

# Supreme Court of Florida

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No. SC10-2010

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## **IN RE: AMENDMENTS TO FLORIDA RULE OF JUVENILE PROCEDURE 8.255.**

[April 26, 2012]

PER CURIAM.

This matter is before the Court for consideration of proposed amendments to Florida Rule of Juvenile Procedure 8.255. We have jurisdiction. See art. V, § 2(a), Fla. Const.; Fla. R. Jud. Admin. 2.140(e).

On October 21, 2010, the Florida Bar's Juvenile Rules Committee (Committee) filed an out-of-cycle report proposing amendments to rule 8.255(b) (Presence of Child). The Executive Committee of the Florida Bar Board of Governors approved the proposal by a vote of 12-0. The Court published the proposal for comment. Two comments were filed, and the Committee filed a response to the comments. After considering the Committee's proposal, the Court asked the Committee to consider whether the amendment should include a provision stating that, when the child is present at the hearing, the trial judge has a

duty to inquire whether attendance is in the child's best interest. See Letter from Thomas D. Hall, Clerk of the Florida Supreme Court, to Joel M. Silvershein, Juvenile Rules Comm. Chair (July 19, 2011) (on file with the Court in Case No. 10-2010). In response, on October 3, 2011, the Committee filed a revised proposal. The revised proposal has not yet been published for comment.

Upon consideration, we adopt the amendments to rule 8.255(b) as proposed by the Committee in its revised proposal. The amendments address the right of a child to be present at all hearings in dependency and termination of parental rights proceedings, as well as the duty of the trial judge to make the appropriate best interest determinations regarding the child's presence. Subdivision (b)(1) states that the child has the right to be present at "all hearings." Moreover, new subdivision (b)(3) is added requiring that, if the child is not present, the court shall inquire and determine the reason for the child's absence. The trial judge must then determine whether it is in the child's best interest to conduct the hearing without the presence of the child, or to continue the hearing so as to allow the child the opportunity to be present. Under new subdivision (b)(2), if the child is present at the hearing, the court may excuse the child if it would not be in the child's best interest to remain.

Accordingly, Florida Rule of Juvenile Procedure 8.255(b) is hereby amended, as reflected in the appendix to this opinion. New language is indicated

by underscoring, and deleted language is indicated by struck-through type. The amendments shall become effective June 1, 2012, at 12:01 a.m. Because the revised proposal of the Committee, which we have adopted, was not published for comment prior to adoption, interested persons shall have sixty days from the date of this opinion in which to file comments with the Court.<sup>1</sup>

It is so ordered.

CANADY, C.J., and PARIENTE, LEWIS, QUINCE, POLSTON, LABARGA, and PERRY, JJ., concur.

PARIENTE, J., concurs with an opinion.

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

PARIENTE, J., concurring.

I commend the Florida Bar's Juvenile Rules Committee for proposing amendments to rule 8.255(b) that will strengthen the provision that children have a right to be at hearings in their dependency cases. When this Court last made

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1. An original and nine paper copies of all comments must be filed with the Court on or before June 25, 2012, with a certificate of service verifying that a copy has been served on the Committee Chair, Honorable Joel M. Silvershein, State Attorney's Office, 201 SE 6th Street, Suite 660, Fort Lauderdale, Florida 33301-3334, as well as separate request for oral argument if the person filing the comment wishes to participate in oral argument, which may be scheduled in this case. The Committee Chair has until July 16, 2012, to file a response to any comments filed with the Court. Electronic copies of all comments and responses also must be filed in accordance with the Court's administrative order in In re Mandatory Submission of Electronic Copies of Documents, Fla. Admin. Order No. AOSC04-84 (Sept. 13, 2004).

amendments to rule 8.255(b), I explained my view of the overriding purpose of the rule:

I read this rule as ensuring that children have the right to be present and be heard on the important issues affecting their lives. And certainly, as the child becomes a young adult, nothing can be more important than giving the child a voice in planning his or her future, ensuring that the child is aware of the services available, and is in fact taking advantage of and receiving the services provided by statute.

In re Amendments to Fla. Rule of Juvenile Procedure 8.255, 3 So. 3d 1239, 1245 (Fla. 2009) (Pariante, J., dissenting).

I agree with the addition of rule 8.255(b) because it ensures that before a hearing proceeds without the presence of a child, the trial court “shall inquire and determine the reason for the absence of the child.” In those cases where the child has an attorney or a guardian ad litem, the inquiry will assist the trial court in making sure that there was a specific informed reason for the child’s absence. When the child has neither a lawyer nor a guardian ad litem, the trial court must take steps to ensure that there is a meaningful inquiry as to why the child is absent.

At the core of the intent of the rule is the child’s right to be present. Unless the trial court affirmatively determines that it would be to the child’s detriment to be present based on specific facts and circumstances in that case, the trial court should ensure that the child is both present and has a meaningful opportunity to be heard. As set forth in Florida’s Dependency Benchbook (2011), a collaborative

effort by Florida dependency judges and stakeholders throughout the State, the following explanation is given for the importance of children at hearings:

Aligning with the principles of family-centered practice, Florida courts are embracing the importance of including children and youth in court and are implementing practices that help them actively participate in dependency proceedings.

Florida Statutes define the child as a party to the dependency case. As a party to the case, children must be notified of all court proceedings (unless excused by the court when the age, capacity, or other condition of the child is such that notice would be meaningless or detrimental to the child). Furthermore, the federal Adoptions and Safe Families Act requires the court to conduct an age-appropriate consultation with the child during a permanency hearing.

Having the child physically present in court gives the judge an opportunity to observe and validate the child's well-being and to ensure that the child's needs are identified and appropriate treatment is provided. Direct observation can validate the Comprehensive Behavioral Assessment to give the judge the best information for making decisions about the child's placement and recommendations for services.

This model serves as suggested guidelines for how to encourage children of all ages to actively participate in their dependency cases. It provides guidance on issues related to including children in all segments of the dependency proceedings so that Florida's children are able to have a voice in the services that are provided and ultimately in the aspects of the case that impact their lives. Allowing children to actively participate in court proceedings is an important aspect of family-centered practice.

Id. at 4-1.<sup>2</sup> My hope is that the amendments to rule 8.255(b) will help to ensure that our children in dependency cases are both present and have a meaningful opportunity to be heard.

Original Proceedings – Florida Juvenile Court Rules Committee

Joel M. Silvershein, Chair, Juvenile Court Rules Committee, Fort Lauderdale, Florida, and John F. Harkness, Jr., Executive Director, The Florida Bar, Tallahassee, Florida,

for Petitioner

Michelle Hankey, West Palm Beach, Florida, on behalf of Legal Aid Society of Palm Beach County; Bernard P. Perlmutter, Kele M. Stewart, Coral Gables, Florida, and Robin L. Rosenberg and Christina L. Spudeas, Coral Springs, Florida, on behalf of University of Miami School of Law, Florida’s Children First, Inc., Florida Youth Shine, and Legal Aid Service of Broward County,

Responding with comments

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2. This excellent benchbook is a product of the statewide Dependency Court Improvement Panel, chaired by the Honorable Jeri B. Cohen, with support from the Office of Court Improvement. The benchbook is a compilation of “promising and science-informed practices as well as a legal resource guide. It is a comprehensive tool for judges, providing information regarding legal and non-legal considerations in dependency cases.” Id. at 1-1.

## APPENDIX

### RULE 8.255. GENERAL PROVISIONS FOR HEARINGS

(a) [No change]

(b) **Presence of Child.**

(1) The child has a right to be present at ~~the~~all hearings ~~unless 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.~~

(2) If the child is present at the hearing, the court may excuse the child from any portion of the hearing when the court determines that it would not be in the child's best interest to remain.

(3) If a child is not present at a hearing, the court shall inquire and determine the reason for the absence of the child. The court shall determine whether it is in the best interest of the child to conduct the hearing without the presence of the child or to continue the hearing to provide the child an opportunity to be present at the hearing.

(4) Any party may file a motion to require or excuse the presence of the child.

(c)-(h) [No change]

### Committee Notes

[No change]