

IN THE SUPREME COURT OF FLORIDA

IN RE:

Case No. SC18-1554

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

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

The Florida Guardian ad Litem Program (“GAL”) submits these comments on the amended proposed Rule 2.570, Rules of Judicial Administration, Parental-Leave Continuances, published in March of 2019. In dependency court, judges are faced with the difficult task of managing large dockets consisting of cases that must be resolved within short time frames imposed by general law for the benefit of child abuse victims. Under the best of circumstances courts struggle to comply with these time frames, and this Court has repeatedly recognized the need to find appropriate homes for children and close jurisdiction of the dependency proceedings as soon as possible.

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As stated in our previous comment, the GAL does not take issue with the concept of parental leave. The GAL acknowledges the work of the Rules of Judicial Administration Committee (RJAC) and the proponents' of the proposed rule sincere attempt to address our concerns. However, because the proposed rule is at odds with the statute governing continuances in dependency proceedings, even with the proposed change it is likely the proposed rule will still result in additional delays not authorized by substantive law. In addition, the lead attorney concept is not currently utilized in dependency proceedings, and the interjection of this concept will result in logistical problems for courts attempting to accommodate lawyers working for government organizations and private attorneys with high caseloads which require flexibility for court coverage. This will serve to add to the delays in resolving the proceedings. As such, the GAL is compelled to oppose the proposed rule.

I. THE AMENDED RULE WILL LIKELY RESULT IN UNAUTHORIZED DELAYS IN DEPENDENCY PROCEEDINGS.

In response to the concerns raised by the GAL as well as others opposing the proposed rule, the RJAC amended the proposed rule to include subparagraph (b) which contains the following language:

(b) In a case governed by the Florida Rules of Criminal Procedure, by the Florida Rules of Juvenile Procedure, or by the Florida Rules of Civil Procedure for Involuntary Commitment of Sexually Violent Predators, a motion for continuance based on the parental leave of a lead attorney is governed by rule 2.545(e) and by any applicable Florida Rule of Criminal Procedure, Florida Rule of Juvenile Procedure, or Florida Rule of Civil Procedure for Involuntary Commitment of Sexually Violent Predators, rather than by this rule, except that in a case governed by Part III of the Florida Rules of Juvenile Procedure, a motion for continuance based on the parental leave of a lead attorney is governed by Florida Rule of Juvenile Procedure 8.240(d). The court should exercise any discretion available to it to reasonably accommodate a request for parental leave within the procedural, statutory, and constitutional constraints applicable to proceedings governed by this subdivision.

The language of the amendment indicates that motions made by lead attorneys requesting parental leave in cases governed by Part III of the Florida Rules of Juvenile Procedure will be governed by rule 8.240(d).¹ At first blush, this language appears to exempt dependency proceedings from the requirements of the rule. Nevertheless, based upon the last sentence of the amendment, judges will be compelled to grant as much time as possible for this express purpose because the rule instructs the court that it “...should exercise any discretion available to it to reasonably accommodate a request for parental leave.”

¹ Part III of the Florida Rules of Juvenile Procedure governs dependency proceedings.

As discussed in the GAL's previous comment, "there is a strong policy incentive in achieving permanency for children in care as quickly as possible." *S.M. v. Dep't of Child. & Fams.*, 202 So. 3d 769, 782 (Fla. 2016). 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), establishes the time limitations as the right of the child in dependency proceedings. In support of this right, the Legislature has limited continuances for any purpose in dependency proceedings to 60 days within a 12 month period. When such continuances are requested, there are specific conditions under which they may be granted. The statute 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) and (4), Fla. Stat. (2018). The Rules of Juvenile Procedure currently echo these requirements and require a showing of good cause before any enlargement of time in dependency proceedings. *See*, Rules 8.240(b) and (d), Fla.R.Juv.P. Irrespective of the nature of the request the court must consider the best interest of the child who is the subject of the dependency proceedings when determining whether to grant the delay. §39.0136(1)(a), Fla. Stat. (2018). It is for

this reason the proposed amendment will be confusing to courts as it is at odds with the strict requirements imposed by general law.

As time limitations are established as a right of the child, this area of the law is substantive and not procedural. *See, Haven Fed. Sav. & Loan Ass'n v. Kirian*, 579 So. 2d 730, 732 (Fla. 1991) (quoting *In re Fla. Rules of Crim. Pro.*, 272 So. 2d 65, 66 (Fla. 1972) (Adkins, J., concurring)). As such, the Court should not adopt a rule that will expand the authorized reasons for continuances established by the Legislature.

II. THE RULES OF PROCEDURE IN DEPENDENCY CASES SHOULD REMAIN SELF-CONTAINED.

As far back as 1992, this Court took steps to separate the Rules of Juvenile Procedure from other rules by eliminating rule 8.200, which used to provide “[w]here the rules are silent, the parties are to refer to the Florida Rules of Civil Procedure.” *See In re Amendments to the Florida Rules of Juvenile Procedure*, 608 So. 2d 478 (Fla. 1982). In doing so, this “Court also added this language to the committee notes to rule 8.000: ‘Reference to the civil rules, previously found in rule 8.200, has been removed because the rules governing dependency and termination of parental rights proceedings are self-contained and no longer need to reference the Florida Rules of Civil Procedure.’” *Dep’t of Child. & Fams. v. K.D.*, 84 So. 3d 1120, 1122 (Fla. 5th DCA 2012).

Rule 8.240 represents the type of “more refined rule” tailored to the needs of this specific practice area. *Cf., In re Amendments to the Fla. Rules of Judicial Admin.*, 225 So. 3d 220, 221-222, (Fla. 2016). The legislative policy behind the statute, and accordingly the rule which was adopted to follow the statute, should not be diluted by the enactment of the proposed rule. The GAL submits this Court should continue this separation of the Rules of Juvenile Procedure. If a parental leave rule is adopted, to the extent necessary, rule 8.240 could be amended to reference the administrative rule and thereby remain self-contained. *See, e.g., Fla. R. Juv. P. 8.240(a)* (regarding computation of time).

III. THE LEAD ATTORNEY CONCEPT IS NOT WORKABLE IN DEPENDENCY PROCEEDINGS.

In addition, the amended rule specifies that “...a motion for continuance based on the parental leave of a lead attorney is governed by Florida Rule of Juvenile Procedure 8.240(d).” [amended rule 2.505(b)]. The “lead attorney” concept poses potential unintended consequences when attempting to implement it in dependency proceedings. The GAL’s concerns in this regard were previously expressed in its comments to proposed AMENDMENTS TO THE FLORIDA RULES OF JUDICIAL ADMINISTRATION, FLORIDA RULE OF CRIMINAL PROCEDURE 3.010, AND FLORIDA RULE OF APPELLATE PROCEDURE 9.440. Case Number: SC16-1062.

In that case, this Court considered amendments to court rules that modified how counsel appear in cases. *In re Amendments to the Fla. Rules of Judicial Admin.*, 225 So. 3d 220, 221 (Fla. 2016). In rejecting the proposed rules, this Court noted: “[e]ach type of representation has its own rules for appearance and termination of appearance in a case.” *Id.* The Court held:

While the attempt to develop one body of comprehensive rules that classifies different types of representation and governs how attorneys appear and terminate an appearance in a case is laudable, we believe more refined rules that address these matters for each of the various practice areas should be considered; and there should be more active involvement of and communication between all the affected rules committees before new proposals are finalized.

In re Amendments to the Fla. Rules of Judicial Admin., 225 So. 3d 220, 221-222, (Fla. 2016).

The GAL is faced with concerns similar to those voiced in 2016. Specifically, that implementing the proposed rules would negatively impact the time to permanency for children in dependency proceedings. Under the current version of the proposed Parental-Leave Continuance rule, a lead attorney may file a motion requesting a continuance in the dependency proceeding. In this instance, there is no definition of what would constitute a “lead attorney,” and there is no limitation related to a specific party. In dependency cases the GAL, Department of Children and Families (DCF), Criminal Conflict, Civil Regional Counsel (CCCRC) and private attorneys appointed pursuant to court registries that

represent both parents and children have large caseloads and utilize flexibility related to court coverage in order to comply with the strict time frames associated with dependency proceedings. From a practical point of view, if the proposed rule is implemented, attorneys for each of these organizations and private registry attorneys may request parental leave and courts will feel compelled to grant as much as possible under the directive currently incorporated in the rule. Even if courts adhere to the 60 day requirement, the proceedings will be delayed in addition to the other authorized reasons for enlargement of time. Just from the GAL perspective, GAL attorneys have caseloads in some instances as high as 125 to 150 cases per attorney. Imposing a requirement on courts to manage continuances in that many cases would pose a significant logistical problem. However, when the DCF, CCCRC, and registry attorneys are considered, the logistical situation becomes unworkable. For example, in rural locations there may only be one attorney for some of these organizations. In those locations the court may need to continue the entire dependency docket for as long as possible to accommodate an attorney's request. As such, attempting to apply this concept in dependency proceedings will only result in more confusion and additional delays in resolving these cases and moving the children to permanent homes.

IV. CONCLUSION

For the forgoing reasons the GAL must oppose the adoption of the amended rule in dependency proceedings.

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 1st day of April, 2019 by email service to the following: Committee Chair, **Eduardo I. Sanchez, Esq.**, United States Attorney's Office, 99 N.E. 4th Street, Suite 800, Miami, Florida 33132 (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).

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