

# Supreme Court of Florida

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No. SC2022-0423

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## **IN RE: AMENDMENTS TO THE FLORIDA RULES OF JUVENILE PROCEDURE.**

April 6, 2023

PER CURIAM.

The Juvenile Court Rules Committee (Committee) filed a report proposing amendments to the Florida Rules of Juvenile Procedure.<sup>1</sup> It proposes amending rules 8.060 (Discovery), 8.104 (Testimony by Closed-Circuit Television or Audio-Video Communication Technology), 8.245 (Discovery), and 8.255 (General Provisions for Hearings).

Because some of the proposed amendments were incompatible with the Criminal Court Steering Committee's then pending proposals in *In re Amendments to Florida Rule of Criminal Procedure 3.220, Florida Rule of Civil Procedure for Involuntary Commitment of*

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1. We have jurisdiction. See art. V, § 2(a), Fla. Const.; see also Fla. R. Gen. Prac. & Jud. Admin. 2.140(b).

*Sexually Violent Predators 4.310, and Florida Rule of Juvenile Procedure 8.060*, 346 So. 3d 1164 (Fla. 2022), we withheld publication of the Committee’s proposals until our decision in that case became final. We then published the Committee’s proposals for comment in the November 2022 edition of *The Florida Bar News*.<sup>2</sup> No comments were received.

Having considered the Committee’s report and the proposed amendments, we adopt the amendments to the Florida Rules of Juvenile Procedure as proposed by the Committee. We discuss the significant changes below.

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2. The published version of the Committee’s proposals incorporated the amendments to rules 8.060(d)(9) and 8.104 adopted by the Court in *In re Amendments to Florida Rule of Criminal Procedure 3.220, Florida Rule of Civil Procedure for Involuntary Commitment of Sexually Violent Predators 4.310, and Florida Rule of Juvenile Procedure 8.060*, 346 So. 3d 1164 (Fla. 2022) (amending rule 8.060(d)(9) (Videotaped Depositions) to increase to 18 the age under which the depositions of children must be audiovisually recorded on the demand of any party), and *In re Amendments to Florida Rules of Juvenile Procedure, Florida Family Law Rules of Procedure, & Florida Supreme Court Approved Family Law Forms*, 47 Fla. L. Weekly S188 (Fla. July 14, 2022) (adding “or Audio-Video Communication Technology” to the title of rule 8.104 and “or, at the discretion of the court, by audio-video communication technology” to subdivision (a) of that rule).

In rule 8.060, existing subdivision (d)(7) (Statements of Law Enforcement Officers) is deleted, and a new, more general telephonic statements provision modeled after Florida Rule of Criminal Procedure 3.220(h)(8) (Telephonic Statements) is added as subdivision (d)(8) (Telephonic Statements). Under the new subdivision, unsworn, telephonic statements of any witness may be taken upon stipulation of the parties and the consent of the witness.

In rules 8.104 and 8.245, “16” is replaced with “18” throughout both rules to align them with section 92.55(2), Florida Statutes (2022), and to provide greater protections for children until adulthood.

Furthermore, in rules 8.245(i)(3)(C) and 8.255(d)(2)(C)(iii), the phrase “or the relationship of the child to the parties in the case” is added for clarity and to maintain consistency with section 92.55(3), Florida Statutes (2022).

Accordingly, the Florida Rules of Juvenile Procedure are amended as set forth in the appendix to this opinion. Deletions are indicated by struck-through type, and new language is indicated by

underscoring. The amendments shall become effective July 1, 2023, at 12:01 a.m.

It is so ordered.

MUÑIZ, C.J., and CANADY, LABARGA, COURIEL, GROSSHANS, and FRANCIS, JJ., concur.

THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER THE EFFECTIVE DATE OF THESE AMENDMENTS.

Original Proceeding – Florida Rules of Juvenile Procedure

Stephanie C. Zimmerman, Chair, Juvenile Court Rules Committee, Bradenton, Florida, Candice Kaye Brower, Past Chair, Juvenile Court Rules Committee, Gainesville, Florida, Joshua E. Doyle, Executive Director, The Florida Bar, Tallahassee, Florida, and Michael Hodges, Staff Liaison, The Florida Bar, Tallahassee, Florida,

for Petitioner

## Appendix

### RULE 8.060. DISCOVERY

(a) – (c) [NO CHANGE]

**(d) Depositions.**

(1) – (6) [NO CHANGE]

~~(7) — *Statements of Law Enforcement Officers.* Upon stipulation of the parties and the consent of the witness, the statement of a law enforcement officer may be taken by telephone in lieu of deposition of the officer. In such case, the officer need not be under oath. The statement, however, shall be recorded and may be used for impeachment at trial as a prior inconsistent statement pursuant to the Florida Evidence Code.~~

(8) *Depositions of Law Enforcement Officers.* Subject to the general provisions of this rule, law enforcement officers shall appear for deposition, without subpoena, upon written notice of taking deposition delivered at the address designated by the law enforcement agency or department or, if no address has been designated, to the address of the law enforcement agency or department, 5 days prior to the date of the deposition. Law enforcement officers who fail to appear for deposition after being served notice are subject to contempt proceedings.

(8) *Telephonic Statements.* On stipulation of the parties and the consent of the witness, the statement of any witness may be taken by telephone in lieu of the deposition of the witness. In such case, the witness need not be under oath. The statement, however, shall be recorded and may be used for impeachment at trial as a prior inconsistent statement pursuant to the Florida Evidence Code.

(9) *Videotaped Depositions of Sensitive Witnesses.*

(A) Depositions of children under the age of 18 shall be videotaped upon demand of any party unless otherwise ordered by the court.

(B) The court may order videotaping of a deposition ~~or taking of a deposition~~ of a witness with fragile emotional strength or an intellectual disability as defined in section 393.063, Florida Statute ~~to be in the presence of the trial judge or a special magistrate.~~

(C) The court may order the taking of a deposition of a witness with fragile emotional strength or an intellectual disability as defined in section 393.063, Florida Statutes, to be in the presence of the trial judge or a special magistrate.

**(e) – (m)** [NO CHANGE]

### **Court Commentary**

[NO CHANGE]

## **RULE 8.104. TESTIMONY BY CLOSED-CIRCUIT TELEVISION OR AUDIO-VIDEO COMMUNICATION TECHNOLOGY**

**(a) Requirements for Use.** In any case the trial court may order the testimony of a victim or witness under the age of ~~16~~18 to be taken outside the courtroom and shown by means of closed-circuit television or, at the discretion of the court, by audio-video communication technology if on motion and hearing in camera, the trial court determines that the victim or witness would suffer at least moderate emotional or mental harm due to the presence of the defendant child if the witness is required to testify in open court.

**(b) – (f)** [NO CHANGE]

### **Committee Notes**

[NO CHANGE]

**RULE 8.245. DISCOVERY**

**(a) - (h)** [NO CHANGE]

**(i) Rules Governing Depositions of Children Under 1618.**

(1) The taking of a deposition of a child witness or victim under the age of 1618 may be limited or precluded by the court for good cause shown.

(2) The court, after proper notice to all parties and an evidentiary hearing, based on good cause shown, may set conditions for the deposition of a child under the age of 1618 including:

(A)- (G) [NO CHANGE]

(3) Good cause is shown based on, but not limited to, one or more of the following considerations:

(A) - (B) [NO CHANGE]

(C) The relationship between the child victim and the alleged abuser or the relationship of the child to the parties in the case.

(D) – (F) [NO CHANGE]

(4) The court, in its discretion, may order the consolidation of the taking of depositions of a child under the age of 1618 when the child is the victim or witness in a pending proceeding arising from similar facts or circumstances.

**(j) – (k)** [NO CHANGE]

**Committee Notes**

[NO CHANGE]

**RULE 8.255. GENERAL PROVISIONS FOR HEARINGS**

**(a) - (c)** [NO CHANGE]

**(d) Examination of Child; Special Protections.**

(1) [NO CHANGE]

(2) *In-Camera Examination.*

(A) – (B) [NO CHANGE]

(C) The court shall make specific written findings of fact, on the record, as to the basis for its ruling. These findings may include but are not limited to:

(i) – (ii) [NO CHANGE]

(iii) the relationship between the child and the alleged abuser or the relationship of the child to the parties in the case;

(iv) – (vii) [NO CHANGE]

(D) [NO CHANGE]

**(e) – (k)** [NO CHANGE]

**Committee Notes**

[NO CHANGE]