

IN THE SUPREME COURT OF FLORIDA

**IN RE: AMENDMENTS TO
FLORIDA RULES OF JUVENILE
PROCEDURE- 2021 LEGISLATION**

CASE NO.: SC21-

**FAST-TRACK REPORT OF THE
JUVENILE COURT RULES COMMITTEE**

Candice Kaye Brower, Chair of the Juvenile Court Rules Committee (“Committee”), and Joshua E. Doyle, Executive Director of The Florida Bar, file this fast-track report, under Florida Rule of General Practice and Judicial Administration 2.140(e).

All rule amendments have been approved by the full Committee by a vote of 24-2-4 and, as required by Rule 2.140(e), The Florida Bar Board of Governors recommends the amendments’ acceptance by vote of 34-0. Also, pursuant to Rule 2.140(e), the amendments have not been published for comment prior to the filing of this report.

The Committee proposes amendments to the following Florida Rules of Juvenile Procedure: Rule 8.217 (Attorney Ad Litem/Attorney for the Child), Rule 8.305 (Shelter Petition, Hearing, and Order), Rule 8.345 (Post-Disposition Relief), 8.415 (Judicial Review of Dependency Cases), Rule 8.540 (Motion to Reinstate Parental Rights), Form 8.973A (Order on Judicial Review for Child Age 16), and Form 8.973AB (Order on Judicial Review for Child Age 17 or Older).

The amendments address changes in statutes adopted in Chapter 2021-169, Laws of Florida, where are effective October 1, 2021. (See Appendix C.) The rule amendments are shown in Appendix A (full page) and Appendix B (two-column). For the court’s convenience, a publication summary is provided as Appendix D.

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PROPOSED RULE AMENDMENTS

RULE 8.217. ATTORNEY AD LITEM/ATTORNEY FOR THE CHILD

The Committee proposes amending Florida Rule of Juvenile Procedure 8.217 to address legislative changes to section 39.522(3)(c)4.b., Florida Statutes, as amended by section 10, Chapter 2021-169, Laws of Florida.

The legislative changes to section 39.522(3)(c)4.b. require an attorney for the child to be appointed if a caregiver provides notice of their objection to the change of the physical custody placement of the child.

In response to this legislative change, and to conform with it, the Committee proposes adding “attorney for the child” to the title of Rule 8.217 to make the rule more expansive as “attorney for the child” is a related term but not legally the same as “attorney ad litem” and both terms are used throughout the statutes. Also, in subdivision (b), the Committee recommends adding a sentence that specifies that the court must appoint an attorney for a child who is the subject of a motion to modify custody. In subdivision (d), the Committee purposes adding a “y” to “An”, deleting “ad litem”, and adding “appointed under this rule” for greater clarity for the reader. Last, the Committee recommends adding a Committee Note to specify the statute amendment that required this rule amendment.

RULE 8.305. SHELTER PETITION, HEARING, AND ORDER

The Committee proposes amending Florida Rule of Juvenile Procedure 8.305 to address legislative changes that adopts a new statute, section 39.4021, Florida Statutes, as enacted by section 5, Chapter 2021-169, Laws of Florida, and section 39.4024(4)(b), as added by section 9, Chapter 2021-169, Laws of Florida.

Section 39.4021, Florida Statutes, provides for a priority of out-of-home placements that include fictive kin and non-relatives.

Section 39.4024(4)(b) requires the court to make a finding on whether there are any services that would ameliorate the risk to the child's safety or well-being if the court finds that contact between the child and the child's siblings is contrary to the safety or well-being of the child.

In response to these legislative changes, and to conform with them, the Committee proposes in subdivision (b)(10) adding “, fictive kin, or nonrelatives” three times to include the other priority placement options for the child. Also, the Committee proposes adding a new subdivision (c)(3) that requires the shelter order to make a finding regarding the reasonable efforts to place the child in order of priority specified in the statute or why such placement is not a placement option or not in the child's best interest. As well, the Committee proposes that the subsequent subdivisions after new subdivision (c)(3) be renumbered to accommodate the new subdivision. In renumbered subdivision (c)(5), the Committee suggests replacing “recommended” with “ordered” and adding a phrase regarding the requirement of the court to make a finding of whether services are available to ameliorate the risk to the children's safety when sibling visitation is not ordered. Last, the Committee recommends a Committee Note to specify the statute amendment that required this rule amendment.

RULE 8.345. POST-DISPOSITION RELIEF

The Committee proposes amending Florida Rule of Juvenile Procedure 8.345 to address legislative changes to section 39.522, Florida Statutes, as amended by section 10, Chapter 2021-169, Laws of Florida.

The legislative changes to section 39.522 allow for any party or current caregiver to object to the change of custody placement, modifies the factors the court must consider when changing the custody placement of a child, and creates a new rebuttable presumption that it is in the child's best interests to remain permanently in his or her current placement when certain conditions are met.

In subdivision (a), the Committee proposes replacing “shall” with “must” in the third sentence for consistency with *In re Guidelines for Rules Submissions*, AOSC06-14 (Fla. 2006). In response to the legislative changes, and to conform with them, the Committee recommends that in subdivision (a), deleting the second sentence in the subdivision and replacing with a sentence which tracks the language in the statute regarding a hearing on a modification of placement. As well, the Committee proposes that the next sentence be modified to address who may object to the modification of placement.

In subdivision (b)(1), the Committee proposes replacing “shall” with “must” for consistency with *In re Guidelines for Rules Submissions*, AOSC06-14 (Fla. 2006). In response to the legislative changes, and to conform with them, the Committee recommends that in subdivision (b)(1), adding “as provided by law” because the factors the court must considered are listed in the new statutory changes and do not need to be repeated in the rule. Similarly, in the second sentence, the Committee proposes adding a phrase regarding the best interests standards being provided by law. Last in this subdivision, the Committee recommends deleting the current standard for changing custody and the subsequent factors listed as the factors are in the new statute and do not need to be repeated in the rule.

The Committee recommends adding a new subdivision (b)(2) to address the new rebuttable presumption created by section 39.522(3)(b)1. Proposed subdivision (b)(2)(A) specifies the rebuttable presumption now provided by law. Proposed subdivision (b)(2)(B) specifies how the caregiver must notify the court of their objection to the department’s change in physical custody. Proposed subdivision (b)(2)(C) specifies what must happen at the initial case status hearing. Proposed subdivision (b)(2)(D) specifies when the court must conduct the hearing and provide the written order on the change of custody. In addition, the Committee proposes renumbering the subsequent subdivision to accommodate the new subdivision (b)(2). Last, the Committee recommends a Committee

Note to specify the statute amendment that required this rule amendment.

RULE 8.415. JUDICIAL REVIEW OF DEPENDENCY CASES

The Committee proposes amending Florida Rule of Juvenile Procedure 8.415 to address legislative changes to section 39.701(3), Florida Statutes, as amended by section 13, Chapter 2021-169, Laws of Florida.

The legislative changes to section 39.701(3) require an additional judicial review when the dependent child turns 16 years old.

In response to these legislative changes, and to conform with them, the Committee proposes adding a new subdivision (b)(3) that provides the requirements of a 16-year-old judicial review. Also, the Committee proposes renumbering the subsequent subdivisions to accommodate the new subdivision (b)(3). Last, the Committee recommends a Committee Note to specify the statute amendment that required this rule amendment.

RULE 8.540. MOTION TO REINSTATE PARENTAL RIGHTS

The Committee proposes adding new Florida Rule of Juvenile Procedure 8.540 to address new section 39.8155, Florida Statutes, as created by section 15, Chapter 2021-169, Laws of Florida.

The legislative changes to section 39.8155, Florida Statutes, allow a parent whose rights have been terminated to petition the court for their parental rights to be reinstated.

In response to the new statute, and to conform with it, the Committee proposes new rule 8.540. Subdivision (a) specifies how the proceeding would be initiated. Proposed subdivision (b)(1) provides the requirements of the notice of hearing on the initial evidentiary hearing on the motion to reinstate parental rights. Proposed subdivision (b)(2) specifies that the movant has the burden of proof and presentation of evidence. Proposed subdivision (b)(3) specifies the court must use the clear and convincing

standard in determining whether the criteria as been met by the movant. Proposed subdivision (c) specifies the manner of the trial home visits and subsequent reports and notifications that must be completed by the department if the court grants the motion. Proposed subdivision (d) specifies how the final evidential hearing should be conducted. Proposed subdivision (e) specifies the court retention of jurisdiction when the court reinstates parental rights. Last, the Committee recommends a Committee Note to specify the statute amendment that required this rule creation.

FORM 8.973A. ORDER ON JUDICIAL REVIEW FOR CHILD AGE 16

The Committee proposes adding a new Florida Rule of Juvenile Procedure 8.973A to address legislative changes to section 39.701(3), Florida Statutes, as amended by section 13, Chapter 2021-169, Laws of Florida.

The legislative changes to section 39.701(3) require an additional judicial review when the dependent child turns 16 years old.

In response to these legislative changes, and to conform with them, the Committee proposes a new form order to be used at the judicial review of the 16 year old child.

FORM 8.973AB. ORDER ON JUDICIAL REVIEW FOR CHILD AGE 17 OR OLDER

The Committee proposes renumbering Florida Rule of Juvenile Procedure 8.973A to 8.973B to address legislative changes to section 39.701(3), Florida Statutes, as amended by section 13, Chapter 2021-169, Laws of Florida.

The legislative changes to section 39.701(3) modify the matters that the court is to review at the judicial review held after a child turns 17 years old because the court must now hold an additional judicial review when the dependent child turns 16 years old.

In response to these legislative changes, and to conform with them, the Committee proposes renumbering the 17-year-old judicial review order to accommodate the new 16-year-old judicial review order and modifying the list of materials the court is to consider.

WHEREFORE, for the reasons described above, the Juvenile Court Rules Committee respectfully requests that the Court amend the following Florida Rules of Juvenile Procedure: Rule 8.217 (Attorney Ad Litem/Attorney for the Child), Rule 8.305 (Shelter Petition, Hearing, and Order), Rule 8.345 (Post-Disposition Relief), Rule 8.540 (Motion to Reinstate Parental Rights), Form 8.937A (Order on Judicial Review for Child Age 16), and Form 8.973AB (Order on Judicial Review for Child Age 17 or Older).

Respectfully submitted on December 8, 2021.

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CERTIFICATE OF COMPLIANCE

I certify that these rules were read against Thomson Reuters' *Florida Rules of Court—State* (2021 revised Edition). I certify that the report was prepared in compliance with the font requirements of Florida Rule of Appellate Procedure 9.045.

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