

IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO THE
RULES OF JUVENILE PROCEDURE

Case No. 06-140

**COMMENTS OF THE GUARDIAN AD LITEM PROGRAM ON THE
TWO-YEAR CYCLE REPORT OF THE JUVENILE RULES COMMITTEE**

The Statewide Guardian ad Litem Office ("GAL") represents the best interests of abused, neglected and abandoned children in dependency proceedings. There are twenty-one local GAL Programs in Florida which are organized under the Statewide Guardian ad Litem Office. The GAL respectfully submits the following comments on the proposed changes to Rules 8.257 and 8.350 of the Florida Rules of Juvenile Procedure.

A. Rule 8.257 - General Magistrates

The Juvenile Rules Committee proposed amendments to Rule 8.257 to restrict the types of hearings that can be conducted by general magistrates. This list includes shelter hearings under section 39.402 and adjudicatory hearings under sections 39.507 and 39.809, Florida Statutes.

In its explanation regarding the prohibition on shelter hearing, the Committee states that the timeframes associated with conducting a shelter hearing (24 hours) do not allow for time for the consent/objection process required for referral to a magistrate under Rule 8.257(b)(1) and (b)(2). Two-Year Cycle

Report, p. 4. The GAL suggests that under this reasoning, general magistrates would also be unable to conduct certain hearings under section 39.407, Florida Statutes, such as hearings for placement of children in residential mental health treatment facilities and approval of orders for the administration of psychotropic medication.

Rule 8.350 of the Florida Rules of Juvenile Procedure specifies the procedural requirements for placement of children in residential mental health facilities, which is authorized by section 39.407(6), Florida Statutes. Subsection (7) of Rule 8.350 provides that "Upon the filing of a motion for placement, the court shall set the matter for a status hearing within 48 hours, excluding weekends and holidays." At the hearing on placement, if the court determines the child is not suitable for residential treatment, the court shall order the department to place the child in the least restrictive setting that is best suited to meet the child's needs. Rule 8.350(a)(11)(c), Fla. R. Juv. P. The requirement that the hearing take place within 48 hours is in conflict with the ten day period allotted for objections to referrals for general magistrates under Rule 8.257(b)(2). Therefore, it seems that the timeframes governing this hearing would necessitate the presence of a judge as opposed to a general magistrate.

Similarly, section 39.407(3) provides a procedure for the Department of Children and Families to seek approval to initiate or continue provision of

psychotropic medications for children in its custody. Section 39.407(3)(d)1. provides:

The department must notify all parties of the proposed action taken under paragraph (c) in writing or by whatever other method best ensures that all parties receive notification of the proposed action within 48 hours after the motion is filed. If any party objects to the department's motion, that party shall file the objection within 2 working days after being notified of the department's motion. If any party files an objection to the authorization of the proposed psychotropic medication, the court shall hold a hearing as soon as possible before authorizing the department to initially provide or to continue providing psychotropic medication to a child in the legal custody of the department.

Additionally, if psychotropic medications are administered in advance of a court order, and any party objects, the court must hold a hearing within 7 days. § 39.407(3)(e), Florida Statutes.

The 7 day time period, like the twenty-four hour time period associated with shelter hearings, does not allow sufficient time for individuals to make objections under Rule 8.257(b)(2). If the principle articulated by the Committee regarding shelter hearings is extended, it seems general magistrates would not be able to oversee proceedings brought under section 39.407(3)(e).

With respect to proceedings brought under section 39.407(3)(c), which provides that a hearing should be held "as soon as possible," the GAL suggests that the Court may need to clarify whether a general magistrate may conduct these

hearings as well. If a hearing is necessary under section 39.407(3)(c), the factual circumstances of the case would be that certain parties believe a child has a medical need for psychotropic medications and other parties disagree. Though it is possible that a hearing held "as soon as possible" may take 10 days or more, this is not desirable. It is in the best interests of dependent children that these hearings be held expeditiously. If it is possible for a general magistrate to conduct this proceeding, then "as soon as possible" would mean, as a practical matter, that there would be a ten day period between the filing of the objection and the hearing. The GAL Program suggests that this frustrates the legislative intent of holding the hearing "as soon as possible," and that such proceedings should truly be given the first available slot on a judge's calendar.

In its Two-Year Cycle Report, the Committee states that the restrictions on magistrates conducting adjudicatory hearings under section 39.507 and 39.809 are necessary because Florida law specifically requires that the proceedings be held by a judge. Two-Year Cycle Report, p.4. There are several other provisions in Chapter 39 which refer specifically to judge. For example, section 39.827, Hearing for Appointment of Guardian Advocate, specifies that the hearing should be conducted by a judge without a jury. Section 39.0132, Oaths, records, and confidential information, provides that "All orders of the court entered pursuant to this chapter shall be in writing and signed by the magistrate, except that the clerk

or deputy clerk may sign a summons or notice to appear." The GAL has attached a list of references to the term judge as Appendix A so that the Court might consider the implications of the new rule and its justification upon these provisions.

B. Rule 8.350 - Placement of Child into Residential Treatment Facilities After Adjudication of Dependency

The GAL is appointed in every case involving the state's attempt to place a dependent child into a residential mental health treatment facility ("treatment facility") pursuant to Florida Rule of Juvenile Procedure 8.350(3). Rule 8.350(6) requires that the GAL be represented by an attorney at all proceedings under this rule, unless the GAL is acting as an attorney. The GAL advocates for protection of the child's best interests and legal interest(s) at each stage of his or her dependency case. The GAL supports the Committee's amendment adding subsection (d) to Rule 8.350 establishing clear and convincing evidence as the burden of proof for the involuntary commitment of dependent children to treatment facilities.

Amending the rule to include a standard of proof will make the Florida Rules of Juvenile Procedure comport with Florida case law and internally consistent. Current Florida case law has established that clear and convincing evidence is the standard of proof to be applied when the state seeks an order committing a dependent child to a treatment facility. *In re J.W.*, 890 So.2d 337 (Fla. 2d DCA 2004). In so holding, the *J.W.* court relied, in part, on the fact that the clear and convincing evidence standard applies in similar proceedings

involving involuntary placement of persons for mental health treatment such as Florida's Baker Act proceedings. *Id.* at 339. In *J.W.*, the court relied upon the United States Supreme Court's statement in *Parham v. J.R.*, 442 U.S. 584, 99 S.Ct. 2493, 61 L.E.d.2d 101 (1979): "It is not disputed that a child, in common with adults, has a substantial liberty interest in not being confined unnecessarily for medical treatment...." *J.W.* at 339-340 (citing *M.W. v. Davis*, 756 So.2d 90, 97 (Fla. 2000)). Based upon the substantial liberty interest at stake and the fact that similar commitment proceedings require a clear and convincing standard of proof, the *J.W.* court held that, "...the proper standard of proof in proceedings for the involuntary commitment of a dependent child to a residential mental health treatment facility is clear and convincing evidence." *Id.* at 340.

The GAL believes the reasoning of the *J.W.* court is sound and should be incorporated into Rule 8.350. A clear and convincing standard of proof will help to ensure that the child's legal interests are protected and an outcome consistent with the child's best interest is reached. Dependent children in need of mental health treatment are some of the most fragile children in the dependency system and their cases must be handled with the utmost care and consideration.

In addition, incorporating subsection (d) into the rule would harmonize the structure of the dependency rules. The standard of proof in other types of dependency hearings, such as dependency and termination of parental rights

adjudicatory hearings, is detailed in the Florida Rules of Juvenile Procedure. *See* Fla. R. Juv. P. 8.330 (a) and Fla. R. Juv. P. 8.525 (a).

Respectfully submitted,

Dennis Moore
Florida Bar No. 0273340
General Counsel
Statewide Guardian ad Litem Office
Guardian ad Litem Program
The Holland Building
600 S. Calhoun Street, Suite 154
Tallahassee, FL 32399-0979
Phone: (850) 922-7213
Fax: (850) 922-7211
Dennis.moore@gal.fl.gov

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent this ____ day of April, 2006 by U.S. Mail to the following: Alan Abromowitz, Esq., Committee Chair, Florida Bar Juvenile Rules Committee, 210 N. Palmetto Avenue, Suite 440, Daytona Beach, Florida 32114-3269.

Dennis Moore