

**PART II. DEPENDENCY AND  
TERMINATION OF  
PARENTAL RIGHTS PROCEEDINGS**

**A. GENERAL PROVISIONS**

**RULE 8.201. COMMENCEMENT OF PROCEEDINGS**

**(a) Commencement of Proceedings.** Proceedings are commenced when:

- (1) an initial shelter petition is filed;
- (2) a petition alleging dependency is filed; or
- (3) a petition for termination of parental rights is filed.

**(b) File to Be Opened.** Upon commencement of any dependency or termination of parental rights proceeding, the clerk shall open a file and assign a case number.

**RULE 8.203. APPLICATION OF UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT**

Any pleading filed commencing proceedings as set forth in rule 8.201 shall be accompanied by an affidavit, to the extent of affiant's personal knowledge, under the Uniform Child Custody Jurisdiction and Enforcement Act. Each party has a continuing duty to inform the court of any custody proceeding in this or any other state of which information is obtained during the proceeding.

**RULE 8.205. TRANSFER OF CASES**

**(a) Transfer of Cases Within Circuit Court.** If it should appear at any time in a proceeding initiated in a division other than the division of the circuit court assigned to handle dependency matters that facts are alleged that essentially constitute a dependency or the termination of parental rights, the court may upon consultation with the administrative judge assigned to dependency cases order the transfer of action and the transmittal of all relevant papers to the division assigned to handle dependency matters. The division assigned to handle dependency matters shall then assume jurisdiction only over matters pertaining to dependency, custody, visitation, and child support.

**(b) Transfer of Cases Within the State of Florida.** The court may transfer any case after adjudication, when adjudication is withheld, or before adjudication where witnesses are available in another jurisdiction, to the circuit court for the county in which is located the domicile or usual residence of the child or such other circuit as the court may determine to be for the best interest of the child and to promote the efficient administration of justice. The transferring court shall enter an order transferring its jurisdiction and certifying the case to the proper court, furnishing all parties, the clerk, and the attorney's office handling dependency matters for the state in the receiving court a copy of the order of transfer within 5 days. The clerk shall also transmit a certified copy of the file to the receiving court within 5 days.

**(c) Transfer of Cases Among States.** If it should appear at any time that an action is pending in another state, the court may transfer jurisdiction over the action to a more convenient forum state, may stay the proceedings, or may dismiss the action.

**RULE 8.210. PARTIES AND PARTICIPANTS**

**(a) Parties.** For the purpose of these rules the terms "party" and "parties" shall include the petitioner, the child, the parent(s) of the child, the department, and the guardian ad litem or the representative of the guardian ad litem program, when the program has been appointed.

**(b) Participants.** “Participant” means any person who is not a party but who should receive notice of hearings involving the child. Participants include foster parents or the legal custodian of the child, identified prospective parents, actual custodians of the child, grandparents entitled to notice of an adoption proceeding as provided by law, the state attorney, and any other person whose participation may be in the best interest of the child. The court may add additional participants. Participants may be granted leave by the court to be heard without the necessity of filing a motion to intervene and shall have no other rights of a party except as provided by law.

**(c) Parent or Legal Custodian.** For the purposes of these rules, when the phrase “parent(s) or legal custodian(s)” is used, it refers to the rights or responsibilities of the parent and, only if there is no living parent with intact parental rights, to the rights or responsibilities of the legal custodian who has assumed the role of the parent.

#### **RULE 8.215. GUARDIAN AD LITEM**

**(a) Request.** At any stage of the proceedings, any party may request or the court may appoint a guardian ad litem to represent any child alleged to be dependent.

**(b) Appointment.** The court shall appoint a guardian ad litem to represent the child in any proceeding as required by law and shall ascertain at each stage of the proceeding whether a guardian ad litem should be appointed if one has not yet been appointed.

**(c) Duties and Responsibilities.** The guardian ad litem shall be a responsible adult, who may or may not be an attorney, or a certified guardian ad litem program, and shall have the following responsibilities:

(1) To gather information concerning the allegations of the petition and any subsequent matters arising in the case and, unless excused by the court, to file a written report. This report shall include a summary of the guardian ad litem’s findings, a statement of the wishes of the child, and the recommendations of the guardian ad litem and shall be provided to all parties and the court at least 72 hours before the hearing for which the report is prepared.

(2) To be present at all court hearings unless excused by the court.

(3) To represent the interests of the child until the jurisdiction of the court over the child terminates, or until excused by the court.

(4) To perform such other duties as are consistent with the scope of the appointment.

**(d) Bond.** A guardian ad litem shall not be required to post bond but shall file an acceptance of the office.

**(e) Service.** A guardian ad litem shall be entitled to receive service of pleadings and papers as provided by rule 8.225.

**(f) Practice of Law by Lay Guardians.** The duties of lay guardians shall not include the practice of law.

**(g) Substitution or Discharge.** The court, on its own motion or that of any party, including the child, may substitute or discharge the guardian ad litem for reasonable cause.

#### **RULE 8.217. ATTORNEY AD LITEM**

**(a) Request.** At any stage of the proceedings, any party may request or the court may consider whether an attorney ad litem is necessary to represent any child alleged to be dependent, if one has not already been appointed.

**(b) Appointment.** The court may appoint an attorney ad litem to represent the child in any proceeding as allowed by law.

**(c) Duties and Responsibilities.** The attorney ad litem shall be an attorney who has completed any additional requirements as provided by law. The attorney ad litem shall have the responsibilities provided by law.

**(d) Service.** An attorney ad litem shall be entitled to receive service of pleadings and papers as provided by rule 8.225.

**RULE 8.220. STYLE OF PLEADING AND ORDERS**

All pleadings and orders shall be styled: “In the interest of ....., a child,” or: “In the interest of ....., children.”

**RULE 8.224. PERMANENT MAILING ADDRESS**

(a) **Designation.** On the first appearance before the court, each party shall provide a permanent mailing address to the court. The court shall advise each party that this address will be used by the court, the petitioner, and other parties for notice unless and until the party notifies the court and the petitioner, in writing, of a new address.

(b) **Effect of Filing.** On the filing of a permanent address designation with the court, the party then has an affirmative duty to keep the court and the petitioner informed of any address change. Any address change must be filed with the court as an amendment to the permanent address designation.

(c) **Service to Permanent Mailing Address.** Service of any summons, notice, pleadings, subpoenas, or other papers to the permanent mailing address on file with the court will be presumed to be appropriate service.

**RULE 8.225. PROCESS, DILIGENT SEARCHES, AND SERVICE OF PLEADINGS AND PAPERS**

**(a) Summons and Subpoenas.**

(1) **Summons.** Upon the filing of a dependency petition, the clerk shall issue a summons. The summons shall require the person on whom it is served to appear for a hearing at a time and place specified not less than 72 hours after service of the summons. A copy of the petition shall be attached to the summons.

(2) **Subpoenas.** Subpoenas for testimony before the court, for production of tangible evidence, and for taking depositions shall be issued by the clerk of the court, the court on its own motion, or any attorney of record for a party. Subpoenas may be served within the state by any person over 18 years of age who is not a party to the proceeding. In dependency and termination of parental rights proceedings, subpoenas may also be served by authorized agents of the department or the guardian ad litem. Except as otherwise required by this rule, the procedure for issuance of a subpoena by an attorney of record in a proceeding shall be as provided in the Florida Rules of Civil Procedure.

(3) **Service of Summons and Other Process to Persons Residing in the State.** The summons and other process shall be served upon all parties other than the petitioner as required by law. The summons and other process may be served by authorized agents of the department or the guardian ad litem.

(A) Service by publication shall not be required for dependency hearings and shall be required only for service of summons in a termination of parental rights proceeding for parents whose identities are known but whose whereabouts cannot be determined despite a diligent search. Service by publication in these circumstances shall be considered valid service.

(B) The failure to serve a party or give notice to a participant in a dependency hearing shall not affect the validity of an order of adjudication or disposition if the court finds that the petitioner has completed a diligent search that failed to ascertain the identity or location of that party.

(C) Personal appearance of any person in a hearing before the court eliminates the requirement for serving process upon that person.

**(4) Service of Summons and Other Process to Persons Residing Outside of the State in Dependency Proceedings.**

(A) Service of the summons and other process on parents, parties, participants, petitioners, or persons outside this state shall be in a manner reasonably calculated to give actual notice, and may be made:

(i) by personal delivery outside this state in a manner prescribed for service of process within this state;

(ii) in a manner prescribed by the law of the place in which service is made for service of process in that place in an action in any of its courts of general jurisdiction;

(iii) by any form of mail addressed to the person to be served and requesting a receipt; or

(iv) as directed by the court. Service by publication shall not be required for dependency hearings.

(B) Notice under this rule shall be served, mailed, delivered, or last published at least 20 days before any hearing in this state.

(C) Proof of service outside this state may be made by affidavit of the person who made the service or in the manner prescribed by the law of this state, the order pursuant to which the service is made, or the law of the place in which the service is made. If service is made by mail, proof may be in a receipt signed by the addressee or other evidence of delivery to the addressee.

(D) Personal appearance of any person in a hearing before the court eliminates the requirement for serving process upon that person.

**(b) Paternity Inquiry and Diligent Search.**

**(1) Identity Unknown.** If the identity of a parent is unknown, and a petition for dependency, shelter care, or termination of parental rights is filed, the court shall conduct the inquiry required by law. The information required by law may be submitted to the court in the form of a sworn affidavit executed by a person having personal knowledge of the facts.

**(2) Location Unknown.** If the location of a parent is unknown and that parent has not filed a permanent address designation with the court, the petitioner shall undertake a diligent search as required by law.

**(3) Affidavit of Diligent Search.** If the location of a parent is unknown after the diligent search has been completed, the petitioner shall file with the court an affidavit of diligent search executed by the person who made the search and inquiry.

**(4) Continuing Duty.** After filing an affidavit of diligent search in a dependency or termination of parental rights proceeding, the petitioner, and, if the court requires, the department, are under a continuing duty to search for and attempt to serve the parent whose location is unknown until excused from further diligent search by the court. The department shall report on the results of the continuing search at each court hearing until the person is located or until further search is excused by the court.

**(5) Effect of Paternity Inquiry and Diligent Search.**

(A) Failure to serve parents whose identity or residence is unknown shall not affect the validity of an order of adjudication or disposition if the court finds the petitioner has completed a diligent search.

(B) If the court inquiry fails to identify any person as a parent or prospective parent, the court shall so find and may proceed without further notice.

(C) If the inquiry, diligent search, or subsequent search identifies and locates any person who may be a parent or prospective parent, the court shall require notice of the hearing to be provided to that person. That person must then be given an opportunity to become a party to the proceedings by completing a sworn affidavit of parenthood and filing it with the court or the department.

**(c) Notice and Service of Pleadings and Papers.**

**(1) Notice of Arraignment Hearings in Dependency Cases.** Notice of the arraignment hearing must be served on all parties with the summons and petition. The document containing the notice to appear in a dependency arraignment hearing must contain, in type at least as large as the balance of the document, the following or substantially similar language: “FAILURE TO PERSONALLY APPEAR AT THE ARRAIGNMENT HEARING CONSTITUTES CONSENT TO THE ADJUDICATION OF THIS CHILD (OR THESE CHILDREN) AS A DEPENDENT CHILD (OR CHILDREN) AND MAY ULTIMATELY RESULT IN LOSS OF CUSTODY OF THIS CHILD (OR THESE CHILDREN).”

**(2) Notice of Assessment of Child Support.** Other than as part of a disposition order, if the court, on its own motion or at the request of any party, seeks to impose or enforce a child support obligation on any

parent, all parties and participants are entitled to reasonable notice that child support will be addressed at a future hearing.

**(3) Notice of Hearings to Participants and Parties Whose Identity or Address are Known.** All participants and parties whose identity and address are known must be notified of all proceedings and hearings subsequent to the initial hearing, unless otherwise provided by law. Notice to parents in proceedings involving shelter hearings and hearings resulting from medical emergencies must be that which is most likely to result in actual notice. It is the duty of the petitioner or moving party to notify all participants and parties known to the petitioner or moving party of all hearings subsequent to the initial hearing, except hearings which must be noticed by the court. Additional notice is not required if notice was provided to the parties in writing by the court or is contained in prior court orders and those orders were provided to the participant or party.

**(4) Service of Pleadings, Orders, and Papers.** Unless the court orders otherwise, every pleading, order, and paper filed in the action after the initial petition, shall be served on each party or the party's attorney. Nothing herein shall be construed to require that a plea be in writing or that an application for witness subpoena be served.

**(5) Method of Service.** When service is required or permitted to be made upon a party or participant represented by an attorney, service shall be made upon the attorney unless service upon the party or participant is ordered by the court.

(A) Service is excused if the identity or residence of the party or participant is unknown and a diligent search for that person has been completed in accordance with law.

(B) Service upon the attorney shall be made by delivering a copy to the attorney or by mailing it to the attorney's last known address.

(C) Delivery of a copy within this rule shall mean:

(i) handing it to the attorney;

(ii) leaving it at the attorney's office with the person in charge thereof;

(iii) if there is no one in charge of the office, leaving it a conspicuous place therein; or

(iv) transmitting it by facsimile to the attorney's or party's office with a cover sheet containing the sender's name, firm, address, telephone number, and facsimile number, the number of pages transmitted, and the recipient's facsimile number. When service is made by facsimile, a copy shall also be served by any other method permitted by this rule. Facsimile service occurs when transmission is complete.

(D) If the party or participant is not represented by an attorney, service of all pleadings or papers shall be upon the party or participant. Service may be made by mail to the party's or participant's permanent mailing address, if one has been provided to the court; to the last known address, if a permanent mailing address has not been provided to the court; or by leaving it at their usual place of abode with some person of their family above 15 years of age and informing such person of the contents.

(E) Service by mail shall be complete upon mailing.

**(6) Filing.** The filing of pleadings and other papers with the court as required by these rules shall be made by filing the original with the clerk of the court either before service or immediately thereafter. The court may permit the papers to be filed with it, in which event the filing date shall be noted thereon and the papers shall be transmitted to the office of the clerk.

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

"I certify that a copy/copies has/have been furnished to (insert names or names) by (delivery) (mail) (fax) on (date).

Title"

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.

#### **RULE 8.230. PLEADINGS TO BE SIGNED**

**(a) Pleading to Be Signed by Attorney.** Every written paper or pleading of a party represented by an attorney shall be signed in the attorney's individual name by such attorney, whose Florida Bar number, address, and telephone number, including area code, shall be stated and who shall be duly licensed to practice law in Florida. The attorney may be required by an order of court to vouch for the authority to represent such party and to give the address of such party. Except when otherwise specifically provided by these rules or applicable statute, pleadings as such need not be verified or accompanied by affidavit.

**(b) Pleading to Be Signed by Unrepresented Party.** A party who has no attorney but who represents himself or herself shall sign a written pleading or other paper to be filed and state his or her address and telephone number, including area code.

**(c) Effect of Signing Pleading.** The signature of a person shall constitute a certificate that the paper or pleading has been read; that to the best of the person's knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. If a pleading or paper is not signed, or is signed with intent to defeat the purpose of this rule, it may be stricken and the action may proceed as though the pleading or paper had not been filed.

#### **RULE 8.235. MOTIONS**

**(a) Motions in General.** An application to the court for an order shall be made by motion which shall be in writing unless made during a hearing; shall be signed by the party making the motion or by the party's attorney; shall state with particularity the grounds therefor; and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion or in a written report to the court for a scheduled hearing provided the notice or report are served on the parties as required by law.

**(b) Motion to Dismiss.** Any party may file a motion to dismiss any petition or other pleading, setting forth the grounds on which the motion is based. If a motion to dismiss is granted where a child is being sheltered under an order, the child may be continued in shelter under previous order of the court upon the representation that a new or amended petition will be filed.

**(c) Sworn Motion to Dismiss.** Before the adjudicatory hearing the court may entertain a motion to dismiss the petition on the ground that there are no material disputed facts and the undisputed facts do not establish a prima facie case of dependency. The facts on which such motion is based shall be specifically alleged and the motion sworn to by the party. The motion shall be filed a reasonable time before the date of the adjudicatory hearing. The opposing parties may traverse or demur to this motion. Factual matters alleged in it shall be deemed admitted unless specifically denied by the party. The motion shall be denied if the party files a written traverse that with specificity denies under oath the material fact or facts alleged in the motion to dismiss.

**(d) Motion to Sever.** A motion may be made for a severance of 2 or more counts of a multi-count petition, or for the severance of the cases of 2 or more children alleged to be dependent in the same petition. The court may grant motions for severance of jointly-brought cases for good cause shown.

**RULE 8.240. COMPUTATION, CONTINUANCE, EXTENSION,  
AND ENLARGEMENT OF TIME**

**(a) Computation.** In computing any period of time prescribed or allowed by these rules, except rules 8.300 and 8.305, by order of court, or by any applicable statute, the day of the act or event from which the designated period of time begins to run is not included. The last day of the period so computed shall be counted, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, a Sunday, nor a legal holiday. When the period of time prescribed or allowed shall be less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation.

**(b) Enlargement of Time.** When by these rules, by a notice given under them, or by order of court an act is required or allowed to be done at or within a specified time, the court for good cause shown, within the limits established by law, and subject to the provisions of subdivision (d) of this rule, may, at any time, in its discretion (1) with or without notice, order the period enlarged if a request is made before the expiration of the period originally prescribed or as extended by a previous order, or (2) on motion made and notice after the expiration of the specified period permit the act to be done when the failure to act was the result of excusable neglect. The court may not, except as provided by law or elsewhere in these rules, extend the time for making a motion for new trial, for rehearing, or vacation of judgment, or for taking an appeal. This rule shall not be construed to apply to shelter hearings.

**(c) Time for Service.**

**(1) Motions and Notice of Hearing.** A copy of any written motion that may not be heard ex parte and a copy of the notice of hearing shall be served a reasonable time before the time specified for the hearing.

**(2) Additional Time After Service by Mail.** Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of notice or other paper is served by mail, 5 days shall be added to the prescribed period.

**(d) Continuances and Extensions of Time.**

(1) A motion for continuance, extension, or waiver of the time standards provided by law and found in this rule shall be in writing and signed by the requesting party. On a showing of good cause, the court shall allow a motion for continuance or extension to be made ore tenus at any time during the proceedings.

(2) A motion for continuance, extension, or waiver of the time standards provided by law shall not be made in advance of the particular circumstance or need that would warrant delay of the proceedings.

(3) A motion for continuance, extension, or waiver of the time standards provided by law shall state all of the facts that the movant contends entitle the movant to a continuance, extension, or waiver of time including:

(A) the task that must be completed by the movant to preserve the rights of a party or the best interests of the child who is the subject of the proceedings;

(B) the minimum number of days absolutely necessary to complete this task; and

(C) the total number of days the proceedings have been continued at the request of any party within any 12-month period.

(4) These time limitations do not include the following:

(A) Periods of delay resulting from a continuance granted at the request of the child's counsel or the child's guardian ad litem or, if the child is of sufficient capacity to express reasonable consent, at the request of or with the consent of the child.

(B) Periods of delay because of unavailability of evidence that is material to the case if the requesting party has exercised due diligence to obtain the evidence and there are substantial grounds to believe that the evidence will be available within 30 days. However, if the requesting party is not prepared to proceed within 30 days, any other party may move for issuance of an order to show cause or the court on its own motion may impose appropriate sanctions, which may include dismissal of the petition.

(C) Periods of delay to allow the requesting party additional time to prepare the case and additional time is justified because of an exceptional circumstance.

(D) Reasonable periods of delay necessary to accomplish notice of the hearing to the parent or legal custodian.

(5) Notwithstanding subdivision (4), proceedings may not be continued or extended for more than a total of 60 days for all parties within any 12-month period. A continuance or extension of time standards beyond 60 days in any 12-month period may be granted only on a finding by the court of extraordinary circumstances and that the continuance or extension of time standards is necessary to preserve the constitutional rights of a party or that there is substantial evidence demonstrating that the child's best interests will be affirmatively harmed without the granting of a continuance or extension of time.

## **RULE 8.245. DISCOVERY**

**(a) Scope of Discovery.** Unless otherwise limited by the court in accordance with these rules, the scope of discovery is as follows:

**(1) In General.** Parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

**(2) Claims of Privilege or Protection of Trial Preparation Materials.** When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and describe the nature of the document, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will allow other parties to assess the applicability of the privilege or protection.

### **(b) Required Disclosure.**

(1) At any time after the filing of a shelter petition, a petition alleging a child to be a dependent child, or a petition for termination of parental rights, on written demand of any party, the party to whom the demand is directed shall disclose and permit inspecting, copying, testing, or photographing matters material to the cause. If the child had no living parent with intact parental rights at the time the dependency allegations arose, then the person who was serving as the legal custodian of the child at that time is entitled to obtain discovery during the pendency of a shelter or dependency petition.

(2) The following information shall be disclosed by any party on demand:

(A) The names and addresses of all persons known to have information relevant to the proof or defense of the petition's allegations.

(B) The statement of any person furnished in compliance with the preceding paragraph. The term "statement" means a written statement made by this person and signed or otherwise adopted or approved by the person, or a stenographic, mechanical, electronic, or other recording, or a transcript of it, or that is a substantially verbatim recital of an oral statement made by this person to an officer or agent of the state and recorded contemporaneously with the making of the oral statement. The court may prohibit any party from introducing in evidence the material not disclosed, to secure and maintain fairness in the just determination of the cause.

(C) Any written or recorded statement and the substance of any oral statement made by the demanding party or a person alleged to be involved in the same transaction. If the number of oral statements made to any person are so numerous that, as a practical matter, it would be impossible to list the substance of all the oral statements, then the party to whom the demand is directed will disclose that person's identity and the fact that this person has knowledge of numerous statements. This disclosure will allow the demanding party to depose that person.

(D) Tangible papers or objects belonging to the demanding party that are to be used at the adjudicatory hearing.

(E) Reports or statements of experts, including results of physical or mental examinations and of scientific tests, experiments, or comparisons.

(3) The disclosures required by subdivision (a) of this rule shall be made within 10 days from the receipt of the demand for them. Disclosure may be made by allowing the requesting party to review the files of the party from whom discovery is requested after redaction of nondiscoverable information.

**(c) Limitations on Disclosure.**

(1) On application, the court may deny or partially restrict disclosure authorized by this rule if it finds there is a substantial risk to any person of physical harm, intimidation, bribery, economic reprisals, or unnecessary annoyance or embarrassment resulting from the disclosure, that outweighs any usefulness of the disclosure to the party requesting it.

(2) Disclosure shall not be required of legal research or of records, correspondence, or memoranda, to the extent that they contain the opinion, theories, or conclusions of the parties' attorneys or members of their legal staff.

**(d) Production of Documents and Things for Inspection and Other Purposes.**

**(1) Request; Scope.** Any party may request any other party

(A) to produce and permit the party making the request, or someone acting on the requesting party's behalf, to inspect and copy any designated documents, including writings, drawings, graphs, charts, photographs, phono-records, and other data compilations from which information can be obtained, translated, if necessary, by the party to whom the request is directed through detection devices into reasonably usable form, that constitute or contain matters within the scope of subdivision (a) and that are in the possession, custody, or control of the party to whom the request is directed; and

(B) to inspect and copy, test, or sample any tangible things that constitute or contain matters within the scope of subdivision (a) and that are in the possession, custody, or control of the party to whom the request is directed.

**(2) Procedure.** Without leave of court the request may be served on the petitioner after commencement of proceedings and on any other party with or after service of the summons and initial petition on that party. The request shall set forth the items to be inspected, either by individual item or category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection or performing the related acts. The party to whom the request is directed shall serve a written response within 15 days after service of the request, except that a respondent may serve a response within 30 days after service of the process and initial pleading on that respondent. The court may allow a shorter or longer time. For each item or category the response shall state that inspection and related activities will be permitted as requested unless the request is objected to, in which event the reasons for the objection shall be stated. If an objection is made to part of an item or category, the part shall be specified. When producing documents, the producing party shall either produce them as they are kept in the usual course of business or shall identify them to correspond with the categories in the request. The party submitting the request may move for an order under subdivision (k) concerning any objection, failure to respond to the request, or any part of it, or failure to permit inspection as requested.

**(3) Persons Not Parties.** This rule does not preclude an independent action against a person not a party for production of documents and things.

**(4) Filing of Documents.** Unless required by the court, a party shall not file any of the documents or things produced with the response. Documents or things may be filed when they should be considered by the court in determining a matter pending before the court.

**(e) Production of Documents and Things Without Deposition.**

**(1) Request; Scope.** A party may seek inspection and copying of any documents or things within the scope of subdivision (d)(1) from a person who is not a party by issuance of a subpoena directing the

production of the documents or things when the requesting party does not seek to depose the custodian or other person in possession of the documents or things.

**(2) Procedure.** A party desiring production under this rule shall serve notice on every other party of the intent to serve a subpoena under this rule at least 5 days before the subpoena is issued if service is by delivery and 10 days before the subpoena is issued if service is by mail. The proposed subpoena shall be attached to the notice and shall state the time, place, and method for production of the documents or things, and the name and address of the person who is to produce the documents or things, if known, and if not known, a general description sufficient to identify the person or the particular class or group to which the person belongs; shall include a designation of the items to be produced; and shall state that the person who will be asked to produce the documents or things has the right to object to the production under this rule and that the person will not be required to surrender the documents or things. A copy of the notice and proposed subpoena shall not be furnished to the person on whom the subpoena is to be served. If any party serves an objection to production under this rule within 10 days of service of the notice, the documents or things shall not be produced under this rule and relief may be obtained under subdivision (g).

**(3) Subpoena.** If no objection is made by a party under subdivision (e)(2), an attorney of record in the action may issue a subpoena or the party desiring production shall deliver to the clerk for issuance a subpoena and a certificate of counsel or pro se party that no timely objection has been received from any party. The clerk shall issue the subpoena and deliver it to the party desiring production. The subpoena shall be identical to the copy attached to the notice, shall specify that no testimony may be taken, and shall require only production of the documents or things specified in it. The subpoena may give the recipient an option to deliver or mail legible copies of the documents or things to the party serving the subpoena. The person on whom the subpoena is served may condition the preparation of copies on the payment in advance of the reasonable costs of preparing the copies. The subpoena shall require production only in the county of the residence of the custodian or other person in possession of the documents or things or in the county where the documents or things are located or where the custodian or person in possession usually conducts business. If the person on whom the subpoena is served objects at any time before the production of the documents or things, the documents or things shall not be produced under this rule, and relief may be obtained under subdivision (g).

**(4) Copies Furnished.** If the subpoena is complied with by delivery or mailing of copies as provided in subdivision (e)(3), the party receiving the copies shall furnish a legible copy of each item furnished to any other party who requests it on the payment of the reasonable cost of preparing the copies.

**(5) Independent Action.** This rule does not affect the right of any party to bring an independent action for production of documents and things.

**(f) Protective Orders.** On motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending may make any order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense that justice requires, including one or more of the following:

- (1) that the discovery not be had;
  - (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place;
  - (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;
  - (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;
  - (5) that discovery be conducted with no one present except persons designated by the court;
  - (6) that a deposition after being sealed be opened only by order of the court;
  - (7) that confidential research or information not be disclosed or be disclosed only in a designated way;
- and

(8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery.

**(g) Depositions.**

**(1) Time and Place.**

(A) At any time after the filing of the petition alleging a child to be dependent or a petition for termination of parental rights, any party may take the deposition on oral examination of any person who may have information relevant to the allegations of the petition.

(B) The deposition shall be taken in a building in which the adjudicatory hearing may be held, in another place agreed on by the parties, or where the trial court may designate by special or general order. A resident of the state may be required to attend an examination only in the county in which he or she resides, is employed, or regularly transacts business in person.

**(2) Procedure.**

(A) The party taking the deposition shall give written notice to each other party. The notice shall state the time and place the deposition is to be taken and the name of each person to be examined.

(B) Subpoenas for taking depositions shall be issued by the clerk of the court, the court, or any attorney of record for a party.

(C) After notice to the parties the court, for good cause shown, may extend or shorten the time and may change the place of taking.

(D) Except as otherwise provided by this rule, the procedure for taking the deposition, including the scope of the examination and obtaining protective orders, shall be the same as that provided by the Florida Rules of Civil Procedure.

**(3) Use of Deposition.** Any deposition taken under this rule may be used at any hearing covered by these rules by any party for the following purposes:

(A) For the purpose of impeaching the testimony of the deponent as a witness.

(B) For testimonial evidence, when the deponent, whether or not a party, is unavailable to testify because of one or more of the following reasons:

(i) He or she is dead.

(ii) He or she is at a greater distance than 100 miles from the place of hearing or is out of the state unless it appears that the absence of the witness was procured by the party offering the deposition.

(iii) The party offering the deposition has been unable to procure the attendance of the witness by subpoena.

(iv) He or she is unable to attend or testify because of age, illness, infirmity, or imprisonment.

(v) It has been shown on application and notice that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

(vi) The witness is an expert or skilled witness.

**(4) Use of Part of Deposition.** If only part of a deposition is offered in evidence by a party, an adverse party may require the party to introduce any other part that in fairness ought to be considered with the part introduced, and any party may introduce any other parts.

**(5) Refusal to Obey Subpoena.** A person who refuses to obey a subpoena served on the person for the taking of a deposition may be adjudged in contempt of the court from which the subpoena issued.

**(6) Limitations on Use.** Except as provided in subdivision (3), no deposition shall be used or read in evidence when the attendance of the witness can be procured. If it appears to the court that any person whose deposition has been taken has absented himself or herself by procurement, inducements, or threats by or on behalf of any party, the deposition shall not be read in evidence on behalf of that party.

**(h) Perpetuating Testimony Before Action or Pending Appeal.**

**(1) Before Action.**

**(A) Petition.** A person who desires to perpetuate the person's own testimony or that of another person regarding any matter that may be cognizable in any court of this state may file a verified petition in the circuit court in the county of the residence of any expected adverse party. The petition shall be titled in the name of the petitioner and shall show:

(i) that the petitioner expects to be a party to an action cognizable in a court of Florida, but is presently unable to bring it or cause it to be brought;

(ii) the subject matter of the expected action and the person's interest in it;

(iii) the facts that the person desires to establish by the proposed testimony and the reasons for desiring to perpetuate it;

(iv) the names or a description of the persons expected to be adverse parties and their names and addresses so far as known; and

(v) the names and addresses of the persons to be examined and the substance of the testimony expected to be elicited from each and asking for an order authorizing the petitioner to take the deposition of the persons to be examined named in the petition for the purpose of perpetuating their testimony.

**(B) Notice and Service.** The petitioner shall serve a notice on each person named in the petition as an expected adverse party, with a copy of the petition, stating that the petitioner will apply to the court at a time and place in the notice for an order described in the petition. At least 20 days before the date of the hearing, the notice shall be served either within or without the county in the manner provided by law for serving of summons. However, if service cannot with due diligence be made on any expected adverse party named in the petition, the court may order service by publication or otherwise and shall appoint an attorney for persons not served in the manner provided by law for service of summons. The attorney shall represent the adverse party and, if he or she is not otherwise represented, shall cross-examine the deponent.

**(C) Order and Examination.** If the court is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it shall make an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and whether the deposition shall be taken on oral examination or written interrogatories. The deposition may then be taken in accordance with these rules and the court may make orders in accordance with the requirements of these rules. For the purpose of applying these rules to depositions for perpetuating testimony, each reference in them to the court in which the action is pending shall be deemed to refer to the court in which the petition for the deposition was filed.

**(D) Use of Deposition.** If a deposition to perpetuate testimony is taken under these rules, it may be used in any action involving the same subject matter subsequently brought in any court of Florida in accordance with the provisions of subdivision (g)(3).

**(2) Pending Appeal.** If an appeal has been taken from a judgment of any court or before the taking of an appeal if the time for it has not expired, the court in which the judgment was rendered may allow the taking of the depositions of witnesses to perpetuate their testimony for use in further proceedings in the court. In such case, the party who desires to perpetuate the testimony may move for leave to take the deposition on the same notice and service as if the action were pending in the court. The motion shall show the names and addresses of persons to be examined, the substance of the testimony expected to be elicited from each, and the reasons for perpetuating the testimony. If the court finds that the perpetuation is proper to avoid a failure or delay in justice, it may make orders as provided for by this rule and the deposition may then be taken and used in the same manner and under the same conditions as are prescribed in these rules for depositions taken in actions pending in the court.

**(3) Perpetuation Action.** This rule does not limit the power of a court to entertain an action to perpetuate testimony.

**(i) Rules Governing Depositions of Children Under 16.**

(1) The taking of a deposition of a child witness or victim under the age of 16 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 16 including:

(A) designating the place of the deposition;

(B) designating the length of time of the deposition;

(C) permitting or prohibiting the attendance of any person at the deposition;

(D) requiring the submission of questions before the examination;

(E) choosing a skilled interviewer to pose the questions;

(F) limiting the number or scope of the questions to be asked; or

(G) imposing any other conditions the court feels are necessary for the protection of the child.

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

(A) The age of the child.

(B) The nature of the allegations.

(C) The relationship between the child victim and the alleged abuser.

(D) The child has undergone previous interviews for the purposes of criminal or civil proceedings that were recorded either by videotape or some other manner of recording and the requesting party has access to the recording.

(E) The examination would adversely affect the child.

(F) The manifest best interests of the child require the limitations or restrictions.

(4) The court, in its discretion, may order the consolidation of the taking of depositions of a child under the age of 16 when the child is the victim or witness in a pending proceeding arising from similar facts or circumstances.

**(j) Supplemental Discovery.** If, subsequent to compliance with these rules, a party discovers additional witnesses, evidence, or material that the party would have been under a duty to disclose or produce at the time of the previous compliance, the party shall promptly disclose or produce such witnesses, evidence, or material in the same manner as required under these rules for initial discovery.

**(k) Sanctions.**

(1) If at any time during the course of the proceedings, it is brought to the attention of the court that a party has failed to comply with an applicable discovery rule or with an order issued under an applicable discovery rule, the court may:

(A) order the party to comply with the discovery or inspection of materials not previously disclosed or produced;

(B) grant a continuance;

(C) order a new hearing;

(D) prohibit the party from calling a witness not disclosed or introducing in evidence the material not disclosed; or

(E) enter an order that it deems just under the circumstances.

(2) Willful violation by counsel of an applicable discovery rule or an order issued under it may subject counsel to appropriate sanction by the court.

**RULE 8.250. EXAMINATIONS, EVALUATION, AND TREATMENT**

**(a) Child.** Mental or physical examination of a child may be obtained as provided by law.

**(b) Parent, Legal Custodian, or Other Person who has Custody or is Requesting Custody.** At any time after the filing of a shelter, dependency, or termination of parental rights petition, or after an adjudication of dependency or a finding of dependency when adjudication is withheld, when the mental or physical condition, including the blood group, of a parent, legal custodian, or other person who has custody or is requesting custody of a child is in controversy, any party may request the court to order the person to

submit to a physical or mental examination or a substance abuse evaluation or assessment by a qualified professional. The order may be made only on good cause shown and after notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made. The person whose examination is sought may, after receiving notice of the request for an examination, request a hearing seeking to quash the request. The court may, on its own motion, order a parent, legal custodian, or other person who has custody or is requesting custody to undergo such evaluation, treatment, or counseling activities as authorized by law.

#### **RULE 8.255. GENERAL PROVISIONS FOR HEARINGS**

**(a) Presence of Counsel.** The department must be represented by an attorney at every stage of these proceedings.

**(b) Presence of Child.** The child has a right to be present at the hearing 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. Any party may file a motion to require or excuse the presence of the child.

**(c) Separate Examinations.** The child and the parents, caregivers, or legal custodians of the child may be examined separately and apart from each other.

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

**(1) Testimony by Child.** A child may be called to testify in open court by any party to the proceeding or the court, and may be examined or cross-examined.

**(2) In-Camera Examination.**

(A) On motion and hearing, the child may be examined by the court outside the presence of other parties as provided by law. The court shall assure that proceedings are recorded, unless otherwise stipulated by the parties.

(B) The motion may be filed by any party or the trial court on its own motion.

(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) the age of the child;

(ii) the nature of the allegation;

(iii) the relationship between the child and the alleged abuser;

(iv) the likelihood that the child would suffer emotional or mental harm if required to testify in open court;

(v) whether the child's testimony is more likely to be truthful if given outside the presence of other parties;

(vi) whether cross-examination would adversely affect the child; and

(vii) the manifest best interest of the child.

(D) The child may be called to testify by means of closed-circuit television or by videotaping as provided by law.

**(e) Invoking the Rule.** Before 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.

**(f) Continuances.** As permitted by law, the court may grant a continuance before or during a hearing for good cause shown by any party.

**(g) Record.** A record of the testimony in all hearings shall be made by an official court reporter, a court-approved stenographer, or 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.

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

## **RULE 8.257. GENERAL MAGISTRATES**

**(a) Appointment.** Judges of the circuit court may appoint as many general magistrates from among the members of The Florida Bar in the circuit as the judges find necessary, and the general magistrates shall continue in office until removed by the court. The order of appointment shall be recorded. Every person appointed as a general magistrate shall take the oath required of officers by the Constitution and the oath shall be recorded before the magistrate discharges any duties of that office.

### **(b) Referral.**

**(1) Consent.** No matter shall be heard by a general magistrate without an appropriate order of referral and the consent to the referral of all parties. Consent, as defined in this rule, to a specific referral, once given, cannot be withdrawn without good cause shown before the hearing on the merits of the matter referred. Consent may be express or implied in accordance with the requirements of this rule.

**(2) Objection.** A written objection to the referral to a general magistrate must be filed within 10 days of the service of the order of referral. If the time set for the hearing is less than 10 days after service of the order of referral, the objection must be filed before commencement of the hearing. Failure to file a written objection within the applicable time period is deemed to be consent to the order of referral.

### **(3) Order.**

(A) The order of referral shall contain the following language in bold type:

**A REFERRAL TO A GENERAL MAGISTRATE REQUIRES THE CONSENT OF ALL PARTIES. YOU ARE ENTITLED TO HAVE THIS MATTER HEARD BEFORE A JUDGE. IF YOU DO NOT WANT TO HAVE THIS MATTER HEARD BEFORE THE GENERAL MAGISTRATE, YOU MUST FILE A WRITTEN OBJECTION TO THE REFERRAL WITHIN 10 DAYS OF THE TIME OF SERVICE OF THIS ORDER. IF THE TIME SET FOR THE HEARING IS LESS THAN 10 DAYS AFTER THE SERVICE OF THIS ORDER, THE OBJECTION MUST BE MADE BEFORE THE HEARING. FAILURE TO FILE A WRITTEN OBJECTION WITHIN THE APPLICABLE TIME PERIOD IS DEEMED TO BE A CONSENT TO THE REFERRAL. REVIEW OF THE REPORT AND RECOMMENDATIONS MADE BY THE GENERAL MAGISTRATE SHALL BE BY EXCEPTIONS AS PROVIDED IN FLORIDA RULE OF JUVENILE PROCEDURE 8.257(f). A RECORD, WHICH INCLUDES A TRANSCRIPT OF PROCEEDINGS, WILL BE REQUIRED TO SUPPORT THE EXCEPTIONS.**

(B) The order of referral shall state with specificity the matter or matters being referred. The order of referral shall also state whether electronic recording or a court reporter is provided by the court.

**(4) Setting Hearing.** When a referral is made to a general magistrate, any party or the general magistrate may set the action for hearing.

**(c) General Powers and Duties.** Every general magistrate shall perform all of the duties that pertain to the office according to the practice in chancery and rules of court and under the direction of the court. A general magistrate shall be empowered to administer oaths and conduct hearings, which may include the taking of evidence. All grounds for disqualification of a judge shall apply to general magistrates.

### **(d) Hearings.**

(1) The general magistrate shall assign a time and place for proceedings as soon as reasonably possible after the referral is made and give notice to each of the parties either directly or by directing counsel to file and serve a notice of hearing. If any party fails to appear, the general magistrate may proceed ex parte or may adjourn the proceeding to a future day, giving notice of the adjournment to the absent party. The general magistrate shall proceed with reasonable diligence in every referral and with the least delay practicable. Any party may apply to the court for an order to the general magistrate to speed the proceedings and to make the report and to certify to the court the reason for any delay.

(2) The general magistrate shall take testimony and establish a record which may be by electronic means as provided by Florida Rule of Judicial Administration 2.535(g)(3) or by a court reporter. The parties may not waive this requirement.

(3) The general magistrate shall have authority to examine under oath the parties and all witnesses on all matters contained in the referral, to require production of all books, papers, writings, vouchers, and other documents applicable to it, and to examine on oath orally all witnesses produced by the parties. The general magistrate may take all actions concerning evidence that can be taken by the circuit court and in the same manner. The general magistrate shall have the same powers as a circuit judge to use communications equipment as defined and regulated by Florida Rule of Judicial Administration 2.530.

(4) The notice or order setting a matter for hearing shall state whether electronic recording or a court reporter is provided by the court. If the court provides electronic recording, the notice shall also state that any party may provide a court reporter at that party's expense, subject to the court's approval.

**(e) Report.**

(1) The general magistrate shall file a report that includes findings of fact, conclusions of law, and recommendations and serve copies on all parties. If a court reporter was present, the report shall contain the name and address of the reporter.

(2) The report and recommendations shall contain the following language in bold type:

**SHOULD YOU WISH TO SEEK REVIEW OF THE REPORT AND RECOMMENDATIONS MADE BY THE GENERAL MAGISTRATE, YOU MUST FILE EXCEPTIONS WITHIN 10 DAYS OF SERVICE OF THE REPORT AND RECOMMENDATIONS IN ACCORDANCE WITH FLORIDA RULE OF JUVENILE PROCEDURE 8.257(f). YOU WILL BE REQUIRED TO PROVIDE THE COURT WITH A RECORD SUFFICIENT TO SUPPORT YOUR EXCEPTIONS WITHIN 10 DAYS OF SERVICE OF THE REPORT AND RECOMMENDATIONS OR YOUR EXCEPTIONS WILL BE DENIED. A RECORD ORDINARILY INCLUDES A WRITTEN TRANSCRIPT OF ALL RELEVANT PROCEEDINGS. THE PERSON SEEKING REVIEW MUST HAVE THE TRANSCRIPT PREPARED FOR THE COURT'S REVIEW.**

**(f) Exceptions.** The parties may file exceptions to the report within 10 days from the time it is served on them. Any party may file cross-exceptions within 5 days from the service of the exceptions. However, the filing of cross-exceptions shall not delay the hearing on the exceptions unless good cause is shown. If no exceptions are filed within that period, the court shall take appropriate action on the report. If exceptions are filed, they shall be heard on reasonable notice by either party or the court.

**(g) Record.** For the purpose of the hearing on exceptions, a record, substantially in conformity with this rule, shall be provided to the court by the party seeking review. The record shall consist of the court file, including the transcript of the relevant proceedings before the general magistrate, and all depositions and evidence presented to the general magistrate.

(1) The transcript of all relevant proceedings, if any, shall be delivered to the judge and provided to all other parties not less than 48 hours before the hearing on exceptions.

(2) If less than a full transcript of the proceedings taken before the general magistrate is ordered prepared by the excepting party, that party shall promptly file a notice setting forth the portions of the transcript that have been ordered. The responding party shall be permitted to designate any additional portions of the transcript necessary to the adjudication of the issues raised in the exceptions or cross-exceptions.

(3) The cost of the original and all copies of the transcript of the proceedings shall be borne initially by the party seeking review. Should any portion of the transcript be required as a result of a designation filed by the responding party, the party making the designation shall bear the initial cost of the additional transcript.

**(h) Prohibition on Magistrate Presiding over Certain Hearings.** Notwithstanding the provisions of this rule, a general magistrate shall not preside over a shelter hearing under section 39.402, Florida Statutes, an adjudicatory hearing under section 39.507, Florida Statutes, or an adjudicatory hearing under section 39.809, Florida Statutes.

## **RULE 8.260. ORDERS**

**(a) General Requirements.** All orders of the court shall be reduced to writing as soon after they are entered as is consistent with orderly procedure and shall contain specific findings of fact and conclusions of law.

**(b) Transmittal to Parties.** A copy of all orders shall be transmitted by the court or under its direction to all parties at the time of entry of the order.

**(c) Other Options.** The court may require

(1) that orders be prepared by a party;

(2) that the party serve the order; and

(3) on a case-by-case basis, that proposed orders be furnished to all parties before entry of the order by the court.

**(d) Precedence of Orders.** Orders of the circuit court hearing dependency matters shall be filed in any dissolution or other custody action or proceeding involving the same child. These orders shall take precedence over other custody and visitation orders. They may be filed under seal and not be open to inspection by the public.

## **RULE 8.265. MOTION FOR REHEARING**

**(a) Basis.** After the court has entered an order, any party may move for rehearing upon one or more of the following grounds:

(1) That the court erred in the decision of any matter of law arising during the hearing.

(2) That a party did not receive a fair and impartial hearing.

(3) That any party required to be present at the hearing was not present.

(4) That there exists new and material evidence, which, if introduced at the hearing would probably have changed the court's decision and could not with reasonable diligence have been discovered before and produced at the hearing.

(5) That the court is without jurisdiction of the proceeding.

(6) That the judgment is contrary to the law and evidence.

**(b) Time and Method.**

(1) A motion for rehearing may be made and ruled upon immediately after the court announces its judgment but must be made within 10 days of the entry of the order.

(2) If the motion is made in writing, it shall be served as provided in these rules for service of other pleadings.

(3) A motion for rehearing shall not toll the time for the taking of an appeal.

**(c) Court Action.**

(1) A rehearing may be granted to all or any of the parties on all or any part of the issues. All orders granting a rehearing shall state the specific issues to be reheard.

(2) If the motion for rehearing is granted the court may vacate or modify the order or any part of it and allow additional proceedings as it deems just. It may enter a new judgment, and may order or continue the child in a shelter or out-of-home placement pending further proceedings.

(3) The court on its own initiative may vacate or modify any order within the time limitation provided in subdivision (b).

## **RULE 8.270. RELIEF FROM JUDGMENTS OR ORDERS**

**(a) Clerical Mistakes.** Clerical mistakes in judgments, orders, or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time on its own initiative or on motion of any party, after such notice, if any, as the court orders. During the pendency of an appeal such

mistakes may be so corrected before the record on appeal is docketed in the appellate court and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

**(b) Extraordinary Relief.** On motion and upon such terms as are just, the court may relieve a party or the party's legal representative from an order, judgment, or proceeding for the following reasons:

(1) Mistake, inadvertence, surprise, or excusable neglect.

(2) Newly discovered evidence which by due diligence could not have been discovered in time to move for rehearing.

(3) Fraud (intrinsic or extrinsic), misrepresentation, or other misconduct of any other party.

(4) That the order or judgment or any part thereof is void.

The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than 1 year after the judgment, order, or proceeding was taken.

**(c) Limitation.** After the court loses jurisdiction of the cause, as provided by law, a motion for relief of judgment or order under subdivision (b) shall not be heard.

### **RULE 8.285. CONTEMPT**

**(a) Direct Contempt.** A contempt may be punished summarily if the court saw or heard the conduct constituting the contempt committed in the actual presence of the court. The judgment of guilt of contempt shall include a recital of those facts upon which the adjudication of guilt is based. Prior to the adjudication of guilt the court shall inform the person accused of the accusation and inquire as to whether there is any cause to show why he or she should not be adjudged guilty of contempt by the court and sentenced. The accused shall be given the opportunity to present evidence of excusing or mitigating circumstances. The judgment shall be signed by the court and entered of record. Sentence shall be pronounced in open court.

**(b) Indirect Contempt.** An indirect contempt shall be prosecuted in the following manner:

**(1) Order to Show Cause.** The court on its own motion or upon affidavit of any person having knowledge of the facts may issue and sign an order directed to the one accused of contempt, stating the essential facts constituting the contempt charged and requiring the accused to appear before the court to show cause why he or she should not be held in contempt of court. The order shall specify the time and place of the hearing, with a reasonable time allowed for the preparation of a defense after service of the order on the one accused. It shall be served in the same manner as a summons. Nothing herein shall be construed to prevent the one accused of contempt from waiving the service of process.

**(2) Motions; Answer.** The accused, personally or by counsel, may move to dismiss the order to show cause, move for a statement of particulars, or answer such order by way of explanation or defense. All motions and the answer shall be in writing unless specified otherwise by the court. The accused's omission to file a motion or answer shall not be deemed an admission of guilt of the contempt charged.

**(3) Order of Arrest; Bail.** The court may issue an order of arrest of the one accused of contempt if the court has reason to believe the accused will not appear in response to the order to show cause. The accused shall be entitled to bail in the manner provided by law in criminal cases.

**(4) Arraignment; Hearing.** The accused may be arraigned at the hearing, or prior thereto upon request. A hearing to determine the guilt or innocence of the accused shall follow a plea of not guilty. The court may conduct a hearing without assistance of counsel or may be assisted by the state attorney or by an attorney appointed for the purpose. The accused is entitled to be represented by counsel, have compulsory process for the attendance of witnesses, and may testify in his or her own defense. All issues of law and fact shall be determined by the court.

**(5) Disqualification of the Judge.** If the contempt charged involves disrespect to or criticism of a judge, the judge shall be disqualified by the chief judge of the circuit.

**(6) Verdict; Judgment.** At the conclusion of the hearing the court shall sign and enter of record a judgment of guilty or not guilty. There should be included in a judgment of guilty a recital of the facts constituting the contempt of which the accused has been found and adjudicated guilty.

**(7) Sentence.** Prior to the pronouncement of sentence the court shall inform the accused of the accusation and judgment against him or her and inquire as to whether there is any cause to show why sentence should not be pronounced. The accused shall be afforded the opportunity to present evidence of mitigating circumstances. The sentence shall be pronounced in open court and in the presence of the one found guilty of contempt.

#### **RULE 8.290. DEPENDENCY MEDIATION**

**(a) Definitions.** The following definitions apply to this rule:

(1) “Dependency matters” means proceedings arising under Chapter 39, Florida Statutes.

(2) “Dependency mediation” means mediation of dependency matters.

(3) “Mediation” means a process whereby a neutral third person called a mediator acts to encourage and facilitate the resolution of a dispute between two or more parties. It is an informal and nonadversarial process with the objective of helping the disputing parties reach a mutually acceptable and voluntary agreement. In mediation, decision-making authority rests with the parties. The role of the mediator includes, but is not limited to, assisting the parties in identifying issues, fostering joint problem-solving, and exploring settlement alternatives.

**(b) Applicability.** This rule applies only to mediation of dependency matters.

**(c) Compliance with Statutory Time Requirements.** Dependency mediation shall be conducted in compliance with the statutory time requirements for dependency matters.

**(d) Referral.** Except as provided by this rule, all matters and issues described in subdivision (a)(1) may be referred to mediation. All referrals to mediation shall be in written form, shall advise the parties of their right to counsel, and shall set a date for hearing before the court to review the progress of the mediation. The mediator or mediation program shall be appointed by the court or stipulated to by the parties. If the court refers the matter to mediation, the mediation order shall address all applicable provisions of this rule. The mediation order shall be served on all parties and on counsel under the provisions of the Florida Rules of Juvenile Procedure.

**(e) Appointment of the Mediator.**

**(1) Court Appointment.** The court, in the order of referral to mediation, shall appoint a certified dependency mediator selected by rotation or by such other procedures as may be adopted by administrative order of the chief judge in the circuit in which the action is pending.

**(2) Party Stipulation.** Within 10 days of the filing of the order of referral to mediation, the parties may agree upon a stipulation with the court designating:

(A) another certified dependency mediator to replace the one selected by the judge; or

(B) a mediator, other than a senior judge, who is not certified as a mediator but who, in the opinion of the parties and upon review by the presiding judge, is otherwise qualified by training or experience to mediate all or some of the issues in the particular case.

**(f) Fees.** Dependency mediation referrals may be made to a mediator or mediation program that charges a fee. Any order of referral to a mediator or mediation program charging a fee shall advise the parties that they may timely object to mediation on grounds of financial hardship. On the objection of a party or the court’s own motion, the court may, after considering the objecting party’s ability to pay and any other pertinent information, reduce or eliminate the fee.

**(g) Objection to Mediation.** Within 10 days of the filing of the order of referral to mediation, any party or participant ordered to mediation may make a written objection to the court about the order of referral if good cause for such objection exists. If a party objects, mediation shall not be conducted until the court rules on the objection.

**(h) Scheduling.** The mediation conference may be held at any stage of the proceedings. Unless otherwise scheduled by the court, the mediator or the mediation program shall schedule the mediation conference.

**(i) Disqualification of the Mediator.** Any party may move to enter an order disqualifying a mediator for good cause. If the court rules that a mediator is disqualified from mediating a case, an order shall be entered with the name of a qualified replacement. Nothing in this provision shall preclude mediators from disqualifying themselves or refusing any assignment.

**(j) Substitute Mediator.** If a mediator agreed upon by the parties or appointed by a court cannot serve, a substitute mediator can be agreed upon or appointed in the same manner as the original mediator. A mediator shall not mediate a case assigned to another mediator without the agreement of the parties or approval of the court. A substitute mediator shall have the same qualifications as the original mediator.

**(k) Discovery.** Unless stipulated by the parties or ordered by the court, the mediation process shall not suspend discovery.

**(l) Appearances.**

**(1) Order Naming or Prohibiting Attendance of Parties.** The court shall enter an order naming the parties and the participants who must appear at the mediation and any parties or participants who are prohibited from attending the mediation. Additional participants may be included by court order or by mutual agreement of all parties.

**(2) Physical Presence of Adult Parties and Participants.** Unless otherwise agreed to by the parties or ordered by the court, any party or participant ordered to mediation shall be physically present at the mediation conference. Persons representing an agency, department, or program must have full authority to enter into an agreement that shall be binding on that agency, department, or program. In the discretion of the mediator, and with the agreement of the attending parties, dependency mediation may proceed in the absence of any party or participant ordered to mediation.

**(3) Appearance of Counsel.** In the discretion of the mediator, and with the agreement of the attending parties, dependency mediation may proceed in the absence of counsel unless otherwise ordered by the court.

**(4) Appearance of Child.** The court may prohibit the child from appearing at mediation upon determining that such appearance is not in the best interest of the child. No minor child shall be required to appear at mediation unless the court has previously determined by written order that it is in the child's best interest to be physically present. The court shall specify in the written order of referral to mediation any special protections necessary for the child's appearance.

**(5) Sanctions for Failure to Appear.** If a party or participant ordered to mediation fails to appear at a duly-noticed mediation conference without good cause, the court, on motion of any party or on its own motion, may impose sanctions. Sanctions against the party or participant failing to appear may include one or more of the following: contempt of court, an award of mediator fees, an award of attorney fees, an award of costs, or other remedies as deemed appropriate by the court.

**(m) Caucus with Parties and Participants.** During the mediation session, the mediator may meet and consult privately with any party, participant or counsel.

**(n) Continuances.** The mediator may end the mediation session at any time and may set new times for reconvening the mediation. No further notification shall be required for parties or participants present at the mediation session.

**(o) Report on Mediation.**

(1) If agreement is reached on all or part of any matter or issue, including legal or factual issues to be determined by the court, the agreement shall be immediately reduced to writing, signed by the attending parties, and promptly submitted to the court by the mediator with copies to all parties and counsel.

(2) If the parties do not reach an agreement as to any matter as a result of mediation, the mediator shall report the lack of an agreement to the court without comment or recommendation.

**(p) Court Hearing and Order On Mediated Agreement.** On receipt of a full or partial mediation agreement, the court shall hold a hearing and enter an order accepting or rejecting the agreement consistent with the best interest of the child. The court may modify the terms of the agreement with the consent of all parties to the agreement.

**(q) Imposition of Sanctions On Breach of Agreement.** In the event of any breach or failure to perform under the court-approved agreement, the court, on a motion of any party or on its own motion, may impose sanctions. The sanctions may include contempt of court, vacating the agreement, imposition of costs and attorney fees, or any other remedy deemed appropriate by the court.

## **B. TAKING CHILDREN INTO CUSTODY AND SHELTER HEARINGS**

### **RULE 8.300. TAKING INTO CUSTODY**

**(a) Affidavit.** An affidavit or verified petition may be filed alleging facts under existing law sufficient to establish grounds to take a child into custody. The affidavit or verified petition shall:

- (1) be in writing and signed;
- (2) specify the name, address, date of birth, and sex of the child, or, if unknown, designate the child by any name or description by which he or she can be identified with reasonable certainty;
- (3) specify that the child is of an age subject to the jurisdiction of the court; and
- (4) state the reasons the child should be taken into custody.

**(b) Criteria for Order.** The court may issue an order to take a child into custody based on sworn testimony meeting the criteria in subdivision (a).

**(c) Order.** The order to take into custody shall:

- (1) be in writing and signed;
- (2) specify the name, address, and sex of the child or, if unknown, designate the child by any name or description by which he or she can be identified with reasonable certainty;
- (3) specify that the child is of an age subject to the jurisdiction of the court;
- (4) state the reasons the child should be taken into custody;
- (5) order that the child be held in a suitable place pending transfer of physical custody to an authorized agent of the department; and
- (6) state the date when issued, and the county and court where issued.

### **RULE 8.305. SHELTER PETITION, HEARING, AND ORDER**

**(a) Shelter Petition.** If a child has been or is to be removed from the home and maintained in an out-of-home placement for more than 24 hours, the person requesting placement shall file a written petition that shall:

- (1) specify the name, address, date of birth, and sex of the child or, if unknown, designate the child by any name or description by which he or she can be identified with reasonable certainty;
- (2) specify the name and address, if known, of the child's parents or legal custodian and how each was notified of the shelter hearing;
- (3) if the child has been removed from the home, state the date and time of the removal;
- (4) specify that the child is of an age subject to the jurisdiction of the court;
- (5) state the reasons the child needs to be placed in a shelter;
- (6) list the reasonable efforts, if any, that were made by the department to prevent or eliminate the need for the removal or continued removal of the child from the home or, if no such efforts were made, a description of the emergency that prevented these efforts;
- (7) recommend where the child is to be placed or the agency to be responsible for placement; and
- (8) be signed by the petitioner and, if represented by counsel, by the petitioner's attorney.

**(b) Shelter Hearing.**

(1) The parents or legal custodians of the child shall be given actual notice of the date, time, and location of the shelter hearing. If the parents are outside the jurisdiction of the court, are not known, cannot be located, or refuse or evade service, they shall be given such notice as best ensures their actual knowledge of

the date, time, and location of the shelter hearing. If the parents or legal custodians are not present at the hearing, the person providing, or attempting to provide, notice to the parents or legal custodians shall advise the court in person or by sworn affidavit of the attempts made to provide notice and the results of those attempts.

(2) The court shall conduct an informal hearing on the petition within the time limits provided by law. The court shall determine at the hearing the existence of probable cause to believe the child is dependent and whether the other criteria provided by law for placement in a shelter have been met. The shelter hearing may be continued for up to 72 hours with the child remaining in shelter care if either:

(A) the parents or legal custodians appear for the shelter hearing without legal counsel and request a continuance to consult with legal counsel; or

(B) the court determines that additional time is necessary to obtain and review documents pertaining to the family to appropriately determine the risk to the child.

(3) The issue of probable cause shall be determined in a nonadversarial manner, applying the standard of proof necessary for an arrest warrant.

(4) At the hearing, all interested persons present shall have an opportunity to be heard and present evidence on the criteria for placement provided by law.

(5) The court may base its determination on a sworn complaint, testimony, or an affidavit and may hear all relevant and material evidence, including oral and written reports, to the extent of its probative value even though it would not be competent at an adjudicatory hearing.

(6) The court shall advise the parent or legal custodian of:

(A) the right to be represented by counsel as provided by law;

(B) the reason the child is in custody and why continued placement is requested;

(C) the right to present placement alternatives; and

(D) the time, date, and location of the next hearing and of the importance of the parents' or legal custodians' active participation in subsequent proceedings and hearings.

(7) The court shall appoint:

(A) a guardian ad litem to represent the child unless the court finds representation unnecessary;

(B) an attorney ad litem to represent the child if the court finds the appointment necessary and authorized by law; and

(C) an attorney for indigent parents unless waived by the parent.

(8) The court shall determine visitation rights absent a clear and convincing showing that visitation is not in the best interest of the child.

(9) The court shall inquire of the parents whether the parents have relatives who might be considered for placement of the child. The parents shall provide to the court and all parties identification and location information regarding the relatives. The court shall advise the parents that the parents have a continuing duty to inform the department of any relative who should be considered for placement of the child.

(10) The court shall advise the parents that if the parents fail to substantially comply with the case plan their parental rights may be terminated and the child's out-of-home placement may become permanent.

(11) If the shelter hearing is conducted by a judge other than a judge assigned to hear dependency cases, a judge assigned to hear dependency cases shall hold a shelter review on the status of the child within 2 working days after the shelter hearing.

**(c) Shelter Order.** An order granting shelter care must identify the parties present at the hearing and contain written findings that:

(1) placement in shelter care is necessary based on the criteria provided by law;

(2) placement in shelter care is in the best interest of the child;

(3) continuation of the child in the home is contrary to the welfare of the child because the home situation presents a substantial and immediate danger to the child's physical, mental, or emotional health or safety that cannot be mitigated by the provision of preventive services;

(4) there is probable cause to believe the child is dependent;

(5) the department has made reasonable efforts to prevent or eliminate the need for removal of the child from the home, including a description of which specific services, if available, could prevent or eliminate the need for removal or continued removal from the home, the date by which the services are expected to become available, and, if services are not available to prevent or eliminate the need for removal or continued removal of the child from the home, an explanation of why the services are not available for the child;

(6) the court notified the parents or legal custodians of the time, date, and location of the next dependency hearing, and of the importance of their active participation in all subsequent proceedings and hearings; and

(7) the court notified the parents or legal custodians of their right to counsel as provided by law.

**(d) Release from Shelter Care.** No child shall be released from shelter care after a shelter order has been entered except on order of the court unless the shelter order authorized release by the department.

## C. PETITION, ARRAIGNMENT, ADJUDICATION, AND DISPOSITION

### RULE 8.310. DEPENDENCY PETITIONS

#### **(a) Contents.**

(1) A dependency petition may be filed as provided by law. Each petition shall be entitled a petition for dependency and shall allege sufficient facts showing the child to be dependent based upon applicable law.

(2) The petition shall contain allegations as to the identity and residence of the parents or legal custodians, if known.

(3) The petition shall identify the age, sex, and name of the child. Two or more children may be the subject of the same petition.

(4) Two or more allegations of dependency may appear in the same petition, in separate counts. The petition need not contain allegations of acts or omissions by both parents.

(5) The petition must describe what voluntary services and/or dependency mediation the parents or legal custodians were offered and the outcome of each.

**(b) Verification.** The petition shall be signed stating under oath the signer's good faith in filing the petition. No objection to a petition on the grounds that it was not signed or verified, as herein provided, shall be entertained after a plea to the merits.

**(c) Amendments.** At any time prior to the conclusion of an adjudicatory hearing, an amended petition may be filed or the petition may be amended by motion; however, after a written answer or plan has been filed, amendments shall be permitted only with the permission of the court, unless all parties consent. Amendments shall be freely permitted in the interest of justice and the welfare of the child. A continuance may be granted on motion and a showing that the amendment prejudices or materially affects any party.

**(d) Defects and Variances.** No petition or any count thereof shall be dismissed, or any judgment vacated, on account of any defect in the form of the petition or of misjoinder of counts. If the court is of the opinion that the petition is so vague, indistinct, and indefinite as to mislead the child, parent, or legal custodian and prejudice any of them in the preparation of a defense, the petitioner may be required to furnish a more definite statement.

**(e) Voluntary Dismissal.** The petitioner without leave of the court, at any time prior to entry of an order of adjudication, may request a voluntary dismissal of the petition by serving a notice requesting dismissal on all parties, or, if during a hearing, by so stating on the record. The petition shall be dismissed and the court loses jurisdiction unless another party adopts the petition within 72 hours.

### **RULE 8.315. ARRAIGNMENTS AND PREHEARING CONFERENCES**

**(a) Arraignment.** Before the adjudicatory hearing, the court shall conduct a hearing to determine whether an admission, consent, or denial to the petition shall be entered, and whether the parties are represented by counsel or are entitled to appointed counsel as provided by law. If an admission or consent is entered and no denial is entered by any other parent or legal custodian, the court shall schedule a disposition hearing to be conducted within 15 days. If a denial is entered, the court shall set an adjudicatory hearing within the period of time provided by law and appoint counsel when required.

**(b) Withdrawal of Plea.** The court may for good cause, at any time before the beginning of a disposition hearing, permit an admission of the allegations of the petition or a consent to dependency to be withdrawn and, if an adjudication has been entered, set aside the adjudication. In a subsequent adjudicatory hearing the court shall disregard an admission or consent that has been withdrawn.

**(c) Prehearing Conference.** Before any adjudicatory hearing, the court may set or the parties may request that a prehearing conference be held to determine the order in which each party may present witnesses or evidence and the order in which cross-examination and argument shall occur. The court may also enter findings on the record of any stipulations entered into by the parties and consider any other matters that may aid in the conduct of the adjudicatory hearing.

**(d) Status Hearing.** Within 60 days of the filing of the petition, a status hearing shall be held with all parties present unless an adjudicatory or disposition hearing has begun. Subsequent status hearings shall be held every 30 days unless an adjudicatory or disposition hearing has begun.

### **RULE 8.320. PROVIDING COUNSEL TO PARTIES**

#### **(a) Duty of the Court.**

(1) At each stage of the dependency proceeding the court shall advise the parent of the right to have counsel present.

(2) The court shall appoint counsel to indigent parents or others who are so entitled as provided by law, unless appointment of counsel is waived by that person.

(3) The court shall ascertain whether the right to counsel is understood.

#### **(b) Waiver of Counsel.**

(1) No waiver of counsel shall be accepted where it appears that the parent is unable to make an intelligent and understanding choice because of age, education, experience, the nature or complexity of the case, or other factors.

(2) A waiver of counsel made in court shall be of record. The court shall question the party in sufficient detail to ascertain that the waiver is made knowingly, intelligently, and voluntarily.

(3) If a waiver is accepted at any stage of the proceedings, the offer of assistance of counsel shall be renewed by the court at each subsequent stage of the proceedings at which the party appears without counsel.

### **RULE 8.325. ANSWERS AND PLEADINGS**

**(a) No Answer Required.** No written answer to the petition need be filed by the parent or legal custodian. The parent or legal custodian of the child may enter an oral or written answer to the petition or remain silent.

**(b) Denial of Allegations.** If the parent or legal custodian denies the allegations of the petition, remains silent, or pleads evasively, the court shall enter a denial of dependency and set the case for an adjudicatory hearing.

**(c) Admission of or Consent to Dependency.** The parent or legal custodian may admit or consent to a finding of dependency. The court shall determine that any admission or consent to a finding of dependency is made voluntarily and with a full understanding of the nature of the allegations and the possible

consequences of the admission or consent, and that the parent has been advised of the right to be represented by counsel. The court shall incorporate these findings into its order in addition to findings of fact specifying the act or acts causing dependency, by whom committed, and facts on which the findings are based. If the answer admits the allegations of the petition it shall constitute consent to a predisposition study.

### **RULE 8.330. ADJUDICATORY HEARINGS**

**(a) Hearing by Judge.** The adjudicatory hearing shall be conducted by the judge, without a jury, utilizing the rules of evidence in use in civil cases. At this hearing the court shall determine whether the allegations of the dependency petition have been sustained by a preponderance of the evidence. If the court is of the opinion that the allegations are sustained by clear and convincing evidence, it may enter an order so stating.

**(b) Examination of Witnesses.** A party may call any person as a witness. A party shall have the right to examine or cross-examine all witnesses. However, the child and the parents, caregivers, or legal custodians of the child may be examined separately and apart from each other.

**(c) Presence of Parties.** All parties have the right to be present at all hearings. A party may appear in person or, at the discretion of the court for good cause shown, by an audio or audiovisual device. No party shall be excluded from any hearing unless so ordered by the court for disruptive behavior or as provided by law. If a person appears for the arraignment hearing and the court orders that person to personally appear at the adjudicatory hearing for dependency, stating the date, time, and place of the adjudicatory hearing, then that person's failure to appear for the scheduled adjudicatory hearing constitutes consent to a dependency adjudication.

**(d) Joint and Separate Hearings.** When 2 or more children are alleged to be dependent children, the hearing may be held simultaneously when the several children involved are related to each other or involved in the same case, unless the court orders separate hearings.

**(e) Motion for Judgment of Dismissal.** In all proceedings, if at the close of the evidence for the petitioner the court is of the opinion that the evidence is insufficient to warrant a finding of dependency, it may, and on the motion of any party shall, enter an order dismissing the petition for insufficiency of the evidence.

**(f) Dismissal.** If the court shall find that the allegations in the petition have not been sustained, it shall enter an order dismissing the case.

**(g) Findings and Orders.** In all cases in which dependency is established:

(1) The court shall enter a written order stating the legal basis for a finding of dependency, specifying the facts upon which the finding of dependency is based, and stating whether the court made the finding by a preponderance of the evidence or by clear and convincing evidence.

(2) The court shall advise the parents that if the parents fail to substantially comply with the case plan, their parental rights may be terminated.

(3) If the child is in out-of-home placement, the court shall inquire of the parents whether the parents have relatives who might be considered as placement for the child. The parents shall provide to the court and all parties identification and location information for the relatives.

### **RULE 8.335. ALTERNATIVES PENDING DISPOSITION**

If the court finds that the evidence supports the allegations of the petition, it may make a finding of dependency as provided by law. If the predisposition and other reports required by law are available, the court may proceed to disposition or continue the case for a disposition hearing. If the case is continued, the court may refer the case to appropriate agencies for additional study and recommendation. The court may order the child continued in placement, designate the placement or the agency that will be responsible for the child's placement, and enter such other orders deemed necessary to protect the health, safety, and well-being of the child, including diagnosis, evaluation, treatment, and visitation.

### **RULE 8.340. DISPOSITION HEARINGS**

**(a) Information Available to Court.** At the disposition hearing the court, after establishing compliance with the dispositional considerations, determinations, and discussions required by law, may receive any relevant and material evidence helpful in determining the proper disposition to be made. It shall include written reports required by law, and may include, but shall not be limited to, any psychiatric or psychological evaluations of the child or his or her parent, caregiver, or legal custodian that may be obtained and that are relevant and material. Such evidence may be received by the court and may be relied upon to the extent of its probative value, even though not competent in an adjudicatory hearing.

**(b) Disclosure to Parties.** All parties shall be entitled to disclosure of all information in all reports submitted to the court.

**(c) Orders of Disposition.** The court shall in its written order of disposition include:

- (1) the placement or custody of the child;
- (2) special conditions of placement and visitation;
- (3) evaluation, counseling, treatment activities, and other actions to be taken by the parties, when ordered;
- (4) supervising or monitoring agencies, and continuation or discharge of the guardian ad litem, when appropriate;
- (5) date, time, and location for subsequent case review as required by law;
- (6) child support payments, if the child is in an out-of-home placement;
- (7) if the child is placed in foster care, the reasons why the child was not placed in the legal custody of an adult relative, legal custodian, or other adult approved by the court;
- (8) approval of the case plan or direction to amend the case plan within 30 days; and
- (9) such other requirements as are deemed necessary to protect the health, safety, and well-being of the child.

### **RULE 8.345. POST-DISPOSITION RELIEF**

**(a) Motion for Modification of Placement.** A child who has been placed in his or her own home, in the home of a relative, or in some other place, under the supervision or legal custody of the department, may be brought before the court by the department or any interested person on a motion for modification of placement. If neither the parents, the legal custodian, nor any appointed guardian ad litem or attorney ad litem object to the change, then the court may enter an order making the change in placement without a hearing. If the parents, the legal custodian, or any appointed guardian ad litem or attorney ad litem object to the change of placement, the court shall conduct a hearing and thereafter enter an order changing the placement, modifying the conditions of placement, continuing placement as previously ordered, or placing the child with the department or a licensed child-caring agency.

**(b) Motion for Termination of Supervision or Jurisdiction.** Any party requesting termination of agency supervision or the jurisdiction of the court or both shall do so by written motion or in a written report to the court. The court shall hear all parties present and enter an order terminating supervision or terminating jurisdiction and supervision or continuing them as previously ordered. The court shall not terminate jurisdiction unless the child is returned to the parent and has been in the placement for at least 6 months, the child is adopted, or the child attains the age of 18.

**RULE 8.350. PLACEMENT OF CHILD INTO RESIDENTIAL TREATMENT CENTER AFTER ADJUDICATION OF DEPENDENCY**

**(a) Placement.**

(1) Any reference in this rule to a residential treatment center is to a residential treatment center or facility licensed under section 394.875, Florida Statutes, for residential mental health treatment. Any reference to hospital is to a hospital licensed under chapter 395, Florida Statutes, for residential mental health treatment. This rule does not apply to placement under sections 394.463 or 394.467, Florida Statutes.

(2) The placement of any child who has been adjudicated dependent for residential mental health treatment shall be as provided by law.

(3) Whenever the department believes that a child in its legal custody may require placement in a residential treatment center or hospital, the department shall arrange to have the child assessed by a qualified evaluator as provided by law and shall file notice of this with the court and all parties. Upon the filing of this notice by the department, the court shall appoint a guardian ad litem for the child, if one has not already been appointed, and may also appoint an attorney for the child. Both the guardian ad litem and attorney, if appointed, shall meet the child and shall have the opportunity to discuss the child's suitability for residential treatment with the qualified evaluator conducting the assessment. Upon the completion of the evaluator's written assessment, the department shall provide a copy to the court and to all parties. The guardian ad litem shall also provide a written report to the court and to all parties indicating the guardian ad litem's recommendation as to the child's placement in residential treatment and the child's wishes.

(4) If the department seeks to place the child in a residential treatment center or hospital, the department shall immediately file a motion for placement of the child with the court. This motion shall include a statement as to why the child is suitable for this placement and why less restrictive alternatives are not appropriate and also shall include the written findings of the qualified evaluator. The motion shall state whether all parties, including the child, are in agreement.

(5) If the evaluator's written assessment indicates that the child requires immediate placement in a residential treatment center or hospital and that such placement cannot wait for a hearing, then the department may place the child pending a hearing, unless the court orders otherwise.

(6) The guardian ad litem must be represented by an attorney at all proceedings under this rule, unless the guardian ad litem is acting as an attorney. If the department's motion, the guardian ad litem's report, or another party based on communication with the child indicates that the child does not agree with the department's motion, then the court shall appoint an attorney to represent the child, if one has not already been appointed.

(7) Upon the filing of a motion for placement, the court shall set the matter for a status hearing within 48 hours, excluding weekends and holidays. The department shall timely provide notice of the date, time, and place of the hearing to all parties and participants.

(8) The child's attorney or guardian ad litem shall notify the child of the date, time, and place of the hearing. No hearing shall proceed without the presence of the child's guardian ad litem and attorney, unless excused by the court for good cause shown. Should the hearing occur in the absence of the guardian ad litem and attorney, upon request the court shall set the matter for an additional hearing within 24 hours, at which time the attorney and guardian ad litem shall be present.

(9) If the child appears at the status hearing not represented by an attorney, the court shall directly inquire of the child whether he or she disagrees with the motion for placement. If the child does not appear and is not represented by an attorney at the status hearing, the court shall diligently pursue all available information to determine if the child disagrees with the department's motion for placement. If no party disagrees with the department's motion at the status hearing, then the motion for placement may be approved by the court. However, if any party, including the child, disagrees, then the court shall set the matter for hearing within 10 working days.

(10) If counsel is not immediately available to represent the child, and the court determines that the child will be harmed if the hearing on placement is postponed, then the hearing may be held in the absence of

counsel. The child shall be present at the hearing unless the court determines pursuant to subdivision (c) that a court appearance is not in the child's best interest. In such circumstances, the child shall be provided the opportunity to express his or her views to the court by a method deemed appropriate by the court. Further, if counsel is not available at the time of the hearing, counsel shall be appointed as soon as practical thereafter and the court shall set an additional hearing at which time both counsel and the child shall be present.

**(11) Hearing on Placement.**

(A) At the hearing, the court shall consider, at a minimum, all of the following:

(i) based on an independent assessment of the child, the recommendation of a department representative or authorized agent that the residential treatment or hospitalization is in the child's best interest and a showing that the placement is the least restrictive available alternative;

(ii) the recommendation of the guardian ad litem;

(iii) a case review committee recommendation, if there has been one;

(iv) the written findings of the evaluation and suitability assessment prepared by a qualified evaluator; and

(v) the views regarding placement in residential treatment that the child expresses to the court.

(B) All parties shall be permitted to present evidence and witnesses concerning the suitability of the placement.

(C) If the court determines that the child is not suitable for residential treatment, the court shall order the department to place the child in the least restrictive setting that is best suited to meet the child's needs.

**(b) Continuing Residential Placement Reviews.**

(1) The court shall conduct a hearing to review the status of the child's residential treatment plan no later than 3 months after the child's admission to the residential treatment program. An independent review of the child's progress toward achieving the goals and objectives of the treatment plan must be completed by a qualified evaluator and submitted to the court and all parties in writing at least 72 hours before the 3-month review hearing.

(2) Review hearings shall be conducted every 3 months thereafter, until the child is placed in a less restrictive setting. At each 3-month review hearing, if the child appears and is not represented by an attorney, the court shall directly inquire of the child whether he or she disagrees with continued placement. If the child does not appear and is not represented by an attorney, the court shall diligently pursue all information available to determine if the child disagrees with continued placement. If the court determines that the child disagrees with the continued placement, the court shall appoint an attorney for the child.

(3) If the court determines at any hearing that the child is not suitable for continued residential treatment, the court shall order the department to place the child in the least restrictive setting that is best suited to meet the child's needs.

**(c) Presence of Child.** The child shall be present at all court hearings unless the court finds that the child's mental or physical condition is such that a court appearance is not in the child's best interest. In such circumstances, the child shall be provided the opportunity to express his or her views to the court by a method deemed appropriate by the court.

**(d) Standard of Proof.** At the hearing, the court shall determine whether the evidence supporting involuntary commitment of a dependent child to a residential mental health treatment facility is clear and convincing.

**RULE 8.355. ADMINISTRATION OF PSYCHOTROPIC MEDICATION TO A CHILD IN SHELTER CARE OR IN FOSTER CARE WHEN PARENTAL CONSENT HAS NOT BEEN OBTAINED**

**(a) Motion for Court Authorization for Administration of Psychotropic Medications.**

(1) Whenever the department believes that a child in its physical or legal custody requires the administration of a psychotropic medication, and the child's parents or legal guardians have not provided

express and informed consent as provided by law, the department or its agent shall file a motion with the court to authorize the administration of the psychotropic medication before the administration of the medication, except as provided in subdivision (c) of this rule. In all cases in which a motion is required, the motion shall include the following information:

(A) The written report of the department describing the efforts made to enable the prescribing physician to obtain express and informed consent for providing the medication to the child and describing other treatments considered or recommended for the child; and

(B) The prescribing physician's signed medical report, as required by law.

(2) The department must serve a copy of the motion, and notify all parties of its proposed administration of psychotropic medication to the child in writing, or by whatever other method best ensures that all parties receive notification of the proposed action, within 48 hours after filing the motion for court authorization.

(3) If any party objects to the proposed administration of the psychotropic medication to the child, that party must file its objection within 2 working days after being notified of the department's motion.

**(b) Court Action on Department's Motion for Administration of Psychotropic Medication.**

(1) If no party timely files an objection to the department's motion, the court may enter its order authorizing the proposed administration of the psychotropic medication without a hearing. Based on its determination of the best interests of the child, the court may order additional medical consultation or require the department to obtain a second opinion within a reasonable time, not more than 21 calendar days. When the court orders an additional medical consultation or second medical opinion, the department shall file a written report including the results of this additional consultation or a copy of the second medical opinion with the court within the time required by the court, and shall serve a copy of the report as required by subdivision (a)(2) of this rule.

(2) If any party timely files its objection to the proposed administration of the psychotropic medication to the child, the court shall hold a hearing as soon as possible on the department's motion.

(A) At such hearing, the medical report of the prescribing physician is admissible in evidence.

(B) At such hearing, the court shall ask the department whether additional medical, mental health, behavioral, counseling, or other services are being provided to the child that the prescribing physician considers to be necessary or beneficial in treating the child's medical condition, and which the physician recommends or expects to be provided to the child with the medication.

(C) The court may order additional medical consultation or a second medical opinion, as provided in subdivision (b)(1) of this rule.

(D) After considering the department's motion and any testimony received, the court may order that the department provide or continue to provide the proposed psychotropic medication to the child, on a determination that it is in the child's best interest to do so.

**(c) Emergency Situations.**

**(1) Shelter Care.** When a child is initially removed from the home and taken into custody under section 39.401, Florida Statutes, and the department continues to administer a current prescription of psychotropic medication to the child, the department shall request court authorization for the continued administration of the medication at the shelter hearing. This request shall be included in the shelter petition.

(A) The department shall provide all information in its possession to the court in support of its request at the shelter hearing. The court may authorize the continued administration of the psychotropic medication only until the arraignment hearing on the petition for adjudication, or for 28 days following the date of the child's removal, whichever occurs first.

(B) When the department believes, based on the required physician's evaluation, that it is appropriate to continue the psychotropic medication beyond the time authorized by the court at the shelter hearing, the department shall file a motion seeking continued court authorization at the same time as it files the dependency petition, within 21 days after the shelter hearing.

**(2) When Delay Would Cause Significant Harm.** Whenever the department believes, based on the certification of the prescribing physician, that delay in providing the prescribed psychotropic medication to

the child would, more likely than not, cause significant harm to the child, the department must submit a motion to the court seeking continuation of the medication within 3 working days after the department begins providing the medication to the child.

(A) The motion seeking authorization for the continued administration of the psychotropic medication to the child shall include all information required in subdivision (a)(1) of this rule. The required medical report must also include the specific reasons why the child may experience significant harm, and the nature and the extent of the potential harm, resulting from a delay in authorizing the prescribed medication.

(B) The department shall serve the motion on all parties within 3 working days after the department begins providing the medication to the child.

(C) The court shall hear the department's motion at the next regularly scheduled court hearing required by law, or within 30 days after the date of the prescription, whichever occurs sooner. However, if any party files an objection to the motion, the court shall hold a hearing within 7 days.

**(3) In Emergency Psychiatric Placements.** The department may authorize the administration of psychotropic medications to a child in its custody in advance of a court order in hospitals, crisis stabilization units, and in statewide inpatient psychiatric programs. Should the department do so, it must seek court authorization for the continued administration of the medication as required in subdivision (a) of this rule.

## D. CASE PLANS

### RULE 8.400. CASE PLAN DEVELOPMENT

**(a) Case Planning Conference.** The case plan must be developed in a face-to-face conference with the parents, the guardian ad litem, attorney ad litem and, if appropriate, the child and the temporary custodian of the child.

**(b) Contents.** The case plan must be written simply and clearly in English and the principal language of the parents, if possible. Each case plan must contain

(1) a description of the problem being addressed, including the parent's behavior or acts resulting in risk to the child and the reason for the intervention by the department;

(2) a permanency goal;

(3) if it is a concurrent plan, a description of the permanency goal of reunification with the parent or legal custodian and one of the remaining permanency goals;

(4) the date the compliance period expires; and

(5) a written notice to the parent that failure of the parent to substantially comply with the case plan may result in the termination of parental rights, and that a material breach of the case plan may result in the filing of a petition for termination of parental rights sooner than the expiration of the compliance period.

**(c) Expiration of Case Plan.** The case plan compliance period expires no later than 12 months after the date the child was initially removed from the home or the date the case plan was accepted by the court, whichever occurs first.

**(d) Department Responsibility.**

(1) The department shall prepare a draft of a case plan for each child receiving services under F.S. Chapter 39.

(2) The department shall document, in writing, a parent's unwillingness or inability to participate in the development of the case plan, provide the written documentation to the parent when available for the court record, and prepare a case plan.

(3) After the case plan has been developed, and before acceptance by the court, the department shall make the appropriate referrals for services that will allow the parents to begin the agreed-upon tasks and services immediately if the parents agree to begin compliance.

(4) The department must immediately give the parties, including the child if appropriate, a signed copy of the agreed-upon case plan.

(5) The department must prepare, but need not submit to the court, a case plan for a child who will be in care no longer than 30 days unless that child is placed in out of home care a second time within a 12-month period.

(6) The department must prepare a case plan for a child in out of home care within 60 days after the department removes the child from the home and shall submit the plan to the court before the disposition hearing for the court to review and approve.

(7) Not less than 3 business days before the disposition hearing, the department must file a case plan with the court.

(8) After jurisdiction attaches, the department shall file with the court all case plans, including all case plans prepared before jurisdiction of the court attached. The department shall provide a copy of the case plans filed to all the parties whose whereabouts are known, not less than 3 business days before the disposition hearing.

**(e) Signature.** The case plan must be signed by all parties except the child, if the child is not of an age or capacity to participate in the case planning process.

**(f) Service.** Each party, including the child, if appropriate, must be provided with a copy of the case plan not less than 3 business days before the disposition hearing. If the location of a parent is unknown, this fact must be documented in writing and included in the plan.

#### **RULE 8.410. APPROVAL OF CASE PLANS**

**(a) Hearing.** The court shall review the contents of the case plan at the disposition hearing unless a continuance for the filing of the case plan has been granted by the court.

**(b) Determinations by Court.** At the hearing, the court shall determine if:

(1) The plan is consistent with the previous orders of the court placing the child in care.

(2) The plan is consistent with the requirements for the content of a case plan as provided by law.

(3) The parents were advised of their right to have counsel present at all prior hearings and the parents were advised of their right to participate in the preparation of the case plan and to have counsel or any other person assist in the preparation of the case plan.

(4) The case plan is meaningful and designed to address the facts, circumstances, and problems on which the court based its order of dependency for the child.

(5) The plan adequately addresses the goals and needs of the child.

**(c) Amendment of Initial Case Plan.** During the hearing, if the court determines that the case plan does not meet statutory requirements and include previous court orders, it shall order the parties to make amendments to the plan. The amended plan must be submitted to the court within 30 days for another hearing and approval. A copy of the amended plan must be provided to each party, if the location of the party is known, at least 3 business days before filing with the court. If the parties do not agree on the final terms, the court shall order those conditions and tasks it believes must be accomplished to obtain permanency for the child. In addition, the court may order the department to provide those services necessary to assist in achieving the goal of the case plan.

**(d) Entry of Findings.** The court shall enter its findings with respect to the review of the case plan in writing and make specific findings on each element required by law to be included in a case plan.

**(e) Review Hearing.** The court will set a hearing to review the performance of the parties to the case plan no later than 90 days after the disposition hearing or the hearing at which the case plan was approved, 6 months from the date on which the child was removed from the home, or 6 months from the date of the last judicial review, whichever comes first.

## **RULE 8.415. JUDICIAL REVIEW OF DEPENDENCY CASES**

**(a) Required Review.** All dependent children shall have their status reviewed as provided by law.

### **(b) Scheduling Hearings.**

**(1) Initial Review Hearing.** The court shall determine when the first review hearing shall be held and the clerk of the court shall immediately schedule the review hearing. In no case shall the hearing be scheduled for later than 6 months from the date of removal from the home or 90 days from the disposition or case plan approval hearing, whichever comes first. In every case, the court must conduct a judicial review at least every 6 months.

**(2) Subsequent Review Hearings.** At each judicial review hearing, the court shall schedule the next judicial review hearing which shall be conducted within 6 months. The clerk of the court, at the judicial review hearing, shall provide the parties with written notice of the date, time, and location of the next judicial review hearing.

**(c) Report.** In all cases, the department or its agent shall prepare a report to the court. The report shall contain facts showing the court to have jurisdiction of the cause as a dependency case. It shall contain information as to the identity and residence of the parent, if known, and the legal custodian, the dates of the original dependency adjudication and any subsequent judicial review proceedings, and a request for one or more of the following forms of relief:

(1) that the child's placement be changed;

(2) that the case plan be continued to permit the parents or social service agency to complete the tasks assigned to them in the agreement; or

(3) that proceedings be instituted to terminate parental rights and legally free the child for adoption.

**(d) Service.** A copy of the report containing recommendations and, if not previously provided by the court, a notice of review hearing shall be served on all persons who are required by law to be served at least 72 hours before the judicial review hearing.

**(e) Information Available to Court.** At the judicial review hearing the court may receive any relevant and material evidence pertinent to the cause. This shall include written reports required by law and may include, but shall not be limited to, any psychiatric or psychological evaluations of the child or parent, caregiver, or legal custodian that may be obtained and that are material and relevant. This evidence may be received by the court and relied on to the extent of its probative value, even though it may not be competent in an adjudicatory hearing.

### **(f) Court Action.**

(1) The court shall hold a hearing to review the compliance of the parties with the case plan and to determine what assigned tasks were and were not accomplished and the reasons for any nonachievement.

(2) If the court finds that the parents have substantially complied with the case plan, the court shall return the child to the custody of the parents if the court is satisfied that reunification will not be detrimental to the child's safety, well-being, or physical, mental, or emotional health.

(3) If the court finds that the social service agency has not complied with its obligations, the court may find the social service agency to be in contempt, shall order the social service agency to submit its plan for compliance with the case plan, and shall require the social service agency to show why the child could not be safely returned to the home of the parents. If the court finds that the child could not be safely returned to the parents, it shall extend the case plan for a period of not more than 6 months to allow the social service agency to comply with its obligations under the case plan.

(4) At any judicial review held under section 39.701(6), Florida Statutes, if, in the opinion of the court, the department has not complied with its obligations as specified in the written case plan or in the provision of independent living services as required by sections 39.701(6) and 409.1451, Florida Statutes, the court shall issue a show cause order. If cause is shown for failure to comply, the court shall give the department 30 days within which to comply and, on failure to comply with this or any subsequent order, the court may hold the department in contempt.

(5) When a child is returned to the parents, the court shall not terminate its jurisdiction over the child until 6 months after the return. Based on a report of the department and any other relevant factors, the court shall then determine whether jurisdiction should be continued or terminated. If its jurisdiction is to be terminated, it shall enter an order to that effect.

(6) When a child has not been returned to the parent, but has been permanently committed to the department for subsequent adoption, the court shall continue to hold judicial review hearings on the status of the child at least every 6 months until the adoption is finalized. These hearings shall be held in accordance with these rules.

(7) If a youth in the legal custody of the department immediately before his or her 18th birthday petitions the court at any time before his or her 19th birthday requesting the court's continued jurisdiction, the court may retain or reinstate jurisdiction for a period of time not to continue beyond the date of the youth's 19th birthday. This continued jurisdiction is for the purpose of determining whether appropriate aftercare support, Road-to-Independence Scholarship, transitional support, mental health, and developmental disability services have been provided to the youth.

(8) If a petition for special immigrant juvenile status and an application for adjustment of status have been filed on behalf of a foster child and the petition and application have not been granted by the time the child reaches 18 years of age, the court may retain jurisdiction solely for the purpose of allowing the continued consideration of the petition and application by federal authorities. Review hearings shall be set solely for the purpose of determining the status of the petition and application. The court's jurisdiction shall terminate on the final decision of the federal authorities, or on the immigrant child's 22nd birthday, whichever occurs first.

(9) The court shall enter a written order on the conclusion of the review hearing including a statement of the facts, those findings it was directed to determine by law, a determination of the future course of the proceedings, and the date, time, and place of the next hearing.

**(g) Administrative Review.** The department, under a formal agreement with the court in particular cases, may conduct administrative reviews instead of judicial reviews for children in out-of-home placement. Notice must be provided to all parties. An administrative review may not be substituted for the first judicial review or any subsequent 6-month review. Any party may petition the court for a judicial review as provided by law.

**(h) Concurrent Planning.**

(1) At the initial judicial review hearing, the court shall make findings regarding the likelihood of the child's reunification with the parent or legal custodian within 12 months after the removal of the child from the home.

(2) If the court makes a written finding that it is not likely that the child will be reunified with the parent or legal custodian within 12 months after the child was removed from the home, the department must file a motion to amend the case plan and declare that it will use concurrent planning for the case plan.

(3) The department must file the motion to amend the case plan no later than 10 business days after receiving the written finding of the court and attach the proposed amended case plan to the motion.

(4) If concurrent planning is already being used, the case plan must document the efforts the department is making to complete the concurrent goal.

## **RULE 8.420. CASE PLAN AMENDMENTS**

**(a) Modifications.** After the case plan has been developed, the tasks and services agreed upon in the plan may not be changed or altered except as follows.

(1) The case plan may be amended at any time to change the goal of the plan, employ the use of concurrent planning, add or remove tasks the parent must complete to substantially comply with the plan, provide appropriate services for the child, and update the child's health, mental health, and education records.

(2) The case plan may be amended on approval of the court if all parties are in agreement regarding the amendments to the plan and the amended plan is signed by all parties and submitted to the court with a memorandum of explanation.

(3) The case plan may be amended by the court or on motion of any party at any hearing to change the goal of the plan, employ the use of concurrent planning, or add or remove the tasks the parent must complete in order to substantially comply with the plan, if there is a preponderance of evidence demonstrating the need for the amendment.

(4) The case plan may be amended by the court or on motion of any party at any hearing to provide appropriate services to the child if there is competent evidence demonstrating the need for the amendment.

(5) The case plan is deemed amended as to the child's health, mental health, and education records when the child's updated health and education records are filed by the department.

**(b) Basis to Amend the Case Plan.** The need to amend the case plan may be based on information discovered or circumstances arising after the approval of the case plan for:

(1) a previously unaddressed condition that, without services, may prevent the child from safely returning to or remaining in the home;

(2) the child's need for permanency;

(3) the failure of a party to substantially comply with a task in the original case plan, including the ineffectiveness of a previously offered service;

(4) an error or oversight in the case plan; or

(5) information discovered or circumstances arising after the approval of the plan regarding the provision of safe and proper care for the child.

**(c) Service.** A copy of the amended plan must be immediately given to all parties.

#### **RULE 8.425. PERMANENCY HEARINGS**

**(a) Required Review.** A permanency hearing must be held no later than 12 months after the date the child was removed from the home or no later than 30 days after a court determines that reasonable efforts to return a child to either parent are not required, whichever occurs first. A permanency hearing must be held at least every 12 months for any child who continues to receive supervision from the department or awaits adoption.

**(b) Determinations at Hearing.**

(1) The court shall determine

(A) whether the current permanency goal for the child is appropriate or should be changed;

(B) when the child will achieve one of the permanency goals; and

(C) whether the department has made reasonable efforts to finalize the permanency plan currently in effect.

(2) The court shall approve a permanency goal for the child as provided by law choosing from the following options, listed in order of preference:

(A) reunification;

(B) adoption, if a petition for termination of parental rights has been or will be filed;

(C) permanent guardianship of a dependent child under section 39.6221, Florida Statutes;

(D) permanent placement with a fit and willing relative under section 39.6231, Florida Statutes; or

(E) placement in another planned permanent living arrangement under section 39.6241, Florida Statutes.

(3) The best interest of the child is the primary consideration in determining the permanency goal. The court must also consider the reasonable preference of the child if the court has found the child to be of sufficient intelligence, understanding, and experience to express a preference and any recommendation of the guardian ad litem.

**(c) Case Plan.** The case plan must list the tasks necessary to finalize the permanency placement and shall be amended at the permanency hearing if necessary. If a concurrent case plan is in place, the court shall approve a single goal that is in the child's best interest.

**(d) Permanency Order.**

(1) The findings of the court regarding reasonable efforts to finalize the permanency plan must be explicitly documented, made on a case-by-case basis, and stated in the court order.

(2) The court shall enter an order approving the permanency goal for the child.

(3) If the court approves a permanency goal of permanent guardianship of a dependent child, placement with a fit and willing relative, or another planned permanent living arrangement, the court shall make findings as to why this permanent placement is established without adoption of the child to follow. The department and the guardian ad litem must provide the court with a recommended list and description of services needed by the child, such as independent living services and medical, dental, educational, or psychological referrals, and a recommended list and description of services needed by his or her caregiver.

(4) If the court establishes a permanent guardianship for the child, the court's written order shall

(A) transfer parental rights with respect to the child relating to protection, education, care and control of the person, custody of the person, and decision-making on behalf of the child to the permanent guardian;

(B) list the circumstances or reasons why the child's parents are not fit to care for the child and why reunification is not possible by referring to specific findings of fact made in its order adjudicating the child dependent or by making separate findings of fact;

(C) state the reasons why a permanent guardianship is being established instead of adoption;

(D) specify the frequency and nature of visitation or contact between the child and his or her parents, siblings, and grandparents; and

(E) require that the permanent guardian not return the child to the physical care and custody of the person from whom the child was removed without the approval of the court.

(5) The court shall retain jurisdiction over the case and the child shall remain in the custody of the permanent guardian unless the order creating the permanent guardianship is modified by the court. The court shall discontinue regular review hearings and relieve the department of the responsibility for supervising the placement of the child. Notwithstanding the retention of jurisdiction, the placement shall be considered permanency for the child.

(6) If the court permanently places a child with a fit and willing relative, the court's written order shall

(A) list the circumstances or reasons why reunification is not possible by referring to specific findings of fact made in its order adjudicating the child dependent or by making separate findings of fact;

(B) state the reasons why permanent placement with a fit and willing relative is being established instead of adoption;

(C) specify the frequency and nature of visitation or contact between the child and his or her parents, siblings, and grandparents; and

(D) require that the relative not return the child to the physical care and custody of the person from whom the child was removed without the approval of the court.

(7) If the court establishes another planned permanent living arrangement as the child's permanency option:

(A) The court must find that a more permanent placement, such as adoption, permanent guardianship, or placement with a fit and willing relative, is not in the best interests of the child.

(B) The department shall document reasons why the placement will endure and how the proposed arrangement will be more stable and secure than ordinary foster care.

(C) The court must find that the health, safety, and well-being of the child will not be jeopardized by such an arrangement.

(D) The court must find that compelling reasons exist to show that placement in another planned permanent living arrangement is the most appropriate permanency goal.

**(e) Entry of Separate Order Establishing Permanency.** If the court permanently places a child in a permanent guardianship or with a fit and willing relative, the court shall enter a separate order establishing the authority of the permanent guardian or relative to care for the child, reciting that individual's powers and authority with respect to the child and providing any other information the court deems proper which can be provided to persons who are not parties to the proceeding as necessary, notwithstanding the confidentiality provisions of Chapter 39, Florida Statutes.

**(f) Recommendations for Sustaining Permanency.** If the court approves a goal of placement with a fit and willing relative or another planned permanent living arrangement, the department and the guardian ad litem must provide the court with a recommended list and description of services needed by the child, and a recommended list and description of services needed by his or her caregiver.

#### **RULE 8.430. MODIFICATION OF PERMANENCY ORDER**

**(a) Best Interests of Child.** The permanency placement is intended to continue until the child reaches the age of majority and may not be disturbed absent a finding by the court that the circumstances of the permanency placement are no longer in the best interest of the child.

**(b) Request for Modification by a Parent.**

(1) If a parent who has not had his or her parental rights terminated makes a motion for reunification or increased contact with the child, the court shall first hold a hearing to determine whether the dependency case should be reopened and whether there should be a modification of the order. At the hearing, the parent must demonstrate that the safety, well-being, and physical, mental, and emotional health of the child is not endangered by the modification.

(2) The court shall base its decision concerning any motion by a parent for reunification or increased contact with a child on the effect of the decision on the safety, well-being, and physical and emotional health of the child. Factors that must be considered and addressed in the findings of fact of the order on the motion must include

(A) the compliance or noncompliance of the parent with the case plan;

(B) the circumstances which caused the child's dependency and whether those circumstances have been resolved;

(C) the stability and length of the child's placement;

(D) the preference of the child, if the child is of sufficient age and understanding to express a preference;

(E) the recommendation of the current custodian; and

(F) the recommendation of the guardian ad litem, if one has been appointed.

### **E. TERMINATION OF PARENTAL RIGHTS**

#### **RULE 8.500. PETITION**

**(a) Initiation of Proceedings.**

(1) All proceedings seeking the termination of parental rights to a child shall be initiated by the filing of an original petition in the pending dependency action, if any.

(2) A petition for termination of parental rights may be filed at any time by the department, the guardian ad litem, or any person having knowledge of the facts. Each petition shall be titled a petition for termination of parental rights.

(3) When provided by law, a separate petition for dependency need not be filed.

**(b) Contents.**

(1) The petition shall contain allegations as to the identity and residence of the parents, if known.

(2) The petition shall identify the age, sex, and name of the child. Two or more children may be the subject of the same petition.

(3) The petition shall include facts supporting allegations that each of the applicable statutory elements for termination of parental rights has been met.

(4) When required by law, the petition shall contain a showing that the parents were offered a case plan and did not substantially comply with it.

(5) The petition shall have a certified copy of the birth certificate of each child named in it attached unless the petitioner, after diligent search and inquiry, is unable to produce it, in which case the petition shall state the date and place of birth of each child, unless these matters cannot be ascertained after diligent search and inquiry or for other good cause.

**(c) Verification.** The petition shall be signed under oath stating the good faith of the petitioner in filing it. No objection to a petition on the grounds that it was not signed or verified as required shall be entertained after a plea to the merits.

**(d) Amendments.** At any time before the conclusion of an adjudicatory hearing, an amended petition may be filed or the petition may be amended by motion. However, after a written answer has been filed or the adjudicatory hearing has commenced, amendments shall be permitted only with the permission of the court unless all parties consent. Amendments shall be freely permitted in the interest of justice and the welfare of the child. A continuance shall be granted on motion and a showing that the amendment prejudices or materially affects any party.

**(e) Defects and Variances.** No petition or any count of it shall be dismissed, or any judgment vacated, because of any defect in the form of the petition or of misjoinder of counts. If the court is of the opinion that the petition is so vague, indistinct, and indefinite as to mislead the parent and prejudice him or her in the preparation of a defense, the petitioner will be required to furnish a more definite statement.

**(f) Voluntary Dismissal.** The petitioner, without leave of the court, at any time before entry of an order of adjudication, may request a voluntary dismissal of the petition by serving a notice of request of dismissal on all parties or, if during a hearing, by so stating on the record. The petition shall be dismissed and the court loses jurisdiction unless another party adopts the petition within 72 hours. Unless otherwise stated, the dismissal shall be without prejudice.

**(g) Parental Consent.**

(1) The parents of the child may consent to the petition for termination of parental rights at any time, in writing or orally, on the record.

(2) If, before the filing of the petition for termination of parental rights, the parents have consented to the termination of parental rights and executed surrenders and waivers of notice of hearing as provided by law, this shall be alleged in the petition and copies shall be attached to the petition and presented to the court.

(3) If the parents appear and enter an oral consent on the record to the termination of parental rights, the court shall determine the basis on which a factual finding may be made and shall incorporate these findings into its order of disposition.

## **RULE 8.505. PROCESS AND SERVICE**

**(a) Personal Service.** On the filing of a petition requesting the termination of parental rights, a copy of the petition and notice of the date, time, and place of the advisory hearing must be personally served on

(1) the parents;

(2) the legal custodians or caregivers of the child;

(3) if the natural parents are dead or unknown, a living relative of the child, unless on diligent search and inquiry no relative can be found;

(4) any person who has physical custody of the child;

(5) any grandparents entitled by law to notice of the adoption proceeding;

(6) any prospective parent identified by law;

(7) the guardian ad litem for the child or the representative of the guardian ad litem program, if the program has been appointed;

(8) the attorney ad litem for the child if one has been appointed; and

(9) any other person as provided by law.

**(b) Contents.** The document containing the notice to appear shall notify the required persons of the filing of the petition and must contain in type at least as large as the balance of the document the following or substantially similar language:

“FAILURE TO PERSONALLY APPEAR AT THE ADVISORY HEARING CONSTITUTES CONSENT TO THE TERMINATION OF PARENTAL RIGHTS OF THIS CHILD (THESE CHILDREN). IF YOU FAIL TO APPEAR ON THE DATE AND TIME SPECIFIED, YOU MAY LOSE ALL LEGAL RIGHTS AS A PARENT TO THE CHILD OR CHILDREN NAMED IN THE PETITION ATTACHED TO THIS NOTICE.”

**(c) Constructive Service.** Parties whose identities are known and on whom personal service of process cannot be effected shall be served by publication as provided by law.

**(d) Waiver of Service.** Service of process may be waived, as provided by law, for persons who have executed a written surrender of the child to the department.

## **RULE 8.510. ADVISORY HEARING AND PRETRIAL STATUS CONFERENCES**

### **(a) Advisory Hearing.**

(1) An advisory hearing on the petition to terminate parental rights must be held as soon as possible after service of process can be effected, but no less than 72 hours following service of process. Personal appearance of any person at the advisory hearing eliminates the time requirement for serving process on that person.

(2) The court must:

(A) advise the parents of their right to counsel and appoint counsel in accordance with legal requirements;

(B) determine whether an admission, consent, or denial to the petition shall be entered; and

(C) appoint a guardian ad litem if one has not already been appointed.

(3) If a parent served with notice fails to personally appear at the advisory hearing, the court shall enter a consent to the termination of parental rights petition for the parent who failed to personally appear.

(4) If an admission or consent is entered by all parents for a named child included in the petition for termination of parental rights and the court finds that termination of parental rights is in the best interest of the child, the court shall proceed to disposition alternatives as provided by law.

(5) If a denial is entered, the court shall set an adjudicatory hearing within the period of time provided by law or grant a continuance until the parties have sufficient time to proceed to an adjudicatory hearing.

**(b) Pretrial Status Conference.** Not less than 10 days before the adjudicatory hearing on a petition for involuntary termination of parental rights, the court shall conduct a pretrial status conference to determine the order in which each party may present witnesses or evidence, the order in which cross-examination and argument shall occur, and any other matters that may aid in the conduct of the adjudicatory hearing.

**(c) Voluntary Terminations.** An advisory hearing may not be held if a petition is filed seeking an adjudication to voluntarily terminate parental rights. Adjudicatory hearings for petitions for voluntary termination must be set within 21 days of the filing of the petition. Notice of intent to rely on this subdivision must be filed with the court as required by law.

## **RULE 8.515. PROVIDING COUNSEL TO PARTIES**

### **(a) Duty of the Court.**

(1) At each hearing, the court shall advise unrepresented parents of their right to have counsel present, unless the parents have voluntarily executed a written surrender of the child and consent to the entry of a court order terminating parental rights.

(2) The court shall appoint counsel for indigent parents as provided by law. The court may appoint counsel for other parties as provided by law.

(3) The court shall ascertain whether the right to counsel is understood. If the right to counsel is waived by any parent the court shall ascertain if the right to counsel is knowingly and intelligently waived.

(4) The court shall enter its findings with respect to the appointment or waiver of counsel of indigent parents or the waiver of the right to have counsel present.

(5) Once counsel has been retained or appointed to represent a parent, the attorney shall continue to represent the parent throughout the proceedings or until the court has approved discontinuing the attorney-client relationship. If the attorney-client relationship is discontinued, the court shall advise the parent of the right to have new counsel retained or appointed for the remainder of the proceedings.

### **(b) Waiver of Counsel.**

(1) No waiver shall be accepted if it appears that the parent is unable to make an intelligent and understanding choice because of mental condition, age, education, experience, the nature or complexity of the case, or other factors.

(2) A waiver of counsel shall be made in court and be of record. The court shall question the parent in sufficient detail to ascertain that the waiver is made knowingly and intelligently.

(3) If a waiver is accepted at any hearing, the offer of assistance of counsel shall be renewed by the court at each subsequent hearing at which the parent appears without counsel.

## **RULE 8.520. ANSWERS AND RESPONSIVE PLEADINGS**

**(a) No Written Answer Required.** No answer to the petition need be filed by the parent. The parent of the child may enter an oral or written answer to the petition or appear and remain silent.

**(b) Plea of Denial.** If the parent denies the allegations of the petition, appears and remains silent, or pleads evasively, the court shall enter a denial and shall set the case for an adjudicatory hearing.

**(c) Plea of Admission or Consent.** If the parent appears and enters a plea of admission or consent to the termination of parental rights, the court shall determine that the admission or consent is made voluntarily and with a full understanding of the nature of the allegations and the possible consequences of the plea and that the parent has been advised of the right to be represented by counsel. The court shall incorporate these findings into its order of disposition, in addition to findings of fact specifying the act or acts causing the termination of parental rights.

## **RULE 8.525. ADJUDICATORY HEARINGS**

**(a) Hearing by Judge.** The adjudicatory hearing shall be conducted by the judge without a jury using the rules of evidence for civil cases. At this hearing the court shall determine whether the elements required by law for termination of parental rights have been established by clear and convincing evidence.

**(b) Time of Hearing.** The adjudicatory hearing shall be held within 45 days after the advisory hearing, unless all necessary parties stipulate to some other hearing date. Reasonable continuances may be granted for purposes of investigation, discovery, procuring counsel or witnesses, or for other good cause shown.

**(c) Examination of Witnesses.** A party may call any person, including a child, as a witness. A party shall have the right to examine or cross-examine all witnesses.

**(d) Presence of Parties.** All parties have the right to be present at all termination hearings. A party may appear in person or, at the discretion of the court for good cause shown, by an audio or audiovisual device.

No party shall be excluded from any hearing unless so ordered by the court for disruptive behavior or as provided by law. If a parent appears for the advisory hearing and the court orders that parent to personally appear at the adjudicatory hearing for the petition for termination of parental rights, stating the date, time, and location of this hearing, then failure of that parent to personally appear at the adjudicatory hearing shall constitute consent for termination of parental rights.

**(e) Examination of Child.** The court may hear the testimony of the child outside the physical presence of the parties as provided by rule 8.255. Counsel for the parties shall be present during all examinations. The court may limit the manner in which counsel examine the child.

**(f) Previous Testimony Admissible.** To avoid unnecessary duplication of expenses, in-court testimony previously given at any properly noticed hearing may be admitted, without regard to the availability of the witnesses, if the recorded testimony itself is made available. Consideration of previous testimony does not preclude the parties from calling the witness to answer supplemental questions.

**(g) Joint and Separate Hearings.** When 2 or more children are the subject of a petition for termination of parental rights, the hearings may be held simultaneously if the children are related to each other or involved in the same case, unless the court orders separate hearings.

**(h) Motion for Judgment of Dismissal.** In all termination of parental rights proceedings, if at the close of the evidence for the petitioner the parents move for a judgment of dismissal and the court is of the opinion that the evidence is insufficient to sustain the grounds for termination alleged in the petition, it shall enter an order denying the termination and proceed with dispositional alternatives as provided by law.

**(i) Final Judgment.**

**(1) Terminating Parental Rights.** If the court finds after all of the evidence has been presented that the elements and one of the grounds for termination of parental rights have been established by clear and convincing evidence, the court shall enter a final judgment terminating parental rights and proceed with dispositional alternatives as provided by law. The order must contain the findings of fact and conclusions of law on which the decision was based. The parties may stipulate, or the court may order, that parents or relatives of the parent whose rights are terminated be allowed to maintain some contact with the child. If the court orders continued contact, the nature and frequency of this contact must be stated in a written order. The visitation order may be reviewed on motion of any party, including a prospective adoptive parent, and must be reviewed by the court at the time the child is placed for adoption.

**(2) Denying Termination of Parental Rights.** If the court finds after all of the evidence has been presented that the grounds for termination of parental rights have not been established by clear and convincing evidence, but that the grounds for dependency have been established by a preponderance of the evidence, the court shall adjudicate or readjudicate the child dependent and proceed with dispositional alternatives as provided by law.

**(3) Dismissing Petition.** If the court finds after all of the evidence has been presented that the allegations in the petition do not establish grounds for dependency or termination of parental rights, it shall enter an order dismissing the petition.

## **RULE 8.535. POSTDISPOSITION HEARINGS**

**(a) Initial Hearing.** If the court terminates parental rights, a postdisposition hearing must be set within 30 days after the date of disposition. At the hearing, the department or licensed child-placing agency shall provide to the court a plan for permanency for the child.

**(b) Subsequent Hearings.** Following the initial postdisposition hearing, the court shall hold hearings every 6 months to review progress being made toward permanency for the child until the child is adopted or reaches the age of 18, whichever occurs first. Review hearings for alternative forms of permanent placement shall be held as provided by law.

**(c) Continuing Jurisdiction.** The court that terminates the parental rights to a child under chapter 39, Florida Statutes, shall retain exclusive jurisdiction in all matters pertaining to the child's adoption under

chapter 63, Florida Statutes. The petition for adoption must be filed in the division of the circuit court that entered the judgment terminating parental rights, unless a motion for change of venue is granted as provided by law.

**(d) Withholding Consent to Adopt.**

(1) When a petition for adoption and a favorable home study under section 39.812(5), Florida Statutes, have been filed and the department's consent has not been filed, the court shall conduct a hearing to determine if the department has unreasonably withheld consent.

(2) In reviewing whether the department unreasonably withheld its consent to adopt, the court shall determine whether the department abused its discretion by withholding consent to the adoption by the petitioner. In making this determination, the court shall consider all relevant information, including information obtained or otherwise used by the department in selecting the adoptive family, pursuant to Florida Administrative Code Chapter 65C.

(3) If the court determines that the department unreasonably withheld consent to adopt, and the petitioner has filed with the court a favorable home study as required by law, the court shall incorporate its findings into a written order with specific findings of fact as to how the department abused its discretion in withholding its consent to adopt, and the consent of the department shall be waived.