

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT

IN AND FOR POLK COUNTY, FLORIDA

ADMINISTRATIVE ORDER 6-17.0

RE: JUVENILE DEPENDENCY PROCEDURES -

SUPPLEMENTAL PETITIONS ALLEGING DEPENDENCY

WHEREAS, a Dependency Court Improvement Oversight Committee, as appointed by the Chief Judge of the Tenth Judicial Circuit, has reviewed procedural practices in Polk County that have been identified as problems hindering the administration of justice in dependency court; and

WHEREAS, the committee has determined that it has become an accepted practice in this circuit in Polk County for the Department of Children and Families "DCF") to file a pleading titled "Supplemental Petition Alleging Dependency" when a petition has previously been filed concerning the same mother and child(ren); and in most instances, an adjudication of dependency has previously been ordered by the court. The practice of filing a supplemental petition has contributed to confusion in the dependency court causing: (1) relitigation of the issue of an adjudication of dependency when indeed it is a matter of *res judicata*; (2) erroneous determinations as to which petition is properly pending (either the first petition or the second supplemental petition, each petitioning for an adjudication of dependency of the same child or children); (3) unnecessary arraignments; and (4) confusion for the Clerk of the Court in complying with Rule 8.201(b), Fla. R. Juv. P. (opening files upon commencement), as well as with statistical reporting requirements; and

WHEREAS, the present Florida Rules of Juvenile Procedure ("Fla. R. Juv. P.") do not contemplate a "supplemental petition alleging dependency"; rather, Rule 8.345(a) contemplates a motion for modification of placement for not only changing the placement but also to modify the conditions of placement. Chapter 39, Florida Statutes (2005) does not reference a "supplemental petition alleging dependency". Rather, Section 39.522 references a post-disposition petition ". . . alleging a need for a change in the conditions of protective supervision or the placement." While another adjudicatory hearing is not required, a hearing is required pursuant to this section if the parent denies the need for a change in the conditions or protective supervision or placement; and

WHEREAS, if the court has terminated jurisdiction, the court would lack the authority to reinstate protective services supervision. In the case of terminated jurisdiction, the petition should not be "supplemental" as a new Petition requesting an adjudication of dependency should be filed. Accordingly, the Court may properly have cases wherein the court adjudicated dependency for the same child twice where the court terminated jurisdiction after the first adjudication.

NOW, THEREFORE, it is ORDERED:

5550. In the event the court has not terminated jurisdiction, and the Department of Children and Families (the Department) brings additional allegations against a parent for the purpose of amending or modifying a case plan, modifying custody, or modifying placement conditions, the Department shall file a post-disposition motion or petition pursuant to Rule 8.345 (a), Fla.R.Juv.P. and Section 39.522, Florida Statutes (2005). The Department shall schedule an evidentiary hearing on the motion providing sufficient notice and opportunity to be heard to the other parties. If the parties consent to the motion, a stipulated order may be submitted to the court and the evidentiary hearing may be canceled.

A. In the event the Department has filed a Shelter Petition prior to the post-disposition motion, the Department shall announce its intent to file the post-disposition motion at the shelter hearing and shall file the motion within 72 hours of the shelter hearing, unless otherwise ordered by the court. If the Shelter Petition is granted, the evidentiary hearing on the post-disposition motion shall be scheduled at the shelter hearing no later than 28 days after the shelter hearing. The arraignment following shelter as referenced in Chapter 39 may be held at the same time as the evidentiary hearing. Further, all statutory provisions related to shelter proceedings shall apply until the shelter order is vacated by the court.

5635. In the event the Department brings allegations against a former non-offending parent, the Department shall not file a pleading simply titled "Supplemental Petition Alleging Dependency". Instead, the Department shall specifically set forth in the title of the pleading the name of the parent to whom the petition is addressed (e.g., Petition Alleging Dependency As To Father, John Smith). If the child has previously been adjudicated dependent as to the other parent, the title of the pleading should specifically set forth the prior adjudication of dependency as to the that parent (e.g., Child Previously Adjudicated Dependent As To Mother). If the original petition has not been disposed, the preferred procedure is amending the petition to add the allegation against another parent, pursuant to the Florida Rules of Juvenile Procedure.

ORDERED on this 10th day of November 2005.

RONALDA A. HERRING

