IN THE SUPREME COURT OF FLORIDA

IN RE:
REPORT AND RECOMMENDATIONS
OF THE WORKGROUP ON IMPROVED
RESOLUTION OF CIVIL CASES

CASE NO.: SC2022-122

_____/

COMMENT OF THE STATEWIDE GUARDIAN AD LITEM OFFICE

Pursuant to Florida Rule of General Practice and Judicial Administration 2.140(a)(1) and (b)(6), The Florida Statewide Guardian ad Litem Office ("GAL") files this comment to the Final Report of the Judicial Management Council Workgroup on Improved Resolution of Civil Cases ("Final Report") and proposes Florida Rule of Civil Procedure 1.010 be amended to expressly exclude from its scope proceedings in the juvenile division of the circuit court to which the Florida Rules of Juvenile Procedure apply. Since 2019, the Judicial Management Council Workgroup on Improved Resolution of Civil Cases ("JMC Workgroup") has been focused on the goal of amending the civil rules to promote the "fair and timely resolution of all cases." Final Report at 5. Notably, the JMC Workgroup was charged with reviewing initiatives and measures taken in other jurisdictions "to achieve timelier, more cost effective, or otherwise

improved resolution of civil cases" as well as examining rules, practices, and procedures in this state to consider whether "this state's laws and rules sufficiently address and deter . . . presentation of an unsupported claim or defense, and causation of an improper delay in litigation." *Id.* at 6. The GAL contends its proposed amendment to Civil Rule 1.010 would further the JMC Workgroup's goals by clarifying the scope of the Civil Rules in conformity with Juvenile Rule 8.000 and alleviating harm caused by the unnecessarily litigation resulting from improper application of the Civil Rules to chapter 39 matters and inconsistency in the case law.

The Civil Rules currently except proceedings to which the Florida Probate Rules, the Florida Family Law Rules of Procedure, and the Small Claims Rules apply from their reach. Fla. R. Civ. P. 1.010. Civil Rule 1.010's silence regarding juvenile proceedings has resulted in a tension/perceived conflict between it and Juvenile Rule 8.000, which, in 1992, was amended to omit the reference to the Civil Rules that had been added the year previously.

Exclusive application of the Juvenile Rules to dependency proceedings is part of a carefully crafted statutory and regulatory scheme, consistent with chapter 39, to protect the unique interests

of all parties in dependency cases, especially dependent children, whose best interests are paramount. Deviations from this scheme that occur when the Civil Rules are used to authorize litigants to take actions outside the scope of the Juvenile Rules result in confusion of issues and substantial delays in permanency. Amendment of Civil Rule 1.010 to include the Juvenile Rules to its list of exemptions is consistent with the textual history of Juvenile Rule 8.000, furthers the JMC Workgroup's goal to promote speedy and just resolution of cases, and is necessary to alleviate confusion and resulting harm to children from extended litigation.

I. THE CIVIL RULES DO NOT APPLY TO MATTERS IN THE JUVENILE DIVISION OF THE CIRCUIT COURTS, WHICH ARE GOVERNED EXCLUSIVELY BY THE FLORIDA RULES OF JUVENILE PROCEDURE.

The Florida Rules of Civil Procedure were first promulgated as a complete compilation in 1966. In re Fla. Rules of Civil Proc. 1967 Revision, 187 So. 2d 598, 598 (Fla. 1966). At that time Civil Rule 1.010 provided a broad scope for the application of the Civil Rules to legal proceedings in Florida:

> These rules shall apply to all suits of a civil nature and all special statutory proceedings in the Circuit Courts, County Judge's Courts, County Courts and Civil Courts of Record

> except that the form, content, procedure and time for pleading in all special statutory proceedings shall be as prescribed by the statutes providing for such proceedings unless these rules specifically provide to the contrary."

Id. That broad reach continues today, except, over time, the Rule has been amended to expressly except various proceedings from its scope. Fla. R. Civ. P. 1.010 ("These rules apply to all actions of a civil nature . . . except those to which the Florida Probate Rules, the Florida Family Law Rules of Procedure, or the Small Claims Rules apply."). Matters to which the Florida Rules of Juvenile Procedure apply are not currently expressly excepted from the Civil Rules, and this has led to substantial inconsistency and confusion regarding their application, if any, in juvenile proceedings and delayed permanency for dependent children.

Because of the unique needs of dependent children and the need for a trial court, acting *in loco parentis*, to protect and effectuate the child's best interest in dependency cases, chapter 39 was constructed on the maxim: "'There 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 Cty. Children's Servs. Ag., 458 U.S. 502, 513-14 (1982); *I.T. v. Dep't of Children & Families*, 47 Fla. L. Weekly D539 (Fla. 3d DCA March 2, 2022) (*parens patriae* "necessarily encompasses the child's need to achieve permanency and the correlating harm that results when such permanency is unduly delayed"). To that end, the legislature made timely permanency the lynchpin of dependency proceedings and the guidepost of a child's best interests. *See,* § 39.001(1)(h)-(i), Fla. Stat. (2021); § 39.0136(1), Fla. Stat. (2021) ("time is of the essence for establishing permanency for a child in the dependency system"); § 39.621(1), Fla. Stat. (2021)(noting time is of the essence for permanency of dependent children and a permanency hearing must be held within 12 months of removal); *S.M. v. Fla. Dep't of Children & Families*, 202 So. 3d 769, 782-83 (2016) (explaining children suffer harm when permanency is unduly delayed); *J.B. v. Fla. Dep't of Children & Families*, 170 So. 3d 780, 792 (Fla. 2015) (recognizing children are harmed when permanency is unduly delayed).

This uniquely constructed statutory scheme resulted in trial court proceedings that differ substantially from those found generally in civil practice, both in their focus on a child's best interests and in

the procedure necessary to ensure best interests are protected. Indeed,

> [i]n Florida the circuit judge acting as juvenile judge has succeeded to all of that exceptional common law jurisdiction of courts of chancery to act on the court's own volition to protect the interests of infants. In addition section 39.40(2), Florida Statutes [now, section 39.013(2), Florida Statutes (2021)], explicitly recognizes the continuing jurisdiction of the juvenile court over a child adjudicated to be dependent. The proper exercise of this unusual jurisdiction recognized by the common law and by statute imposes a duty to affirmatively act in the interest of a child in a manner which is abnormal to the usual judicial function of acting only on matters presented by pleadings filed by the parties. Such duties and obligations include protection of the interests and best welfare of the minor children adjudicated by the court to be dependent.

In re Interest of J.S., 444 So. 2d 1148, 1149-50 (Fla. 5th DCA 1984); *see also J.B.,* 170 So. 3d at 798 (Pariente, J. concurring) ("the legislature created a process that while considering a child's right to permanency, provides judicial oversight by a judge who is not merely an unbiased fact-finder but instead actively oversees the proceedings") (internal quotation omitted).

This construction was a calculated choice to balance the competing rights and interests of dependency litigants in the creation

of a statutory structure that gives primacy to permanency and the child's best interests while respecting the fundamental due process rights of parents and interests of the State. *See, e.g.*, *S.M.*, 202 So. 3d 781-82 ("While the Court and the legislature understand the importance of the parent-child bond . . . ultimately, the health, welfare, and safety of the child must be paramount."); *C.J. v. Dep't of Children & Families*, 756 So. 2d 1108, 1109 (Fla. 3d DCA 2000) ("In determining whether a continuance should be granted under the circumstances presented by this case, the trial court must consider two primary concerns. First and foremost is the best interest of the child, which ordinarily requires a permanent placement at the earliest possible time. . . . The second consideration is affording fairness to the parents involved.").

In order to effectuate the legislature's goals, the Civil Rules alone could not provide adequate procedure for dependency cases, and in 1972, this Court promulgated, for the first time, procedural rules regulating matters in the juvenile division of the circuit court. *In re Trans. Rule 11*, 270 So. 2d 715 (Fla. 1972). Final rules were adopted five years later, which provided: "These rules shall govern the procedures in the Circuit Court in the exercise of its jurisdiction

over children alleged to be or adjudicated delinquent, dependent, or ungovernable as defined in the Florida Statutes." *The Fla. Bar*, 345 So. 2d 655, 655 (Fla. 1977).

In 1984, the Juvenile Rules were amended to parse out and develop separate rules for the various types of proceedings heard in the juvenile division of the circuit court. *In re The Fla. Bar to Amend Fla. Rules of Juvenile Proc.*, 462 So. 2d 399, 400 (Fla. 1984). What was then Juvenile Rule 8.500 was created to define the scope of the rules pertaining to dependency matters and provided,

> These rules shall govern the procedures in the Circuit Court in the exercise of its jurisdiction relating to juvenile dependency proceedings.
>
> They are intended to provide a just, speedy, and efficient determination of the procedures covered by them and shall be construed to secure simplicity in procedure and fairness in administration.

Id. at 424. The scope of the Juvenile Rules remained unchanged until 1991, when Rule 8.500 was renumbered and amended to direct that "Where these rules are silent, the parties are to refer to the Florida Rules of Civil Procedure." *In re Petition of The Fla. Bar to Amend the Fla. Rules of Juvenile Procedure*, 589 So. 2d 818, 836 (Fla. 1991).

However, the very next year the Court deleted the language from the 1991 amendment entirely, removing all reference to the Civil Rules from the scope and purpose of the rules governing dependency matters. *In re Amendments to Fla. Rules of Juvenile Proc.*, 608 So. 2d 478, 479 (Fla. 1992). It also elected to include a Committee Note that explained the amendment to the rule, which provided, in part: "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." *Id.* at 480; *see also* Fla. R. Juv. P. 8.000, 1992 comment. Juvenile Rule 8.000 has generally remained unchanged since then, and it continues to include the Committee Note.

Despite the 1992 amendment, the application of Civil Rules in chapter 39 proceedings has proliferated. The plain meaning of Juvenile Rule 8.000 is clear—"These rules shall govern the procedures in the juvenile division of the circuit court in the exercise of its jurisdiction under Florida law." Nothing in that language is ambiguous; it is a succinct, affirmative statement delineating the procedural rule set that applies to all matters in the juvenile division

of the circuit court. Section 39.013, Florida Statutes (2021), confirms "All procedures, including petitions, pleadings, subpoenas, summonses, and hearings, in this chapter shall be conducted according to the Florida Rules of Juvenile Procedure unless otherwise provided by law," as does as the 1992 comment to Juvenile Rule 8.000.

The 1992 comment is instructive on the meaning of Juvenile Rule 8.000, particularly in light of the textual history of the Rule. *In re Amendments to the Rules Regulating the Fla. Bar*, 933 So. 2d 417, 422 (Fla. 2006) ("The comment accompanying each rule explains and illustrates the meaning and purpose of the rule."). Prior to 1991, the Juvenile Rules were silent on the application of the Civil Rules to matters in the juvenile division, at which time this Court adopted amendments which provided explicitly that the Civil Rules would supplement the Juvenile Rules where they were silent. Yet a year later, the Court removed that newly-added language entirely and left the original language to speak for itself, complemented by a comment the Court chose to include, which explained reference to the Civil Rules had been deleted "*because the rules governing dependency and termination of parental rights proceedings are self-contained* and no

longer need to reference the Florida Rules of Procedure." *In re Amend*s, 608 So. 2d at 479-80.

Florida adheres to the supremacy-of-the-text principle, which compels application of a legal text, like statutes and procedural rules, as written. *Advisory Opinion to the Governor Re: Implementation Of Amendment 4, The Voting Restoration Amendment*, 288 So. 3d 1070, 1078 (Fla. 2020). Thus, courts "must examine the actual language used" to "determin[e] the objective meaning of the text." *Id.* And when "substantial and material change[s]" are made to the wording of a legal text, the changes are "presumed to have intended some specific objective or alteration of law, unless a contrary indication is clear." *State v. Flansbaum-Talabisco*, 121 So. 3d 568, 576 (Fla. 4th DCA 2013) (citing *Punsky v. Clay County Bd. of County Comm'rs*, 60 So. 3d 1088, 1092 (Fla. 1st DCA 2011)). This principle is embodied in the reenactment canon. *Jackson v. State*, 289 So. 3d 967, 969 (Fla. 4th DCA 2020); *see also,* Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 256 (2012)). Unlike the disfavored review of legislative history, changes to the language in a legal text provides context from which a change in meaning can be determined. Scalia & Garner, Reading Law 256.

Thus, changes to the scope of the Juvenile Rules between 1991 and 1992 provide further context for the conclusion that Juvenile Rule 8.000 prohibits use of the Civil Rules in chapter 39 proceedings. Not only did the Court affirmatively remove language that had permitted such use, the comment it included for purposes of "explanation and guidance" makes clear that the language was deleted because supplementation with the Civil Rules was no longer appropriate, given that the Juvenile Rules were "self-contained." *In re Amends.*, 608 So. 2d at 479-80; *see also,* Fla. R. Juv. P. 8.000, 1992 comment.

Moreover, the language in Juvenile Rule 8.000 is identical to the language used in Florida Probate Rule 5.010, and similar to the language used to define the scope of the Family Law Rules of Procedure in Family Law Rule 12.010 and the Florida Small Claims Rules, all of which have expressly been excepted from the general application of the Civil Rules in Civil Rule 1.010. *Compare* Fla. R. Juv. P. 8.000 ("These rules shall govern the procedures in the juvenile division . . . .") *with* Fla. R. Prob. 5.010 ("These rules govern the procedure in all probate and guardianship proceedings . . . ."); Fla. Sm. Cl. R. 7.010(b) ("These rules are applicable to all actions of a civil

nature in the county courts which contain a demand for money or property, the value of which does not exceed $8,000 exclusive of costs, interest, and attorneys' fee."); Fla. Fam. L. R. P. 12.010(a)(1) ("These rules apply to all actions concerning family matters . . . ."). There is no basis to treat the Rules of Juvenile Procedure differently under Civil Rule 1.010.

For these reasons, Civil Rule 1.010 should be amended to acknowledge expressly, like it does for Family Law Rules, Probate Rules, and Small Claims Rules, that the scope of the Civil Rules does not extend to matters in which the Juvenile Rules apply.

II. CONFUSION IN THE COURTS AND BY LITIGANTS IS DETRIMENTALLY AFFECTING THE BEST INTERESTS OF CHILDREN AND REQUIRES CIVIL RULE 1.010 BE AMENDED TO EXPRESSLY EXCLUDE MATTERS TO WHICH THE JUVENILE RULES APPLY FROM THE CIVIL RULES' SCOPE.

Despite the clear differentiation between general civil proceedings and juvenile proceedings and the language of Juvenile Rule 8.000, the case law considering the application of Civil Rules to dependency proceedings has been inconsistent. It has created confusion for litigants and trial courts and detracted from the best

interests of children, warranting the clarification that amendment of Civil Rule 1.010 would bring.

In *Dep't of Child. & Families v. K.D.*, 84 So. 3d 1120, 1121-22 (Fla. 5th DCA 2012), the Fifth District clearly enunciated that civil discovery tools, like interrogatories, were not generally available for use in dependency cases unless Florida Rule of Juvenile Procedure 8.245 expressly provided for them. In reaching this conclusion, the Court relied on Juvenile Rule 8.000, noting that the language authorizing reference to the Civil Rules "was eliminated when the juvenile rules were amended in November 1992," and, therefore, it concluded that "[b]ecause no rule authorizes . . . use [of interrogatories], there is also no rule regulating their use," and to permit their usage "was a material departure from the essential requirements of law." *Id.* Similarly, though not analyzing Rule 8.000 directly, in two separate cases, the Fourth and Second Districts found permitting non-party interventions into a dependency to constitute a departure from the essential requirements of law, because Juvenile Rule 8.210(a) "limits the parties to a juvenile proceeding" and the proposed intervenors did not fall within the definition of parties. *J.L. v. G.M.*, 687 So. 2d 977, 977-78 (Fla. 4th

DCA 1997); *see also, J.P. v. Dep't of Child. & Fam. Servs. (In the Interest of J.P.),* 12 So. 3d 253, 255 (Fla. 2d DCA 2009). In so doing, the Court in these cases necessarily rejected application of the concept of liberal intervention, as codified in Civil Rule 1.230, to dependency cases where it was not expressly authorized, and, in fact, prohibited by otherwise applicable juvenile rules. *Grimes v. Walton Cty.*, 591 So. 2d 1091, 1094 (Fla. 1st DCA 1992) (Civil Rule 1.230 should be liberally construed).

In contrast, however, a recent case out of the Third District Court of Appeal held Civil Rule 1.230 could be used to permit non-party intervention, provided the non-party could satisfy the test for intervention set out in *Sullivan v. Sapp,* 866 So. 2d 28, 33 (Fla. 2004). *See*, *T.R.-B. v. Dep't of Children & Families*, 335 So. 3d 729 (Fla. 3d DCA 2022). That opinion relied upon another case, *I.B. v. Dep't of Child. & Families,* 876 So. 2d 581, 584 (Fla. 5th DCA 2004), wherein the Fifth District approved an intervention into a dependency by non-party caregivers, though that was not specifically the issue on appeal. Additionally, a third case on this specific issue is currently pending in the Fifth District, challenging the trial court's grant of intervention in a dependency proceeding to two non-parties who did not have

placement of the children pursuant to *T.R.-B.* and Civil Rule 1.230. *See*, 5D22-0536.

Together, these cases establish an inconsistent and unpredictable legal landscape for courts and practitioners in this area, and the ensuing litigation over the application of the Civil Rules to specific issues—let alone litigation over the merits of the underlying claims in cases where the Civil Rules are permitted to be applied—is detrimentally affecting children's best interests by delaying permanency.

In virtually all cases, as is apparent from the cases cited above, those attempting to use the Civil Rules to "supplement" the Juvenile Rules are nonparties to dependencies attempting to find some legal vehicle to authorize the trial court to consider their asserted interests in ways not permitted under the Juvenile Rules on their face. But the Juvenile Rules simply do not allow for that, consonant with the unique construct and focus of chapter 39 upon the child, and amending Civil Rule 1.010 would clarify the exclusivity of the Juvenile Rules in dependency proceedings and preclude this sort of litigation, which distracts—and detracts—from achieving timely permanency for the child.

Unlike other civil proceedings, who may be a party to a dependency proceeding is expressly and exclusively provided in section 39.01(58), Florida Statutes (2021), and Juvenile Rule 8.210(a), neither of which permit for any addition of parties beyond those enumerated. In contrast, both the Civil Rules of Procedure and Florida Family Law Rules of Procedure expressly provide that any person may become a party to the proceeding upon a showing of the requisite interest in the litigation. *See,* Fla R. Civ. P. 1.210(a); Fla. Fam Law. R. P. 12.210(a). Thus, had the Court, in enacting the Juvenile Rules applicable to dependency actions in conformity with the substantive law of chapter 39, concluded non-party intervention was authorized, it would have expressly provided for that procedure, as it has in myriad other contexts, including in other parts of the Juvenile Rules. Fla. R. Juv. P. 8.610(b) (permitting the court to "add additional parties" in proceedings for families and children in need of services; Fla. R. Juv. P. 8.710(b) (permitting the court to "add additional parties" in guardian advocate for drug-exposed newborns proceedings); *see also Nunes v. Herschman*, 310 So. 3d 79, 84 (Fla. 4th DCA 2021) (discussing the Omitted-Case Canon: "Thus, if the legislature wanted to add depositions to the text of the statute, it

would have."); Reading Law at 93 (discussing the Omitted-Case Canon of statutory construction).

Furthermore, those who may be interested in the welfare of a child but who are not enumerated parties are otherwise accounted-for with a special status crafted specifically for dependency matters. Pursuant to section 39.01(57), Florida Statutes (2021) and Juvenile Rule 8.210(a)(2), upon a finding it is the child's best interests, such individuals may be found to be participants, who are entitled to notice and whose participant status permits the trial court to hear from them *"without the necessity of filing a motion to intervene*," although they "shall have no other rights of a party." Fla. R. Juv. P. 8.210(a)(2) (emphasis added).

Thus, far from being silent on the rights of non-parties, or leaving a gap requiring supplementation by the Civil Rules, these provisions in the self-contained Juvenile Rules accommodate non-parties directly and provide a forum for them to be heard in the best interests of the child, without the need for intervention. The fact that no right of intervention exists in dependency matters therefore precludes the Civil Rules from being used for that purpose. To permit the Civil Rules to be used in this way for tactical advantage—whether

for intervention under Civil Rule 1.230, to obtain discovery not authorized by the Juvenile Rules, or to authorize collateral proceedings under Civil Rule 1.540 outside of the one-year time frame provided for relief from judgment in Juvenile Rule 8.270(c)—and to defeat the clear and express provisions of chapter 39 undermines the comprehensive procedure this Court devised in the Juvenile Rules to achieve the legislature's policies and priorities enacted in chapter 39. The best interests of the child and the need for clarity in the face of steadily increasing litigation concerning the Civil Rules in juvenile proceedings merits amendment to Civil Rule 1.010, consistent with the JMC Workgroup's goals, to provide express consistency with the Juvenile Rules and end the protracted litigation harming Florida's most vulnerable children by causing undue delay in their achieving permanency.

WHEREFORE, Florida Statewide Guardian ad Litem Office respectfully moves this Court to amend Florida Rule of Civil Procedure 1.010 as follows in underline:

> These rules apply to all actions of a civil nature and all special statutory proceedings in the circuit courts and county courts except those to which the Florida Probate Rules, the Florida Family Law Rules of Procedure, <u>the Florida</u>

Rules of Juvenile Procedure, or the Small Claims Rules apply. The form, content, procedure, and time for pleading in all special statutory proceedings shall be as prescribed by the statutes governing the proceeding unless these rules specifically provide to the contrary. These rules shall be construed to secure the just, speedy, and inexpensive determination of every action. These rules shall be known as the Florida Rules of Civil Procedure and abbreviated as Fla. R. Civ. P.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

The undersigned has filed this comment via the eportal and served a copy via ***U.S. Mail*** to Chief Judge Robert Morris, Workgroup Chair, Second District Court of Appeal, P.O. Box 327, Lakeland, FL 33802, and via ***email*** to Tina White, OSCA Staff Liaison to the Workgroup, 500 South Duval Street, Tallahassee, Florida 32399, *whitet@flcourts.org;* this 1st of June, 2022.

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