

IN THE SUPREME COURT OF FLORIDA

IN RE AMENDMENTS TO THE FLORIDA RULES OF JUVENILE PROCEDURE

CASE NO.: SC13-

2013 LEGISLATIVE AMENDMENTS TO THE FLORIDA RULES OF JUVENILE PROCEDURE

Whitney M. Untiedt, Chair, Juvenile Court Rules Committee, and John F. Harkness, Jr., Executive Director, The Florida Bar, file this out-of-cycle report under *Fla. R. Jud. Admin.* 2.140(e). A May 20, 2013, letter from Thomas D. Hall, Clerk, Florida Supreme Court, (see Appendix K), provided a chart of legislation that might affect court rules. The Committee has reviewed this chart and other legislation passed during the 2013 session and has amended the Florida Rules of Juvenile Procedure to conform to statutory changes. The proposed amendments are provided in the full-page format (see Appendix B), and the two-column format (see Appendix C). The voting records for the Committee and the Board of Governors are found in Appendix A.

Rule 8.060. *Rule 8.060(a)(2)(A)(i)(g)* has been amended to delete reference to the standard for expert witness testimony set forth in *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923). This conforms the rule to Chapter 2013-107, Laws of Florida, (see Appendix D), which adopted the standard in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), for expert witness testimony in Florida courts.

Rule 8.095. Multiple subdivisions of this rule have been amended to replace “mentally retarded” with “intellectually disabled.” This change conforms the rule to Chapter 2013-162, Laws of Florida, (see Appendix E), which replaces “mental retardation” with “intellectual disability” in a number of statutes.

This rule has also been amended to change Department of Children and Family Services to Department of Children and Families. This conforms the rule to section 20.19, Florida Statutes, as amended by section 2, Chapter 2012-84, Laws of Florida (see Appendix F). This change will be made in other rules as they are amended in the future.

Rule 8.135. David Brunell, a staff attorney at the District Court of Appeal, Second District, brought to the Committee’s attention (see Appendix G) that *Fla. R. App. P.* 9.140(h) had been renumbered as *Rule 9.020(i)* in *In re Amendments to*

the Florida Rules of Civil Procedure, the Florida Rules of Judicial Administration, the Florida Rules of Criminal Procedure, the Florida Probate Rules, the Florida Small Claims Rules, the Florida Rules of Juvenile Procedure, the Florida Rules of Appellate Procedure, and the Florida Family Law Rules of Procedure — Electronic Filing, 102 So. 3d 451 (Fla. 2012). Rule 8.135(b)(1)(A) has been amended to correct the cross-reference to the appellate rule. Although this amendment is not a legislative amendment, the Committee believed that it would be helpful to practitioners to make the correction now, rather than waiting for the Committee's next three-year cycle in 2015.

Rule 8.255. This amendment creates a new subdivision (i), requiring that at any hearing at which it is determined that reunification is not a viable alternative, and before commencement of proceedings for termination of parental rights, that the parents be advised of the availability of private placement of the child with an adoption entity under Chapter 63, Florida Statutes. This conforms the rule to section 39.802(4)(d), Florida Statutes, as amended by section 1, Chapter 2012-81, Laws of Florida (see Appendix H).

Rule 8.345. Two new subdivision, (a)(1) and (a)(2), have been added to the rule detailing determinations the court must make before reuniting a child and a parent from whose custody the child has been removed. This conforms the rule to creation of section 39.522(3), Florida Statutes, by section 3 of Chapter 2013-21, Laws of Florida, (see Appendix I) which also details the standards for reunification.

Rule 8.425. New subdivisions (b)(4) and (d)(3) have been created to require notification to parents of the availability of private placement for adoption of a child under chapter 63, Florida Statutes, if the court approves a permanency goal of adoption. This conforms the rule to the addition of section 39.802(4)(d), Florida Statutes, by section 1, Chapter 2012-81, Laws of Florida (see Appendix H). This subdivision requires that the parents in a termination of parental rights proceeding be advised of the alternative of placement of the child for private adoption under Chapter 63, Florida Statutes.

Form 8.947. This form has been amended to include assessment of costs under various statutes. Section 3 of Chapter 2013-112, Laws of Florida (see Appendix J), amended section 985.032, Florida Statutes, to require that a juvenile adjudicated delinquent or who has adjudication withheld be assessed costs of prosecution under section 938.27, Florida Statutes. See § 985.032(1), Fla. Stat. The form has also been amended to add a provision for an indigent child to

perform community service in lieu of paying costs. See § 985.455(1)(d), Fla. Stat., as added by §4, Ch. 2013-122, Laws of Fla.

The form has also been amended in the “GUN CHARGES” section to change the days to be served in secure detention to 15/21. This conforms to section 790.22(9), Florida Statutes.

The Committee respectfully requests that the Court amend the Florida Rules of Juvenile Procedure as outlined in this report.

Respectfully submitted July 29, 2013.

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CERTIFICATE OF COMPLIANCE

I certify that this report was prepared in compliance with the font requirements of *Fla. R. App. P.* 9.120(a)(2).

I certify that these rules and form were read against West's *Florida Rules of Court Volume I— State* (2013) and *In re Amendments to the Florida Rules of Juvenile Procedure*, 38 Fla. L. Weekly S337 (Fla. 2013).

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CERTIFICATE OF SERVICE

I certify that a copy of this report was served by e-mail on David J. Brunell, brunelld@flcourts.org.

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APPENDIX A

VOTING RECORDS

<u>Rule</u>	<u>Committee</u>	<u>Board of Governors</u>
Rule 8.060, Discovery	21-0-1	40-0
Rule 8.095, Procedure When Child Believed to be Incompetent or Insane	23-0-1	40-0
Rule 8.135, Correction of Disposition or Commitment Orders	20-0-0	40-0
Rule 8.255, General Provisions For Hearings	18-1-5	40-0
Rule 8.345, Post-Disposition Relief	23-0-0	40-0
Rule 8.425, Permanency Hearings	19-1-4	40-0
Form 8.947, Disposition Order — Delinquency	22-1-1	40-0