

IN THE SUPREME COURT OF FLORIDA

**IN RE: AMENDMENTS TO THE FLORIDA
RULES OF JUVENILE PROCEDURE—2018
REGULAR-CYCLE REPORT**

CASE NO: 18-174

**COMMENT FROM THE CIVIL PROCEDURE RULES COMMITTEE
REGARDING FLORIDA RULE OF JUVENILE PROCEDURE 8.255(e)**

Honorable Rodolfo Armando Ruiz II, Chair of the Civil Procedure Rules Committee, and Joshua E. Doyle, Executive Director of the Florida Bar, on behalf of the Civil Procedure Rules Committee (“CPRC”), file this comment regarding proposed amendments to Florida Rule of Juvenile Procedure 8.255(e). The comment was approved by the CPRC by a vote of 34-0.

The CPRC has reviewed the proposed amendments by the Juvenile Court Rules Committee (“JCRC”) to Florida Rule of Juvenile Procedure 8.255, and respectfully provides the following comments. The JCRC seeks to add subdivision (e), titled “Taking Testimony,” which will allow testimony of a witness via communications equipment. The CPRC commends the work of the JCRC and its efforts to provide for the use of contemporaneous audio and audiovisual communication equipment in connection with the taking of live testimony from a remote witness during a hearing or trial. The CPRC similarly plans to submit its own out-of-cycle amendments to Rules 1.310 and 1.451 of the Florida Rules of Civil Procedure that address the use of communication equipment during depositions, hearings, and trials, as well as the circumstances under which an oath can be administered to a witness remotely via communication equipment. (See Appendix A, which contains proposed amendments to Rules 1.310 and 1.451 approved by the CPRC, but not yet approved by the Board of Governors.)

The amendments proposed by the CPRC in this regard are not as far reaching as those of the JCRC, and the CPRC amendments distinguish between audio communication equipment and audiovisual communication equipment, which Rule 8.255 fails to do. When using audio communication equipment, the proposed CPRC rules require that the oath be administered by a person “physically present” with the witness to ensure that the identity of the witness can be confirmed by the individual administering the oath. On the other hand, when using audiovisual communication equipment, the proposed CPRC rules provide that the oath can be administered remotely via video conference or other comparable

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audiovisual communication equipment because the identity of the witness can be confirmed by the individual administering the oath. Whether using audiovisual or audio communication equipment, the CPRC proposes that the person administering the oath must be qualified to administer oaths in the jurisdiction where the witness is physically located, and the oath must be administered consistent with the laws of that jurisdiction. The proposed Rule 8.255 does not make that important distinction. The CPRC is concerned with the language in Rule 8.255(e)(4) that allows the oath to be administered by the Court using communication equipment when the parties waive the requirement that the oath be administered by a notary public or other person authorized to administer oaths in the witness's jurisdiction "because there is no question as to the identity of the witness." It is unclear who is to make the determination that there is no question as to the identity of the witness; is it the parties, the Court, or both? It is also unclear whether the identity of a witness can ever be established with such certainty.

The CPRC is also concerned that Rule 8.255 may be in conflict with the Rules of Judicial Administration. The CPRC is working collaboratively with the Rules of Judicial Administration Committee ("RJAC") to: (i) ensure that the proposed amendments to Rules 1.310 and 1.451 are consistent with Rule 2.530 of the Florida Rules of Judicial Administration – which defines and addresses the use of communication equipment during hearings and trials; and (ii) suggest amendments to Rule 2.530 that expand its definition of communications equipment to include audiovisual communications equipment, and provide when an oath can be administered remotely via audiovisual equipment. Therefore, the CPRC urges that the JCRC consider the interplay of Rule 2.530 with their proposed amendments to Rule 8.255.

Respectfully submitted on April 2, 2018.

/s/ Honorable Rodolfo Armando Ruiz

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was furnished by e-mail, via the Florida Courts E-filing Portal, on April 2, 2018, to:

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CERTIFICATE OF COMPLIANCE

I certify that this comment was prepared in compliance with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

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