

Supreme Court of Florida

CORRECTED OPINION

No. 74,586

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IN RE: AMENDMENTS TO THE FLORIDA RULES OF
JUVENILE PROCEDURE ADDRESSING THE
UNLICENSED PRACTICE OF LAW BY THE
DEPARTMENT OF HEALTH AND REHABILITATIVE
SERVICES COUNSELORS

[March 1, 1990]

PER CURIAM.

The Juvenile Rules Committee of The Florida Bar has submitted proposed amendments to the Florida Rules of Juvenile Procedure to implement our holding in The Florida Bar, In re Advisory Opinion HRS Nonlawyer Counselor, 547 So.2d 909 (Fla. 1989), wherein we ordered the Florida Department of Health and Rehabilitative Services to end its practice of law by lay counselors. The proposed amendments were unanimously endorsed by The Florida Bar Board of Governors. We approve the amendments. Appended is the text of the amended portions of the rules, which become effective upon the filing of this opinion. The committee notes (reasons for change) are included for explanation and guidance only and are not adopted as an official part of the rules.

It is so ordered.

EHRlich, C.J., and OVERTON, McDONALD, SHAW, BARKETT, GRIMES and KOGAN, JJ., Concur
NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED. THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER THE EFFECTIVE DATE OF THESE RULES.

OLD RULE

RULE 8.610. GENERAL PROVISIONS FOR HEARINGS

(a) Presence of Child. The child shall be present at the hearing unless excused by the court or the court finds that the child's mental or physical condition or age is such that a court appearance is not in the best interest of the child. Any party may file a motion to excuse the presence of the child.

(b) In-camera Proceedings. The child may be examined by the court outside the presence of other parties under circumstances as provided by law. The court shall assure that the proceedings are recorded unless otherwise stipulated by the parties.

(c) Invoking the Rule. Prior to the examination of any witness the court may, and on the request of any party shall, exclude all other witnesses. The court may cause witnesses to be kept separate and to be prevented from communicating with each other until all are examined.

(d) Continuances. The court may grant a continuance before or during a hearing for good cause shown by any party.

(e) Record. A record of the testimony in all hearings shall be made by an official court reporter, a court approved stenographer, or by a recording device. The records of testimony shall be preserved as required by law. Official records of testimony shall be transcribed only on order of the court.

(f) Notice. Where these rules do not require a specific notice, all parties will be given reasonable notice of any hearing.

NEW RULE

RULE 8.610. GENERAL PROVISIONS FOR HEARINGS

(a) Presence of Counsel. The Department of Health and Rehabilitative Services must be represented by an attorney at every stage of these proceedings.

~~(a)~~ (b) Presence of Child. [No change in text.]

~~(b)~~ (c) In-camera Proceedings. [No change in text.]

~~(c)~~ (d) Invoking the Rule. [No change in text.]

~~(d)~~ (e) Continuances. [No change in text.]

~~(e)~~ (f) Record. [No change in text.]

~~(f)~~ (g) Notice. [No change in text.]

REASON FOR CHANGE

This rule change creates an additional section entitled "Presence of Counsel" and specifically mandates the department be represented by an attorney at all stages of the proceedings.

OLD RULE

RULE 8.630. PROCESS

(a) Summons and Subpoenas. [No changes recommended.]

(b) Service of Pleadings and Papers.

(1) Service, When Required. [No changes recommended.]

(2) Service, How Made. [No changes recommended.]

(3) Filing. [No changes recommended.]

(4) Filing with Court Defined. [No changes recommended.]

(5) Certificate of Service. When any authorized person shall in substance certify:

"I do certify that copy (copies) hereof have been furnished to (here insert name or names) by (delivery) (mail) this day of, 19..."

Title

This certificate shall be taken as prima facie proof of such service in compliance with all rules of court and law.

NEW RULE

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This certificate shall be taken as prima facie proof of such service in compliance with all rules of court and law. The certificate must be signed by the attorney of record, clerk or deputy clerk, judicial assistant, or judge.

REASON FOR CHANGE

Only the above listed persons are authorized to sign a certificate of service. An agent of the department is deleted.

(6) [People Who May Certify Service.] Service of pleadings and orders required to be served as provided by subdivision (2) may be certified by an attorney of record, clerk or deputy clerk, judge, or authorized agent of the Department of Health and Rehabilitative Services in the form provided in subdivision (5).

(6) {People Who May Certify Service.} Service of pleadings and orders required to be served as provided by subdivision (2) may be certified by an attorney of record, clerk or deputy clerk, judge, or authorized agent of the Department of Health and Rehabilitative Services in the form provided in subdivision (5).

OLD RULE

RULE 8.710. DETENTION PETITION,
HEARING AND ORDER

(a) Detention Petition. If a child is to be placed in a shelter after being taken into custody for a period longer than 24 hours, the person requesting placement shall file a written petition which shall:

(1) specify the name, address, and sex of the child, or if unknown, designate him by any name or description by which he can be identified with reasonable certainty.

(2) specify that the child is of an age subject to the jurisdiction of the court.

(3) state the reasons why the child needs to be placed in a shelter.

(4) recommend where the child is to be placed or the agency to be responsible for placement.

(5) be signed by an authorized agent of the Department of Health and Rehabilitative Services or by the state attorney or assistant state attorney.

(b) Detention Hearing. [No changes in text recommended.]

(c) Detention Order.

(1) The court shall not proceed with entry of a detention order in the absence of the parent or legal custodian except for good cause shown. Absence of the parent or legal custodian shall not invalidate the proceedings or the order after the court has made such a finding.

(2) [No changes recommended.]

NEW RULE

RULE 8.710. DETENTION SHELTER PETITION,
HEARING AND ORDER

(a) Detention Shelter Petition. If a child is to be placed in a shelter after being taken into custody for a period longer than twenty-four hours, the person requesting placement shall file a written petition which shall:

(1) specify the name, address, and sex of the child, or if unknown, designate him by any name or description by which he can be identified with reasonable certainty.

(2) specify that the child is of an age subject to the jurisdiction of the court.

(3) state the reasons why the child needs to be placed in a shelter.

(4) recommend where the child is to be placed or the agency to be responsible for placement.

(5) be signed by an authorized agent of the Department of Health and Rehabilitative Services or by the state attorney or ~~assistant state attorney~~ the petitioner and, if represented by counsel, by his attorney.

(b) Detention Shelter Hearing. [No changes in text recommended.]

(c) Detention Shelter Order.

REASON FOR CHANGE

This revision changes the reference from detention to shelter throughout the rule and requires the shelter petition to be signed by the petitioner and, if represented, by the attorney.

(d) Release from Shelter Care. No child shall be released from shelter after a detention order has been entered except on order of the court unless the detention order authorized release by the Department of Health and Rehabilitative Services.

(1) The court shall not proceed with entry of a detention shelter order in the absence of the parent or legal custodian except for good cause shown. Absence of the parent or legal custodian shall not invalidate the proceedings or the order after the court has made such a finding.

(2) [No changes recommended.]

(d) Release from Shelter Care. No child shall be released from shelter after a detention shelter order has been entered except on order of the court unless the detention shelter order authorized release by the Department of Health and Rehabilitative Services.

OLD RULE

RULE 8.800. POST-DISPOSITION RELIEF

(a) Motion for Modification of Placement. [No changes recommended.]

(b) Motion for Termination of Supervision or Jurisdiction. [No changes recommended.]

(c) Performance Agreements. Within 30 days after placement of a child in foster care one of the following shall occur:

(1) The Department of Health and Rehabilitative Services shall file a performance agreement with the court; or

(2) The Department of Health and Rehabilitative Services shall submit a motion requesting an extension of the time for filing the performance agreement for a period of not more than 30 days; however, this shall not preclude a party or any other agency or person participating in the preparation of the performance agreement from filing the motion.

(i) Service. A copy of the motion and notice of hearing shall be served on the parties and participants in the preparation of the performance agreement.

(ii) Hearing. The court shall hear all persons present, in person, by counsel, or both. On good cause shown, the court may grant an extension not to exceed 30 days; or

NEW RULE

RULE 8.800. POST-DISPOSITION RELIEF

(a) Motion for Modification of Placement. [No changes recommended.]

(b) Motion for Termination of Supervision or Jurisdiction. [No changes recommended.]

(c) Performance Agreements. Within 30 days after placement of a child in foster care one of the following shall occur: the department shall:

(1) The Department of Health and Rehabilitative Services shall file a performance agreement with the court; or file with the court a performance agreement signed by the parties involved, which shall include but not be limited to the attorney representing the department, the department counselor, the parent(s), counsel for the parent, if represented, and the guardian ad litem; or

(2) The Department of Health and Rehabilitative Services shall submit a motion requesting an extension of the time for filing the performance agreement for a period of not more than 30 days; however, this shall not preclude a party or any other agency or person participating in the preparation of the performance agreement from filing the motion.

(i) Service. A copy of the motion and notice of hearing shall be served on the parties and participants involved in the preparation of the performance agreement.

REASON FOR CHANGE

These changes require the performance agreement to be signed by the attorney for the department, as well as the counselor and other participants. It further mandates the department be represented at all times.

This change mandates that the report issued for foster care reviews be signed by an attorney for the department.

(3) The Department of Health and Rehabilitative Services shall submit a motion for review of a plan for permanent placement, to which a copy of the proposed plan shall be attached. In the event that such a motion and plan are submitted because the parents will not or cannot participate in the preparation of the performance agreement, the motion shall contain a full explanation of the circumstances preventing the parents from participating. In the event that the motion and plan are being submitted due to the inability of the parents and the department to concur in all or any portion of the performance agreement, the motion shall contain an explanation of the nature of the disagreement.

(i) Service. The motion, proposed plan, and notice of hearing shall be served on the parties and participants in the preparation of the performance agreement.

(ii) Hearing. The court shall hear all parties present, in person, by counsel, or both. After such hearing, the court shall order the department to submit the plan for permanent placement, but may, in its discretion, issue a protective order modifying, deleting, or adding to the requirements included in the plan for permanent placement.

(d) Foster Care Review in Dependency Cases. Children in foster care shall have their status reviewed as provided by law.

(1) Scheduling Hearings. [No changes recommended.]

(ii) Hearing. The court shall hear all persons parties present, in person, by counsel, or both. The department at all times, however, shall be represented by an attorney. On good cause shown, the court may grant an extension not to exceed 30 days; or Only one 30-day extension may be granted upon a showing of good cause; or

(3) The Department of Health and Rehabilitative Services submit a motion for review of a plan for permanent placement, to which a copy of the proposed plan shall be attached. In the event that such a motion and plan are submitted because the parents will not or cannot participate in the preparation of the performance agreement, the motion shall contain a full explanation of the circumstances preventing the parents from participating. In the event that the motion and plan are being submitted due to inability of the parents and the department to concur in all or any portion of the performance agreement, the motion shall contain an explanation of the nature of the disagreement.

(i) Service. The motion, proposed plan, and notice of hearing shall be served on the parties and participants in the preparation of the performance agreement.

(ii) Hearing. The court shall hear all parties present, in person, by counsel, or both. The department, at all times, however, shall be represented by an attorney. After such hearing, the court shall order the department to submit the plan for permanent placement, but may, in its discretion, issue a protective order modifying, deleting, or adding to the requirements included in the plan for permanent placement.

(2) Petition and Report.

(i) Petition. [No changes recommended.]

(ii) Report. The Department shall prepare a report as required by law including the status of compliance with each provision of the performance agreement and including recommendations for continued foster care, return of the child to the parent, guardian, relative, or former custodian, or for the initiation of proceedings to terminate parental rights. A copy of the written report shall be provided to all parties within the time period provided by law.

(3) Service. [No changes recommended.]

(4) Court Action. [No changes recommended.]

(d) Foster Care Review in Dependency Cases. Children in foster care shall have their status reviewed as provided by law.

(1) Scheduling Hearings. [No changes recommended.]

(2) Petition and Report.

(i) Petition. [No changes recommended.]

(ii) Report. The Department shall prepare a report as required by law, including the status of compliance with each provision of the performance agreement and including recommendations for continued foster care, return of the child to the parent, guardian, relative, or former custodian, or for the initiation of proceedings to terminate parental rights. A copy of the written report shall be provided to all parties within the time period provided by law. Said report shall be signed by the attorney representing Department of Health and Rehabilitative Services.

(3) Service. [No changes recommended.]

(4) Court Action. [No changes recommended.]

Original Proceeding - Florida Rules of Juvenile Procedure

Jeanne D. Howard, Chairperson for the Juvenile Court Rules
Committee, West Palm Beach, Florida,

for Petitioner