

Supreme Court of Florida

No. SC05-950

**IN RE: AMENDMENTS TO THE FLORIDA RULES OF JUVENILE
PROCEDURE; FORMS FOR USE WITH RULES OF JUVENILE
PROCEDURE; AND THE FLORIDA RULES OF APPELLATE
PROCEDURE—JUDICIAL WAIVER OF PARENTAL NOTICE OF
TERMINATION OF PREGNANCY.**

[June 30, 2005]

PER CURIAM.

In 1999, the Florida Legislature passed legislation requiring parental notification before a minor could obtain an abortion. See § 390.01115, Fla. Stat. (1999). The legislation also provided, however, that a minor could obtain a judicial waiver of the required parental notification under some circumstances. In response to this legislation, the Court adopted a new rule of civil procedure and a form applicable to judicial waiver proceedings under the statute. The Court also amended Rule of Appellate Procedure 9.110(1) covering appeal of an order denying a petition for judicial waiver. These rule amendments were adopted on an emergency basis and after adoption, were published for comment. See Amend. To

Fla. R. Civ. P.; Forms for Use with R. Civ. P.; and Fla. R. App. P.—Judicial Waiver of Parental Notice of Abortion, 756 So. 2d 27 (Fla. 1999). Comments were received. Subsequently, however, the 1999 legislation was held unconstitutional, see N. Fla. Women’s Health and Counseling Servs., Inc. v. State, 866 So. 2d 612 (Fla. 2003), and the Court eventually repealed the rule amendments, see Amend. To Fla. R. Civ. P. (Two-Year Cycle) and Fla. R. App. P. 9.110, 858 So. 2d 1013 (Fla. 2003).

In 2004, the Constitution of the State of Florida was amended to include Article X, Section 22, permitting the Legislature to provide for parental notice of termination of a minor’s pregnancy. In response to this constitutional amendment, the 2005 Florida Legislature passed chapter 2005-52, Laws of Florida. This new law repeals section 390.01115, the old parental notice of abortion law, and creates section 390.01114, the Parental Notice of Abortion Act. Much like the former law, the Parental Notice of Abortion Act requires parental notification before a minor may obtain an abortion but allows for judicial waiver of the required notification. The act provides that a minor may petition the circuit court to obtain a judicial waiver of the notification requirement and requests that the Florida Supreme Court adopt the necessary rules and forms applicable to such proceedings. By its terms, the act will take effect “upon the adoption of rules and forms by the Supreme Court, but no later than July 1, 2005.” Ch. 2005-52, § 3, Laws of Fla.

In response to the Legislature's request, we adopt several new Florida Rules of Juvenile Procedure, accompanying forms, and an amendment to Florida Rule of Appellate Procedure 9.110. The new rules are similar to those previously adopted in 1999; however, in adopting them, the Court has attempted to accommodate not only the statutory provisions, but various public comments submitted with regard to the 1999 rules and form. In particular, the 1999 rule and form required the name of the minor, as well as other information such as an address and phone number for confidential notification regarding the hearing set on the petition. In an effort to ensure complete confidentiality in these proceedings, the new rules and forms allow the petition to be filed under a pseudonym and permit the minor to elect to receive notice by contacting the clerk of court herself or through a third party contact.

Accordingly, we hereby adopt on an emergency basis Florida Rules of Juvenile Procedure 8.800, 8.805, 8.810, 8.815, 8.820, 8.825, 8.830, and 8.835, accompanying Forms 8.987, 8.988, 8.989, 8.990, and 8.991, and new subdivision (n) of Florida Rule of Appellate Procedure 9.110, as set forth in the attached appendix. The additions are indicated by underlining. In adopting the aforementioned rules and forms, we express no opinion on the substance of the new legislation. The amendments shall become effective immediately upon the release of this opinion. The opinion and the forms discussed herein may be

accessed and downloaded from this Court's website at
www.floridasupremecourt.org.

Finally, because we have adopted these rules and forms on an emergency basis without the benefit of the general rulemaking process, interested parties shall have sixty days from the date of this opinion in which to file comments with the Court. Given the placement of the new rules governing the petition for judicial waiver, the Court specifically invites comments from the Juvenile Court Rules Committee.¹

It is so ordered.

PARIENTE, C.J., and WELLS, ANSTEAD, LEWIS, QUINCE, CANTERO, and BELL, JJ., concur.

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

Original Proceeding – the Florida Rules of Juvenile Procedure; Forms for use with Rules of Juvenile Procedure; and the Florida Rules of Appellate Procedure – Judicial Waiver of Parental Notice of Termination of Pregnancy

1. The Court received a letter from the Juvenile Court Rules Committee on June 27, 2005, addressing various concerns relating to the Court's adoption of rules governing judicial waiver of parental notice proceedings. Due to the time constraints bearing upon this matter, the Court is unable, at this time, to comprehensively consider the Committee's concerns. Accordingly, the Committee's letter will be treated as a comment in this case and will be considered along with any other comments submitted by the Committee or others during the comment period.

APPENDIX

RULES OF JUVENILE PROCEDURE

PART IV. OTHER PROCEEDINGS

A. [no change]

B. JUDICIAL WAIVER OF PARENTAL NOTICE OF TERMINATION OF PREGNANCY

Rule 8.800. Applicability. These rules apply to proceedings instituted pursuant to section 390.01114, Florida Statutes.

Rule 8.805. Commencement of Proceedings

(a) Petition to Be Filed. Proceedings for a judicial waiver of parental notice of termination of pregnancy shall be commenced by the filing of a petition in any circuit court within the appellate district in which the petitioner resides as provided by section 390.01114(4)(a), Florida Statutes.

(b) Pseudonymous Petitions. Petitions filed under a pseudonym or initials shall be filed simultaneously with a sworn statement containing the minor's true name, date of birth, address and the case number. A certified copy of this Sworn Statement of True Name and Pseudonym shall be given to the minor at the time it is filed. The original sworn statement shall be kept under seal at all times and may only be opened at the minor's request or by court order.

(c) Notice Under Pseudonymous Petitions. So that the minor may receive notice in a safe and secure manner, the minor shall elect to receive notice through the address and phone number of a trusted third person or by personally contacting the clerk's office. If the minor elects to personally contact the clerk's office, she must still provide an address and phone number of a third person through which to receive notice in the event that the court needs to provide notice at a time other than when the minor personally contacts the clerk's office.

(d) Procedures Upon Filing Petition. Upon the filing of a petition, the clerk of the circuit court shall immediately:

(1) open a file and assign a case number;

(2) provide the minor with a certified copy of Form 8.988 Sworn Statement of True Name and Pseudonym;

(3) provide the minor with Form 8.989 Advisory Notice to Minor;

(4) present the petition to the court for scheduling of the hearing and appointment of counsel, if requested; and

(5) provide notice of the hearing to the minor. If it is not possible for the clerk to immediately provide notice at the time the minor files the petition, the clerk shall provide notice through the method elected by the minor in the petition.

(e) Fees and Costs. No filing fees or court costs shall be assessed against any pregnant minor who petitions a court for a waiver of parental notice.

Rule 8.810. Petition. The petition shall include:

(a) the pseudonym or initials of the minor;

(b) the age of the minor;

(c) a statement that the minor is pregnant and notice has not been waived;

(d) a statement that the minor desires to terminate her pregnancy without notice to a parent or legal guardian; and

(e) a short and plain statement of facts to establish any of the following:

(1) The minor is sufficiently mature to decide whether to terminate her pregnancy.

(2) The minor is a victim of child abuse or sexual abuse by one or both of her parents or a guardian.

(3) Notification of a parent or guardian is not in the best interest of the minor.

Rule 8.815. Counsel. As provided by section 390.01114(4)(a), Florida Statutes, the circuit court shall advise the minor that she has a right to court-appointed counsel and shall provide her with counsel upon her request at no cost.

Rule 8.820. Hearing

(a) Hearing by Judge. A judge shall conduct an informal hearing on the petition within the time limits provided by law and these rules. General magistrates and special magistrates shall not hear a petition for a judicial waiver of parental notice of termination of pregnancy.

(b) Evidence. The judge shall hear evidence relating to the emotional development, maturity, intellect, and understanding of the minor, and all other relevant evidence.

(c) Burdens of Proof.

(1) A finding that the minor is sufficiently mature to decide whether to terminate her pregnancy requires proof by clear and convincing evidence.

(2) A finding that the minor is a victim of child abuse or sexual abuse by one or both of her parents or a guardian requires proof by a preponderance of the evidence.

(3) A finding that notification of a parent or guardian is not in the best interest of the minor requires proof by a preponderance of the evidence.

(d) Time Limits. As provided by section 390.01114(4)(b), Florida Statutes:

(1) Cases commenced under this rule take precedence over other pending matters as necessary to ensure that the court can make its ruling and issue written findings of fact and conclusions of law within 48 hours of the filing of the petition.

(2) The 48-hour time limit may be extended at the request of the minor; however, the court remains under an obligation to rule on the petition as soon as practically possible.

(3) If the court fails to rule within the 48-hour period and an extension has not been requested by the minor, the petition shall be deemed granted and an order shall be issued.

(e) Confidentiality of Hearings. Hearings under this part shall be closed to the public and all records thereof shall remain confidential as provided by sections 390.01114(4)(e) and 390.01116, Florida Statutes.

Rule 8.825. Order and Judgment. At the conclusion of the hearing, the court shall issue written and specific findings of fact and conclusions of law in support of its decision and order that a confidential record be maintained.

Rule 8.830. Transcripts. A court that conducts proceedings pursuant to these rules shall provide for a written transcript of all testimony and proceedings as provided by section 390.01114(4)(e), Florida Statutes.

Rule 8.835. Confidentiality of Records

(a) As provided by section 390.01116, Florida Statutes, any information including the petition, documents, transcripts, recordings of cases, and any other information that could be used to identify a minor who has petitioned the court for a judicial waiver of parental notice of termination of pregnancy is confidential and exempt from section 119.07(1), Florida Statutes, and section 24(a), Article I of the State Constitution.

(b) So that the minor shall remain anonymous, the court file shall be sealed unless otherwise ordered by the court.

Form 8.987. Petition for Judicial Waiver of Parental Notice of Termination of Pregnancy

Petition for Judicial Waiver of Parental Notice of Termination of Pregnancy

I certify that the following information is true and correct:

(1) The pseudonym or initials of the minor (is/are) _____, and the minor has filed a Sworn Statement of True Name and Pseudonym with the clerk.

(2) The minor is _____ years old.

(3) The minor is pregnant and notice has not been waived.

(4) The minor desires to terminate her pregnancy without notice to a parent or legal guardian for one or more of the following reasons:
[check all that apply]

_____ a. The minor is sufficiently mature to decide whether to terminate her pregnancy, for the following reason(s):

_____ b. The minor is a victim of child abuse or sexual abuse by one or both of her parents or a guardian, for the following reason(s):

_____ c. Notification of a parent or guardian is not in the best interest of the minor, for the following reason(s):

(5) The minor requests that the court enter an order authorizing her to consent to the performance or inducement of a termination of pregnancy without notification of a parent or guardian.

Form 8.988. Sworn Statement of True Name and Pseudonym

Sworn Statement of True Name and Pseudonym

NOTICE TO THE CLERK OF COURT: A CERTIFIED COPY OF THIS DECLARATION WITH THE CASE NUMBER NOTED ON IT SHALL BE GIVEN TO THE MINOR AFTER SHE SIGNS IT.

THE ORIGINAL SHALL IMMEDIATELY BE PLACED IN A SEALED ENVELOPE WHICH SHALL BE FILED UNDER SEAL AND KEPT UNDER SEAL AT ALL TIMES.

(1) My true name is _____, and my address is
(print your name)

(print your address)

(2) My date of birth is _____.

(3) I have filed a Petition for Judicial Waiver of Parental Notice of Termination of Pregnancy under the name or initials _____ on _____
(date)

I understand that by signing this form I am swearing to or affirming the truthfulness of the information herein and that the punishment for knowingly making a false statement includes fines, imprisonment or both.

Dated: _____

Signature: _____
(You must sign your true name.)

Form 8.989. Advisory Notice to Minor

Advisory Notice to Minor

YOU ARE NOTIFIED as follows:

YOUR CASE NUMBER APPEARS AT THE TOP OF THIS FORM. KEEP IT IN A SAFE PLACE. YOU CAN NOT GET INFORMATION FROM THE CLERK WITHOUT YOUR CASE NUMBER.

YOU HAVE BEEN GIVEN A COPY OF THE SWORN STATEMENT YOU SIGNED WITH YOUR TRUE NAME. KEEP IT IN A SAFE PLACE. YOU MAY NEED TO SHOW IT AND THE FINAL JUDGMENT IN YOUR CASE TO YOUR DOCTOR BEFORE TERMINATING YOUR PREGNANCY.

All information in your case is confidential. No papers will be sent to your home, and you will be contacted by this court only through the method you elected in the petition. Your name will not be on your court papers.

If you would like an attorney to help you with your case, the court will appoint one for you at no cost to you. Your attorney will receive notices about your case so he or she can prepare for and attend hearings with you. You may also name someone else you trust to receive notices for you. You can also contact the clerk of court yourself to check on your case.

You have a right to a hearing and a decision on your case within 48 hours of filing your petition unless you or your attorney waives this right or asks for an extension of time. If this time limit is not met you have the right to ask the clerk for a form that will allow your doctor to perform a termination of pregnancy without notifying a parent.

If the court dismisses your petition, you have the right to appeal. You will be given information regarding how to proceed with an appeal, and if you would like an attorney to help you with an appeal, you may request that the court appoint one.

I certify that I have given a copy of this advisory form to the minor.

Dated: _____

Clerk of the Court

Form 8.990. Final Order Granting Petition for Judicial Waiver of Parental Notice of Termination of Pregnancy

Final Order Granting Petition for Judicial Waiver of Parental Notice of Termination of Pregnancy

THIS CAUSE having come before the court on a petition for judicial waiver of parental notice of termination of pregnancy and the court being otherwise advised in the premises, finds the following:

_____ The minor has proven by clear and convincing evidence that she is sufficiently mature to decide whether to terminate her pregnancy, for the following reason(s):

_____ The minor has proven by a preponderance of the evidence that she is a victim of child abuse or sexual abuse by one or both of her parents or a guardian, for the following reason(s):

_____ The court, having made a finding under this section, will report the abuse as is required by section 39.201, Florida Statutes.

_____ The minor has proven by a preponderance of the evidence that notification of a parent or guardian is not in the best interest of the minor, for the following reason(s):

THEREFORE, it is ORDERED AND ADJUDGED that:

1. The petition for judicial waiver of parental notice of termination of pregnancy is GRANTED.

2. The minor may consent to the performance or inducement of a termination of pregnancy without notice to a parent or guardian.

3. The clerk shall keep and maintain a confidential record of these proceedings as provided by section 390.01116, Florida Statutes, and shall seal the record.

DONE AND ORDERED in the court in and for County, Florida,
on (date)

..... Judge

Form 8.991. Final Order Dismissing Petition for Judicial Waiver of Parental Notice of Termination of Pregnancy

Final Order Dismissing Petition for Judicial Waiver of Parental Notice of Termination of Pregnancy

THIS CAUSE having come before the court on a petition for judicial waiver of parental notice of termination of pregnancy and the court being otherwise advised in the premises, finds the following:

The minor has not proven by sufficient evidence any of the criteria that would permit a judicial waiver of the parental notification requirements of section 390.01114(3), Florida Statutes, for the following reasons:

THEREFORE, it is ORDERED AND ADJUDGED that:

1. The petition for judicial waiver of parental notice of termination of pregnancy is DISMISSED.
2. The clerk shall keep and maintain a confidential record of these proceedings as provided by section 390.01116, Florida Statutes, and shall seal the record.
3. The clerk shall immediately provide Form 9.900(a) Notice of Appeal to the minor or petitioner if other than the minor.

DONE AND ORDERED in the court in and for County, Florida, on (date)

..... Judge

Rule 9.110. Appeal Proceedings to Review Final Orders of Lower Tribunals and Orders Granting New Trial in Jury and Non-Jury Cases

(a) - (m) [no change]

(n) Exception, Appeal of Final Order Dismissing Petition for Judicial Waiver of Parental Notice of Termination of Pregnancy. If an unmarried minor or another person on her behalf appeals an order dismissing a petition for judicial waiver of parental notice of termination of pregnancy, the clerk shall prepare and transmit the record as described in rule 9.200(d) within 2 days from the filing of the notice of appeal. The district court of appeal shall render its decision on the appeal as expeditiously as possible and no later than 10 days from the filing of the notice of appeal. Briefs or oral argument may be ordered at the discretion of the district court of appeal. If no decision is rendered within the foregoing time period, the order shall be deemed reversed, the petition shall be deemed granted, and the clerk shall place a certificate to this effect in the file and provide the minor with a certified copy of the certificate. The appeal and all proceedings thereon shall be confidential so that the minor shall remain anonymous. The file shall remain sealed unless otherwise ordered by the court. Should the petition be granted, the clerk shall furnish the petitioner with a certified copy of the decision or the clerk's certificate for delivery to the minor's physician. No filing fee shall be required for any part of an appeal of the dismissal of a petition for a waiver of parental notice of termination of pregnancy.