florida Statutes governs juvenile delinquency proceedings, and specifically provides:

(1) A child is entitled to representation by legal counsel at all stages of any proceedings under this part. If the child and the parents or other legal guardian are indigent and unable to employ counsel for the child, the court shall appoint counsel pursuant to s. 27.52.

§ 985.203(1), Fla. Stat. (2004) (emphasis supplied). Thus, Florida law currently contemplates that indigent children of indigent parents are required to receive the assistance of appointed counsel.

However, important for purposes of the instant analysis, Florida law also provides that indigent children of nonindigent parents are also entitled to appointed counsel to the extent the nonindigent parents fail to fulfill their statutory responsibility to provide for their child's defense. Section 985.203(2) also provides:

If the parents or legal guardian of an indigent child are not indigent but refuse to employ counsel, the court shall appoint counsel pursuant to s. 27.52 to represent the child at the detention hearing and until counsel is provided. Costs of representation are hereby imposed as provided by ss. 27.52 and 938.29. . . .

§ 985.203(2), Fla. Stat. (2004). Pursuant to section 27.52(6):

A nonindigent parent or legal guardian of an applicant who is a minor . . . shall furnish the minor . . . with the necessary legal services and costs incident to a delinquency proceeding . . . . The failure of a parent or legal guardian to furnish legal services and costs under this section does not bar the appointment of legal counsel pursuant to s. 27.40 or s. 27.5303. When the public defender, a special assistant public defender appointed pursuant to s. 27.53(2), or a private attorney is appointed to represent a minor . . . in any proceeding in circuit court or in a criminal proceeding in any other court, the parents or the legal guardian shall be liable for payment of the fees, charges, and costs of the representation even if the person is a minor being tried as an adult. Liability for the fees, charges, and costs of the representation shall be imposed in the form of a lien against the property of the nonindigent parents or legal guardian of the

minor . . . . The lien shall be enforceable as provided in s. 27.561 or s. 938.29.

§ 27.52(6), Fla. Stat. (2004) (emphasis added).

As a close examination of the relevant statutory provisions reveals, Florida law provides the indigent child, even of nonindigent parents who have not fulfilled their statutory responsibility of providing for their child's defense, assistance of appointed counsel from the time of the detention hearing. The detention hearing is an appearance before a judge early in any proceeding, and marks an opportunity in juvenile proceedings for the accused minor to waive counsel.<sup>9</sup> Therefore, it is perfectly proper under the statutory scheme governing juvenile proceedings and the public defender's office that a public defender consult with the minor regarding his or her right to counsel, as contemplated by the proposed amended rule. Costs for this consultation, as well as costs generated from continued representation of the child should the nonindigent parent continue to default on his or her responsibility, can be assessed against the defaulting parent in the form of a lien on his or her property pursuant to existing law. With this statutory basis in place, any

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9. Florida Rule of Juvenile Procedure 8.165 currently provides: "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." Fla. R. Juv. P. 8.165(b)(4). The substance of this subpart is unchanged by the amendments approved today.

assertion that the proposed amended rule exceeds the public defender's authority, or imposes an unworkable mandate completely fails. Assertions that the judicial system can and should confront the problem of inappropriate waivers of counsel without implementing the procedural rule to accomplish this goal are hollow words without accompanying action. We face a serious problem recognized by the majority in its reference to the many disturbing cases involving waivers of counsel. The majority apparently urges and advocates an informal practice of consultation with counsel with regard to waivers but "side-steps" our responsibility to adopt a meaningful procedural rule. I have little confidence in a rule that as now adopted requires a written waiver but without a provision for consultation. It may well be a step forward, but in my view, it truly falls short of protecting Florida's children.

ANSTEAD, J., concurs.

Original Proceeding - Florida Rules of Juvenile Procedure

Deborah A. Schroth, Chair and Jennifer Alani Parker, Former Chair, Juvenile Court Rules Committee, Tallahassee, Florida, and Gerald F. Glynn of Florida's Children First!, Inc., Orlando, Florida, on behalf of Juvenile Court Rules Committee; and John F. Harkness, Jr., Executive Director, The Florida Bar, Tallahassee, Florida

for Petitioner

Honorable Lynn Tepper, Circuit Judge, Sixth Judicial Circuit, Dade City, Florida on behalf of The Steering Committee on Children and Families; Ward L. Metzger, Appellate Coordinator, Office of the Public Defender, Fourth Judicial Circuit, Jacksonville, Florida on behalf of Nancy A. Daniels, Public Defender, Second Judicial Circuit and The Florida Public Defender Association; Ryan Thomas Truskoski, Pro se, Orlando, Florida; and Rosemary N. Palmer, Pro se, Tallahassee, Florida,

Interested Parties with comments

## APPENDIX

### 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. 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 an allegation of committing 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, 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.

**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.

**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.

(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 ~~where~~when the failure to act was the result of excusable neglect, ~~but if~~The court may not, except as provided by law or elsewhere 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) **Additional Time After Service by Mail.** Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of notice or other paper is served by mail, 5 days shall be added to the prescribed period.

(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:

(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.

## **RULE 8.245. DISCOVERY**

(a) **Scope of Discovery.** Unless otherwise limited by the court in accordance with these rules, the scope of discovery is as follows:

(1) **In General.** Parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(2) **Claims of Privilege or Protection of Trial Preparation Materials.** When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and describe the nature of the document, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will allow other parties to assess the applicability of the privilege or protection.

(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.

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

(A) The names and addresses of all persons known to have information relevant to the proof or defense of the petition's allegations.

(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 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) Any written or recorded statement and the substance of any oral statement made by the demanding party or a person alleged to be involved in the same transaction. If the number of oral statements made to any person are so numerous that, as a practical matter, it would be impossible to list the substance of all the oral statements, then the party to whom the demand is directed will disclose that person's identity and the fact that this person has knowledge of numerous statements. This disclosure will allow the demanding party to depose that person.

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

(E) Reports or statements of experts, including results of physical or mental examinations and of scientific tests, experiments, or comparisons.

(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.

**(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.

(2) Disclosure shall not be required of legal research or of records, correspondence, or memoranda, to the extent that they contain the opinion, theories, or conclusions of the parties' attorneys or members of their legal staff.

**(d) Production of Documents and Things for Inspection and Other Purposes.**

(1) **Request; Scope.** Any party may request any other party

(A) to produce and permit the party making the request, or someone acting on the requesting party's behalf, to inspect and copy any designated documents, including writings, drawings, graphs, charts, photographs, phono-records, and other data compilations from which information can be obtained, translated, if necessary, by the party to whom the request is directed through detection devices into reasonably usable form, that constitute or contain matters within the scope of subdivision (a) and that are in the possession, custody, or control of the party to whom the request is directed; and

(B) to inspect and copy, test, or sample any tangible things that constitute or contain matters within the scope of subdivision (a) and that are in the possession, custody, or control of the party to whom the request is directed.

(2) **Procedure.** Without leave of court the request may be served on the petitioner after commencement of proceedings and on any other party with or after service of the summons and initial petition on that party. The request shall set forth the items to be inspected, either by individual item or category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection or performing the related acts. The party to whom the request is directed shall serve a written response within 15 days after service of the request, except that a respondent may serve a response within 30 days after service of the process and initial pleading on that respondent. The court may allow a shorter or longer time. For each item or category the response shall state that inspection and related activities will be permitted as requested unless the request is objected to, in which event the reasons for the objection shall be stated. If an objection is made to part of

an item or category, the part shall be specified. When producing documents, the producing party shall either produce them as they are kept in the usual course of business or shall identify them to correspond with the categories in the request. The party submitting the request may move for an order under subdivision (k) concerning any objection, failure to respond to the request, or any part of it, or failure to permit inspection as requested.

(3) **Persons Not Parties.** This rule does not preclude an independent action against a person not a party for production of documents and things.

(4) **Filing of Documents.** Unless required by the court, a party shall not file any of the documents or things produced with the response. Documents or things may be filed when they should be considered by the court in determining a matter pending before the court.

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

(1) **Request; Scope.** A party may seek inspection and copying of any documents or things within the scope of subdivision (d)(1) from a person who is not a party by issuance of a subpoena directing the production of the documents or things when the requesting party does not seek to depose the custodian or other person in possession of the documents or things.

(2) **Procedure.** A party desiring production under this rule shall serve notice on every other party of the intent to serve a subpoena under this rule at least 5 days before the subpoena is issued if service is by delivery and 10 days before the subpoena is issued if service is by mail. The proposed subpoena shall be attached to the notice and shall state the time, place, and method for production of the documents or things, and the name and address of the person who is to produce the documents or things, if known, and if not known, a general description sufficient to identify the person or the particular class or group to which the person belongs; shall include a designation of the items to be produced; and shall state that the person who will be asked to produce the documents or things has the right to object to the production under this rule and that the person will not be required to surrender the documents or things. A copy of the notice and proposed subpoena shall not be furnished to the person on whom the subpoena is to be served. If any party serves an objection to production under this rule within 10 days of service of

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

(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).

(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~~ upon the payment of the reasonable cost of preparing the copies.

(5) **Independent Action.** This rule does not affect the right of any party to bring an independent action for production of documents and things.

(f) **Protective Orders.** On motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending may make any order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense that justice requires, including one or more of the following:

- (1) that the discovery not be had;

(2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

(5) that discovery be conducted with no one present except persons designated by the court;

(6) that a deposition after being sealed be opened only by order of the court;

(7) that confidential research or information not be disclosed or be disclosed only in a designated way; and

(8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery.

**(g) Depositions.**

**(1) Time and Place.**

(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.

(B) The deposition shall be taken in a building ~~wherein~~ which the adjudicatory hearing may be held, in ~~such another place as agreed upon~~ such another place 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~~ in 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) After notice to the parties the court, for good cause shown, may extend or shorten the time and may change the place of taking.

(D) Except as otherwise provided by this rule, the procedure for taking the deposition, including the scope of the examination and obtaining protective orders, shall be the same as that provided by the Florida Rules of Civil Procedure.

(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) For the purpose of impeaching the testimony of the deponent as a witness.

(B) For testimonial evidence, when the deponent, whether or not a party, is unavailable to testify because of one or more of the following reasons:

(i) He or she is dead.

(ii) He or she is at a greater distance than 100 miles from the place of hearing or is out of the state, unless it appears that the absence of the witness was procured by the party offering the deposition.

(iii) The party offering the deposition has been unable to procure the attendance of the witness by subpoena.

(iv) He or she is unable to attend or testify because of age, illness, infirmity, or imprisonment.

(v) It has been shown on application and notice that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

(vi) The witness is an expert or skilled witness.

(4) **Use of Part of Deposition.** If only part of a deposition is offered in evidence by a party, an adverse party may require the party to introduce any other part that in fairness ought to be considered with the part introduced, and any party may introduce any other parts.

(5) **Refusal to Obey Subpoena.** A person who refuses to obey a subpoena served upon the person for the taking of a deposition may be adjudged in contempt of the court from which the subpoena issued.

(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~~ 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) that the petitioner expects to be a party to an action cognizable in a court of Florida, but is presently unable to bring it or cause it to be brought;

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

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

(iv) the names or a description of the persons expected to be adverse parties and their names and addresses so far as known; and

(v) the names and addresses of the persons to be examined and the substance of the testimony expected to be elicited from each and asking for an order authorizing the petitioner to take the deposition of the persons to be examined named in the petition for the purpose of perpetuating their testimony.

(B) **Notice and Service.** The petitioner shall ~~thereafter~~ serve a notice on each person named in the petition as an expected adverse party, ~~to-~~gether with a copy of the petition, stating that the petitioner will apply to the court at a time and place therein 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 in 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) **Use of Deposition.** If a deposition to perpetuate testimony is taken under these rules, it may be used in any action involving the same subject matter subsequently brought in any court of Florida in accordance with the provisions of subdivision (g)(3).

(2) **Pending Appeal.** If an appeal has been 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) **Perpetuation Action.** This rule does not limit the power of a court to entertain an action to perpetuate testimony.

(i) **Rules Governing Depositions of Children Under 16.**

(1) The taking of a deposition of a child witness or victim under the age of 16 may be limited or precluded by the court for good cause shown.

(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:

(A) designating the place of the deposition;

- (B) designating the length of time of the deposition;
- the deposition;
- (C) permitting or prohibiting the attendance of any person at
- examination;
- (D) requiring the submission of questions before the
- (E) choosing a skilled interviewer to pose the questions;
- (F) limiting the number or scope of the questions to be asked; or
- (G) imposing any other conditions the court feels are necessary for the protection of the child.

(3) Good cause is shown based on, but not limited to, one or more of the following considerations:

- (A) The age of the child.
- (B) The nature of the allegations.
- (C) The relationship between the child victim and the alleged abuser.
- (D) The child has undergone previous interviews for the purposes of criminal or civil proceedings that were recorded either by videotape or some other manner of recording and the requesting party has access to the recording.
- (E) The examination would adversely affect the child.
- (F) The manifest best interests of the child require the limitations or restrictions.

(4) The court, in its discretion, may order the consolidation of the taking of depositions of a child under the age of 16 when the child is the victim or witness in a pending proceeding arising from similar facts or circumstances.

(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.

(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 may:

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

(B) grant a continuance;

(C) order a new hearing;

(D) prohibit the party from calling a witness not disclosed or introducing in evidence the material not disclosed; or

(E) enter ~~such an~~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.

### **Committee Notes**

**1991 Amendment.** (a)(1) Termination of parental rights proceedings have been added to discovery procedures.

**RULE 8.255. GENERAL PROVISIONS FOR HEARINGS**

(a) **Presence of Counsel.** The department must be represented by an attorney at every stage of these proceedings.

(b) **Presence of Child.** The child has a right to be present at the hearing unless the court finds that the child's mental or physical condition or age is such that a court appearance is not in the best interest of the child. Any party may file a motion to require or excuse the presence of the child.

(c) **Separate Examinations.** The child and the parents, caregivers, or legal custodians of the child may be examined separately and apart from each other.

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

(1) **Testimony by Child.** A child may be called to testify in open court by any party to the proceeding or the court, and may be examined or cross-examined.

(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.

(B) The motion may be filed by any party or the trial court on its own motion.

(C) The court shall make specific written findings of fact, on the record, as to the basis for its ruling. These findings may include but are not limited to:

- (i) the age of the child;
- (ii) the nature of the allegation;

(iii) the relationship between the child and the alleged abuser;

(iv) the likelihood that the child would suffer emotional or mental harm if required to testify in open court;

(v) whether the child's testimony is more likely to be truthful if given outside the presence of other parties;

(vi) whether cross-examination would adversely affect the child; and

(vii) the manifest best interest of the child.

(D) The child may be called to testify by means of closed-circuit television or by videotaping as provided by law.

(e) **Invoking the Rule.** Before the examination of any witness the court may, and on the request of any party 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.

(f) **Continuances.** As permitted by law, the court may grant a continuance before or during a hearing for good cause shown by any party.

(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.

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

~~(i) **Masters.** Pursuant to Florida Rule of Civil Procedure 1.490, including the requirement of consent of all parties, both general and special masters may be appointed to hear issues involved in proceedings under this part, except as otherwise prohibited by law.~~

## 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.

**RULE 8.257. GENERAL MAGISTRATES**

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

**(b) Referral.**

**(1) Consent.** No matter shall be heard by a general magistrate 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 magistrate 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.

**(3) Order.**

**(A)** The order of referral shall contain the following language in bold type:

**A REFERRAL TO A GENERAL MAGISTRATE 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 MAGISTRATE, 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 MAGISTRATE SHALL BE BY EXCEPTIONS AS PROVIDED IN FLORIDA RULE OF JUVENILE PROCEDURE 8.257(f). A RECORD, WHICH INCLUDES A TRANSCRIPT OF PROCEEDINGS, WILL 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 magistrate, any party or the general magistrate may set the action for hearing.

(c) **General Powers and Duties.** Every general magistrate 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 magistrate 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 magistrates.

(d) **Hearings.**

(1) The general magistrate 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 magistrate may proceed ex parte or may adjourn the proceeding to a future day, giving notice of the adjournment to the absent party. The general magistrate 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 magistrate to speed the

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

(2) The general magistrate 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 magistrate 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 magistrate may take all actions concerning evidence that can be taken by the circuit court and in the same manner. The general magistrate 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 magistrate 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 bold type:

**SHOULD YOU WISH TO SEEK REVIEW OF THE REPORT AND RECOMMENDATIONS MADE BY THE GENERAL MAGISTRATE, 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 magistrate, and all depositions and evidence presented to the general magistrate.

(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 magistrate 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.

**RULE 8.290. DEPENDENCY MEDIATION**

(a) **Definitions.** The following definitions apply to this rule:

(1) “Dependency matters” means proceedings arising under Chapter 39, Florida Statutes.

(2) “Dependency mediation” means mediation of dependency matters.

(3) “Mediation” means a process whereby a neutral third person called a mediator acts to encourage and facilitate the resolution of a dispute between two or more parties. It is an informal and nonadversarial process with the objective of helping the disputing parties reach a mutually acceptable and voluntary agreement. In mediation, decision-making authority rests with the parties. The role of the mediator includes, but is not limited to, assisting the parties in identifying issues, fostering joint problem-solving, and exploring settlement alternatives.

(b) **Applicability.** This rule applies only to mediation of dependency matters.

(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) **Appointment of the Mediator.**

(1) **Court Appointment.** The court, in the order of referral to mediation, shall appoint a certified dependency mediator selected by rotation or by such other procedures as may be adopted by administrative order of the chief judge in the circuit in which the action is pending.

(2) **Party Stipulation.** Within 10 days of the filing of the order of referral to mediation, the parties may agree upon a stipulation with the court designating:

(A) another certified dependency mediator to replace the one selected by the judge; or

(B) a mediator who does not meet the certification requirements of these rules but who, in the opinion of the parties and upon review by the presiding judge, is otherwise qualified by training or experience to mediate all or some of the issues in the particular case.

(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 grounds of financial hardship. ~~Upo~~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) **Objection to Mediation.** Within 10 days of the filing of the order of referral to mediation, any party or participant ordered to mediation may make a written objection to the court about the order of referral if good cause for such objection exists. If a party objects, mediation shall not be conducted until the court rules on the objection.

(h) **Scheduling.** The mediation conference may be held at any stage of the proceedings. Unless otherwise scheduled by the court, the mediator or the mediation program shall schedule the mediation conference.

(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.

(j) **Substitute Mediator.** If a mediator agreed upon by the parties or appointed by a court cannot serve, a substitute mediator can be agreed upon or appointed in the same manner as the original mediator. A mediator shall not mediate a case assigned to another mediator without the agreement of the parties or approval of the court. A substitute mediator shall have the same qualifications as the original mediator.

(k) **Discovery.** Unless stipulated by the parties or ordered by the court, the mediation process shall not suspend discovery.

(l) **Appearances.**

(1) **Order Naming or Prohibiting Attendance of Parties.** The court shall enter an order naming the parties and the participants who must appear at the mediation and any parties or participants who are prohibited from attending the mediation. Additional participants may be included by court order or by mutual agreement of all parties.

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

(3) **Appearance of Counsel.** In the discretion of the mediator, and with the agreement of the attending parties, dependency mediation may proceed in the absence of counsel unless otherwise ordered by the court.

(4) **Appearance of Child.** The court may prohibit the child from appearing at mediation upon determining that such appearance is not in the best interest of the child. No minor child shall be required to appear at mediation unless the court has previously determined by written order that it is in the child's best

interest to be physically present. The court shall specify in the written order of referral to mediation any special protections necessary for the child's appearance.

(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.

(m) **Caucus with Parties and Participants.** During the mediation session, the mediator may meet and consult privately with any party, participant, or counsel.

(n) **Continuances.** The mediator may end the mediation session at any time and may set new times for reconvening the mediation. No further notification shall be required for parties or participants present at the mediation session.

(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.

(2) If the parties do not reach an agreement as to any matter as a result of mediation, the mediator shall report the lack of an agreement to the court without comment or recommendation.

(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.

(q) **Imposition of Sanctions Upon Breach of Agreement.** In the event of any breach or failure to perform under the court-approved agreement, the court, upon a motion of any party or upon 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.

### **Committee Notes**

**1997 Adoption.** In considering the provision regarding the appearance of the child found in subsection (l)(4), the Supreme Court Mediation and Arbitration Rules Committee considered issues concerning the child's right to participate and be heard in mediation and the need to protect the child from participating in proceedings when such participation would not be in the best interest of the child. The Committee has addressed only the issue of mandating participation of the child in mediation. In circumstances where the court has not mandated that the child appear in mediation, the Committee believes that, in the absence of an order prohibiting the child from mediation, the participation of the child in mediation will be determined by the parties.

Whenever the court, pursuant to subdivision (p) determines whether to accept, reject, or modify the mediation agreement, the Committee believes that the court shall act in accordance with the confidentiality requirements of chapter 44, Florida Statutes.

**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) be in writing and signed;
- (2) specify the name, address, date of birth, and sex of the child, or, if unknown, designate the child by any name or description by which he or she can be identified with reasonable certainty;
- (3) specify that the child is of an age subject to the jurisdiction of the court; and
- (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) be in writing and signed;
- (2) specify the name, address, and sex of the child or, if unknown, designate the child by any name or description by which he or she can be identified with reasonable certainty;
- (3) specify that the child is of an age subject to the jurisdiction of the court;
- (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

issued. (6) state the date when issued, and the county and court where

**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:

(1) specify the name, address, date of birth, and sex of the child or, if unknown, designate the child by any name or description by which he or she can be identified with reasonable certainty;

(2) specify the name and address, if known, of the child's parents or legal custodian and how each was notified of the shelter hearing;

(3) if the child has been removed from the home, state the date and time of the removal;

(4) specify that the child is of an age subject to the jurisdiction of the court;

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

(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;

(7) recommend where the child is to be placed or the agency to be responsible for placement; and

(8) be signed by the petitioner and, if represented by counsel, by the petitioner's attorney.

(b) **Shelter Hearing.**

(1) The parents or legal custodians of the child shall be given actual notice of the date, time, and location of the shelter hearing. If the parents are outside the jurisdiction of the court, are not known, cannot be located, or refuse or evade service, they shall be given such notice as best ensures their actual

knowledge of the date, time, and location of the shelter hearing. If the parents or legal custodians are not present at the hearing, the person providing, or attempting to provide, notice to the parents or legal custodians shall advise the court in person or by sworn affidavit of the attempts made to provide notice and the results of those attempts.

(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:

(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

(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.

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

(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.

(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, 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) the right to be represented by counsel as provided by law;

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

(C) the right to present placement alternatives; and

(D) the time, date, and location of the next hearing and of the importance of the parents' or legal custodians' active participation in subsequent proceedings and hearings.

(7) The court shall appoint:

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

(B) an attorney ad litem to represent the child if the court finds the appointment necessary and authorized by law; and

(C) an attorney for indigent parents unless waived by the parent.

(8) The court shall determine visitation rights absent a clear and convincing showing that visitation is not in the best interest of the child.

(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.

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

(1) placement in shelter care is necessary based on the criteria provided by law;

(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) the court notified the parents or legal custodians of the time, date, and location of the next dependency hearing, and of the importance of their active participation in all subsequent proceedings and hearings; and

(7) the court notified the parents or legal custodians of their right to counsel as provided by law.

(d) **Release from Shelter Care.** No child shall be released from shelter care after a shelter order has been entered except on order of the court unless the shelter order authorized release by the department.

**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 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.

**Committee Notes**

**1991 Amendment.** (d) This section requires a status hearing every 30 days to ensure prompt resolution of the case while preserving the rights of all parties.

**RULE 8.325.       ANSWERS AND PLEADINGS**

(a) **No Answer Required.** No written answer to the petition need be filed by the parent; or legal custodian. The parent; or legal custodian of the child may enter an oral or written answer to the petition or remain silent.

(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.

(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.

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

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

~~(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."~~

**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:

(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.

(2) File with the court a case plan prepared without the participation of the parents, if the parents are unable or unwilling to participate in the preparation of a case plan. The plan or supporting documents shall contain a full explanation of the circumstances preventing the parents from participating and the efforts made by the department to secure parental participation.

(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.

(A) A copy of the motion and notice of hearing shall be served on the parties and participants involved in the preparation of the case plan.

(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~~ a showing of good cause. In the 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:

(~~1~~A) 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 in rule 8.340(a).

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

(c) **Service.** Each party must be provided with a copy of the case plan at least 72 hours before the disposition hearing. If the location of a parent is unknown, this fact must be documented in writing and included in the plan.

**RULE 8.410. APPROVAL OF CASE PLANS**

(a) **Hearing.** The court shall review the contents of the case plan at the disposition hearing unless a continuance for the filing of the case plan has been granted by the court.

(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.

(5) The plan adequately addresses the goals and needs of the child.

(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) **Entry of Findings.** The court shall enter its findings with respect to the review of the case plan in writing and make specific findings on each element required by law to be included in a case plan.

(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.~~

**RULE 8.415. JUDICIAL REVIEW OF DEPENDENCY CASES**

(a) **Required Review.** All dependent children shall have their status reviewed as provided by law.

(b) **Scheduling Hearings.**

(1) **Initial Review Hearing.** The court shall determine when the first review hearing shall be held and the clerk of the court shall immediately schedule the review hearing. In no case shall the hearing be scheduled for later than 6 months from the date of removal from the home or 90 days from the disposition or case plan approval hearing, whichever comes first. In every case, the court must conduct a judicial review at least every 6 months.

(2) **Subsequent Review Hearings.** At each judicial review hearing, the court shall schedule the next judicial review hearing which shall be conducted within 6 months. The clerk of the court, at the judicial review hearing, shall provide the parties with written notice of the date, time, and location of the next judicial review hearing.

(c) **Report.** In all cases, the department or its agent shall prepare a report to the court. The report shall contain facts showing the court to have jurisdiction of the cause as a dependency case. It shall contain information as to the identity and residence of the parent, if known, and the legal custodian, the dates of the original dependency adjudication and any subsequent judicial review proceedings, and a request for one or more of the following forms of relief:

(1) that the child's placement be changed;

(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

(3) that proceedings be instituted to terminate parental rights and legally free the child for adoption.

(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.

(e) **Information Available to Court.** At the judicial review hearing the court may receive any relevant and material evidence pertinent to the cause. This shall include written reports required by law and may include, but shall not be limited to, any psychiatric or psychological evaluations of the child or parent, caregiver, or legal custodian that may be obtained and that are material and relevant. This evidence may be received by the court and relied on to the extent of its probative value, even though it may not be competent in an adjudicatory hearing.

(f) **Court Action.**

(1) The court shall hold a hearing to review the 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) If the court finds that the parents have substantially complied with the case plan, the court shall return the child to the custody of the parents if the court is satisfied that reunification will not be detrimental to the child's safety, well-being, or physical, mental, or emotional health.

(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.

(4) If, at any judicial review hearing, regardless of the expiration date of the case plan, the court finds that the parents have not substantially complied with the case plan to the degree that further reunification efforts are without merit, the court may order the social service agency to initiate a termination of parental rights proceeding. If the court finds that an order initiating

a termination of parental rights proceeding would not be in the child's best interests; that the parents in good faith attempted to comply with the terms of the plan but need more time to accomplish their assigned tasks and believes the parents will accomplish them; or, by clear and convincing proof, that the situation of the child is so extraordinary that the case plan should be extended, the court may extend the time limitation for the plan or modify the terms of the plan. No plan shall be extended for a period longer than 6 months. At the expiration of the extended plan, the court shall again review the child's status.

(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~~ if its jurisdiction is to be terminated, it shall enter an order to that effect.

(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 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~~ 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) **Administrative Review.** The department, under a formal agreement with the court in particular cases, may conduct administrative reviews instead of judicial reviews for children in out-of-home placement. Notice must be provided to all parties. An administrative review may not be substituted for the first judicial review or any subsequent 6-month review. Any party may petition the court for a judicial review as provided by law.

### **Committee Notes**

**1991 Adoption.** The rule allows for certain forms of relief pertinent to foster care review. It allows the court to order commencement of a termination of parental rights proceeding if the parents are not in compliance. The court also is permitted to extend or modify the plan.

## **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) Contents.**

(1) The petition shall contain allegations as to the identity and residence of the parents, if known.

(2) The petition shall identify the age, sex, and name of the child. Two or more children may be the subject of the same petition.

(3) The petition shall include facts supporting allegations that each of the applicable statutory elements for termination of parental rights has been met.

(4) When required by law, the petition shall contain a showing that the parents were offered a case plan and did not substantially comply with it.

(5) The petition shall have a certified copy of the birth certificate of each child named in it attached unless the petitioner, after diligent search and inquiry, is unable to produce it, in which case the petition shall state the date and place of birth of each child, unless these matters cannot be ascertained after diligent search and inquiry or for other good cause.

(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, 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~~of 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.

(f) **Voluntary Dismissal.** The petitioner, without leave of the court, at any time before entry of an order of adjudication, may request a voluntary dismissal of the petition by serving a notice of request of dismissal on all parties or, if during a hearing, by so stating on the record. The petition shall be dismissed and the court loses jurisdiction unless another party adopts the petition within 72 hours. Unless otherwise stated, the dismissal shall be without prejudice.

(g) **Parental Consent.**

(1) The parents of the child may consent to the petition for termination of parental rights at any time, in writing or orally, on the record.

(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.

(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 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.~~

**RULE 8.505. PROCESS AND SERVICE**

(a) **Personal Service.** ~~Upon~~ On 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

- (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;
  - (4) any person who has physical custody of the child;
  - (5) any grandparents entitled by law to ~~priority for adoption~~ notice of the adoption proceeding;
  - (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) **Contents.** The document containing the notice to appear shall notify the required persons of the filing of the petition and must contain in type at least as large as the balance of the document the following or substantially similar language:

"FAILURE TO PERSONALLY APPEAR AT THE ADVISORY HEARING CONSTITUTES CONSENT TO THE TERMINATION OF PARENTAL RIGHTS OF THIS CHILD (THESE CHILDREN). IF YOU FAIL TO APPEAR ON THE DATE AND TIME

SPECIFIED, YOU MAY LOSE ALL LEGAL RIGHTS AS A PARENT TO THE CHILD OR CHILDREN NAMED IN THE PETITION ATTACHED TO THIS NOTICE."

(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.

**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.

(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) **Pretrial Status Conference.** Not less than 10 days before the adjudicatory hearing on a petition for involuntary termination of parental rights, the court shall conduct a pretrial status conference to determine the order in which each party may present witnesses or evidence, the order in which cross-examination and argument shall occur, and any other matters that may aid in the conduct of the adjudicatory hearing.

(c) **Voluntary Terminations.** An advisory hearing may not be held if a petition is filed seeking an adjudication to voluntarily terminate parental rights. Adjudicatory hearings for petitions for voluntary termination must be set within 21 days of the filing of the petition. Notice of intent to rely on this subdivision must be filed with the court as required by law.

## **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) The court shall appoint counsel for indigent parents. The court may appoint counsel for other parties as provided by law.

(3) The court shall ascertain whether the right to counsel is understood. If the right to counsel is waived by any parent the court shall ascertain if the right to counsel is knowingly and intelligently waived.

(4) The court shall enter its findings with respect to the appointment or waiver of counsel of indigent parents or the waiver of the right to have counsel present.

(5) Once counsel has been retained or appointed to represent a parent, the attorney shall continue to represent the parent throughout the proceedings or until the court has approved discontinuing the attorney-client relationship. If the attorney-client relationship is discontinued, the court shall advise the parent of the right to have new counsel retained or appointed for the remainder of the proceedings.

### **(b) Waiver of Counsel.**

(1) No waiver shall be accepted if it appears that the parent 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.

(2) A waiver of counsel shall be made in court and be of record. The court shall question the parent in sufficient detail to ascertain that the waiver is made knowingly and intelligently.

(3) If a waiver is accepted at any hearing, the offer of assistance of counsel shall be renewed by the court at each subsequent hearing at which the parent appears without counsel.

#### **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.~~

## **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.

(b) **Time of Hearing.** The adjudicatory hearing shall be held within 45 days after the advisory hearing, unless all necessary parties stipulate to some other hearing date. Reasonable continuances may be granted for purposes of investigation, discovery, procuring counsel or witnesses, or for other good cause shown.

(c) **Examination of Witnesses.** A party may call any person, including a child, as a witness. A party shall have the right to examine or cross-examine all witnesses.

(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.

(e) **Examination of Child.** The court may hear the testimony of the child outside the physical presence of the parties as provided by rule 8.255. Counsel for the parties shall be present during all examinations. The court may limit the manner in which counsel examine the child.

(f) **Previous Testimony Admissible.** To avoid unnecessary duplication of expenses, in-court testimony previously given at any properly noticed hearing may be admitted, without regard to the availability of the witnesses, if the recorded

testimony itself is made available. Consideration of previous testimony does not preclude the parties from calling the witness to answer supplemental questions.

(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) **Motion for Judgment of Dismissal.** In all termination of parental rights proceedings, if at the close of the evidence for the petitioner the parents move for a judgment of dismissal and the court is of the opinion that the evidence is insufficient to sustain the grounds for termination alleged in the petition, it shall enter an order denying the termination and proceed with dispositional alternatives as provided by law.

(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~~ 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) **Denying Termination of Parental Rights.** If the court finds after all of the evidence has been presented that the grounds for termination of parental rights have not been established by clear and convincing evidence, but that the grounds for dependency have been established by a preponderance of the evidence, the court shall adjudicate or readjudicate the child dependent and proceed with dispositional alternatives as provided by law.

(3) **Dismissing Petition.** If the court finds after all of the evidence has been presented that the allegations in the petition do not establish grounds for dependency or termination of parental rights, it shall enter an order dismissing the petition.

**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 terminates 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.

**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~~ A petition under oath has been filed in this court alleging the above-named .....child/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. The .....parent(s)/custodian..... ~~is/are~~ required to produce the .....child/children..... at ~~said~~ that time and place unless the .....child/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.

**FORM 8.911.**

**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. Affiant .....has/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. Affiant .....does/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. Affiant .....does/does not..... know of any person(s) who .....is/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 juramente 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 incapacidades, necesitan acomodos 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).....

KÒM, tantiske, ....(non pati ki fé demann-nan).... fé yon demann devan tribinal-la, epi li sèmante 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	<del>Birth date</del> <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 commanded~~ 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 incapacidades, necesitan acomodos 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).....

KÒM, tandiske, gen yon demann sèmante pou anile dwa paran-yo, ki prezante devan tribinal-la, konsènan timoun ki nonmen nan lèt sa-a, piwo-a, yon kopi dokiman-an kwoke nan dosye-a., yo bay lòd pou prezante devan ..... (Jij-la) ....., a..... (nan.lè ak adrès chita tandè-a)....., NAN YON CHITA TANDE POU YO ENFÒME-W, YO GEN LENTANSYON POU ANILE DWA-OU KÒM PARAN. Ou fèt pou prezante nan dat ak lè ki endike-a.

**SI OU PA PREZANTE PÈSONÈLMAN NAN CHITA TANDE-A, POU YO ENFÒME-W, YO GEN LENTANSYON POU ANILE DWA-OU KÒM PARAN, SA KA LAKÒZ YO DESIDE OU KONSANTI TIMOUN SA-A (YO), BEZWEN PWOTEKSYON LETA EPI SA KA LAKÒZ OU PÈDI DWA-OU KÒM PARAN TIMOUN SA-A(YO), KI GEN NON YO MAKE NAN KOPI DEMANN-NAN, KI KWOKE NAN AVÈTISMAN-AN**

**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 e mete so mwen nan dokiman tribinal-la kòm temwen nan (vil, distrik, eta) ....., nan ... (dat).....

PA: GREFYE TRIBINAL-LA  
\_\_\_\_\_  
ASISTAN GREFYE TRIBINAL-LA