

IN THE SUPREME COURT OF FLORIDA

IN RE:

Case No. SC18-1554

AMENDMENTS TO THE FLORIDA  
RULES OF JUDICIAL ADMINISTRATION –  
PARENTAL LEAVE.

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**THE GUARDIAN AD LITEM PROGRAM’S COMMENTS  
REGARDING AMENDMENTS TO THE FLORIDA  
RULES OF JUDICIAL ADMINISTRATION – PARENTAL LEAVE**

The Florida Guardian ad Litem Program (“GAL”) submits these comments on the Joint Out-of-Cycle Report, filed by the Rules of Judicial Administration Committee (“RJAC”), on September 14, 2018. The GAL Program is the state organization statutorily charged with representing Florida’s abused, abandoned and neglected children. §§ 39.820(1), 39.822, 39.8296, Fla. Stat. (2017). There are currently over 32,000 children under the jurisdiction of Florida’s dependency courts. In fiscal year 2014-2015 there were 1,428 children involved in both delinquency and dependency proceedings. The GAL is appointed to represent the vast majority of these children.

The GAL is not offering general opposition to the proposed rule. However, because the Legislature has expressly prescribed the requirements related to time limitations and continuances in abuse and neglect proceedings and designated these matters as a right of the child, the Court should not approve a rule of court

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that will be in conflict with both the child's rights and the Legislature's sound public policy in these proceedings. As such, the GAL joins the Juvenile Court Rules Committee ("JCRC"), in requesting this Court not adopt the proposed rule as drafted. If the Court decides to adopt the proposed rule, the GAL requests the Court include the revision suggested by the JCRC in its comment provided to the RJAC on August 15, 2018, and exempt juvenile proceedings from the proposed rule's requirements. Appendix to RJAC Report pgs. 35-39.

## **I. Background**

The RJAC report contains draft rule 2.570, Parental-Leave Continuance.

The proposed rule provides:

Unless substantial prejudice is demonstrated by another party, a motion for continuance based on the parental leave of a lead attorney in a case must be granted if made within a reasonable time after the later of:

- a. the movant learning of the basis for the continuance; or
- b. the setting of the proceeding for which the continuance is sought.

Three months is the presumptive maximum length of a parental leave continuance absent a showing of good cause that a longer time is appropriate. If the motion for continuance is challenged by another party that makes a prima facie demonstration of substantial prejudice, the burden shifts to the movant to demonstrate that the prejudice caused by denying the continuance exceeds the burden that would be caused to the objecting party if the continuance were to be granted. The court shall enter a written order setting forth its ruling on the motion and, if

the court denies the requested continuance, the specific grounds for denial shall be set forth in the order.

Pursuant to its terms, the proposed rule would require courts to grant continuances sought by counsel in connection with the birth or adoption of lead counsel's child in any proceeding, unless another party can demonstrate substantial prejudice. Even if substantial prejudice is demonstrated, the continuance will still be granted if the prejudice to the movant exceeds the burden caused to the objecting party.

**II. Time Limitations are the Right of the Child in Dependency Proceedings Based on the Strong Public Policy of Preventing Developmental Harm to Children.**

This Court, the Legislature and the federal government recognize the need to move children from foster care to a permanent living situation as soon as possible. In *S.M. v. Fla. Dep't of Children & Families*, 202 So. 3d 769, 781 (Fla. 2016), this court summed up this point as follows:

The Legislature has also made clear that "[t]ime is of the essence" in providing permanency for children requiring that, if possible, children should be placed in a permanent living situation within one year of coming into care. § 39.621(1), Fla. Stat. Timeliness is also mandated by the federal government. *See* 42 U.S.C. § 671(a)(15)(C) (2015) (requiring that reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan); *see also* 42 U.S.C. § 675(5)(C) (2015) (requiring a permanency hearing to be held, no later than twelve months after the date the child is considered to have entered foster care).

*Id.*

The United States Supreme Court has echoed this sentiment, stating “[t]here is little that can be as detrimental to a child's sound development as uncertainty over whether he is to remain in his current ‘home,’ under the care of his parents or foster parents, especially when such uncertainty is prolonged.” *Lehman v. Lycoming County Children's Servs. Agency*, 458 U.S. 502, 513-514 (1982).

This is why “there is a strong policy incentive in achieving permanency for children in care as quickly as possible.” *S.M.* at 782. This policy has been repeatedly made clear by the Legislature, which mandated that “time is of the essence for establishing permanency for a child in the dependency system.” §39.0136(1), Fla. Stat. (2018), *see also*, §§§ 39.621(1), 39.402(14)(e), and 39.806(1)(e)2., Fla. Stat. (2018). Section 39.0136(1), established the time limitations as the right of the child in dependency proceedings.

The Legislature implemented this policy by expressly limiting the conditions for granting continuances in dependency proceedings. Specifically, section 39.0136(1), provides that “[t]ime limitations are a right of the child which may not be waived, extended, or continued at the request of any party except as provided in this section.” Pursuant to the statute continuances will only be granted if requested by the child or the child’s representative, due to the unavailability of evidence, to allow a party additional time to prepare the case if justified by exceptional

circumstances or reasonable periods of delay to perfect required notice of hearings. *See*, §§ 39.0136(1)(a),(b) and (c), Fla. Stat. (2018).

However, even when such continuances are requested the Legislature has established strict conditions under which they may be granted. For example, irrespective of the nature of the request the court must consider the best interest of the child when determining whether to grant the delay. §39.0136(1)(a), Fla. Stat. (2018). If the request is made due to unavailability of evidence, the continuance will only be granted if the evidence will be available within 30 days. §39.0136(1)(b)1., Fla. Stat. (2018). If the requesting party is not prepared to proceed in 30 days any party may move for the issuance of an order to show cause or the court on its own motion may impose sanctions including dismissal of the petition. *Id.* In addition, the statute limits the length of all continuances to 60 days and specifies that any such continuance should only be granted to preserve the constitutional rights of a party or protect the best interests of the child. §§39.0136(3)(4), Fla. Stat. (2018). As such, the Legislature has appropriately limited the traditional judicial discretion related to the granting of continuances in these matters. This limitation is based upon sound public policy associated with the care of abused and neglected children under state protection and the rights established for the child which is the subject of the proceedings. The proposed rule

is in conflict with the general law and would countermand the strong public policy which forms the basis for the limitations established by the law.

### **III. DEPENDENCY PROCEEDINGS SHOULD BE EXEMPTED FROM THE REQUIREMENTS OF PROPOSED RULE 2.570.**

The GAL does not take issue with the public policy reasons supporting the need for family leave as articulated by the minority within the Report. However, the GAL does not believe those reasons are sufficient to override the requirement that all abused, abandoned and neglected children in Florida's dependency system receive timely permanency within twelve months from the time they are removed from their parents' care. The proposed rule conflicts with the requirements of section 39.0136, or at the very least will likely create confusion that will result in additional delays in dependency proceedings. Therefore, the GAL is asking the Court to revise the proposed rule in order to exempt dependency proceedings from the proposed rules' requirements.

Although substantial prejudice is not defined within the proposed rule hopefully the majority, if not all, judges would find that a delay substantially prejudices the child in dependency proceedings based upon the statutory right described above. However, that finding would not assure the motion would be denied. Pursuant to the proposed rules committee notes, "a continuance or stay may be denied in the sound discretion of the court where there would be

substantial prejudice to another party, where an emergency or time-sensitive matter would be unreasonably delayed....”

Based upon this note, an additional finding must be made in time-sensitive matters such as dependency proceedings before the court can deny a motion to continue the proceedings: that there would be unreasonable delay. As with the phrase “substantial compliance,” there is no definition of the term, nor is there any note to provide guidance on what would be unreasonable. Of course, even if unreasonable delay is demonstrated, it is still within the sound discretion of the court to grant or deny the continuance pursuant to the proposed rule. Taken as a whole, it is at least an open question whether continuances would be granted in contravention of section 39.0136’s requirements.

Further, under the proposed rule’s procedure the GAL will be in the position of having to file a response to the request for continuance to attempt to demonstrate “substantial prejudice.” The situation is exacerbated by the fact that the Department of Children and Families and any attorney ad litem appointed to the child[ren] may also have to file an objection. The workload associated with this for the parties, the judge, and the clerk will take time away from other proceedings that move children toward permanency. Any procedure that works against timely permanency and conflicts with section 39.0136, should be rejected.

**IV. CHILDREN SUBJECT TO DELINQUENCY PROCEEDINGS SHOULD BE EXEMPTED FROM THE REQUIREMENTS OF PROPOSED RULE 2.570.**

While the primary focus of the GAL is the children under the jurisdiction of dependency courts, there are also a significant number of these children that are the subjects of delinquency proceedings. These children, commonly referred to as “cross-over kids,” also require expedient judicial process in order to safe guard their due process rights in the delinquency proceedings as well as to expedite permanency in the dependency matter. The GAL adopts the position of the JCRC discussed on pages 2-3 of its comment on this point. *See*, Appendix to RJAC Report, pgs. 36-37.

Respectfully Submitted,

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Comment was sent this 15th day of November, 2018 by email service to the following: Committee Chair, **Eduardo I. Sanchez, Esq.**, United States Attorney's Office, 99 N.E. 4<sup>th</sup> Street, Suite 800, Miami, Florida 33132 ([eduardo.i.sanchez@usoj.gov](mailto:eduardo.i.sanchez@usoj.gov)); and Bar Staff Liaison to the Committee, **Krys Godwin, Esq.**, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399 ([kgodwin@floridabar.org](mailto:kgodwin@floridabar.org)).

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