

## **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.**

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

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

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

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

**(c) 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) **Taking Testimony.**

**(1) Testimony at Hearing or Trial.** When testifying at a hearing or trial, a witness must be physically present unless otherwise provided by law or these rules. This rule shall not apply to statutory requirements for parents to personally appear at arraignment hearings, advisory hearings, and adjudicatory hearings.

**(2) Communication Equipment.** The court may permit a witness to testify at a hearing or trial by contemporaneous audio, or by video conference or comparable audiovisual communication equipment:

- (A) by agreement of the parties; or

(B) for good cause shown upon written or ore tenus request of a party upon reasonable oral, written, or actual notice to all other parties. The request and notice must contain an estimate of the length of the proposed testimony. In considering sufficient good cause, the court must weigh and address in its order or its ruling on the record the reasons stated for testimony by communication equipment against the potential for prejudice to the objecting party.

**(3) Required Equipment.** Communication equipment as used in this rule means a conference telephone or other electronic device that permits all those appearing or participating to hear and speak to each other simultaneously and permits all conversations of all parties to be audible to all persons present. Contemporaneous video conference or comparable audiovisual communication equipment must make the witness both audible and visible to all parties and participants present. For testimony by any of the foregoing means, there must be appropriate safeguards for the court to maintain sufficient control over the equipment and the transmission of the testimony so the court may stop the communication to accommodate objections or prevent prejudice. A parent who participates by contemporaneous audio or video communication equipment must be given the opportunity to privately and confidentially communicate with counsel during the proceedings.

**(4) Oath.** Testimony may be taken through audio communication equipment only if a notary public or other person authorized to administer oaths in the witness's jurisdiction is physically present with the witness and administers the oath consistent with the laws of the jurisdiction. If testimony is provided at the hearing via video conference or comparable audiovisual communication equipment, and the parties agree, the witness may also be sworn remotely using such video conference or comparable audiovisual communication equipment by a person who is qualified to administer oaths in the witness's jurisdiction and who administers the oath consistent with the laws of the jurisdiction. The oath procedures of this subdivision are not required for hearings where, by law, the court may consider any evidence to the extent of its probative value even though not competent in an adjudicatory hearing and where the parties and the court agree to waive these oath procedures.

**(5) Burden of Expense.** The cost for the use of the communication equipment is the responsibility of the requesting party unless otherwise ordered by the court.

**(f) Invoking the Rule.** Before the examination of any witness the court may, and on the request of any party must, 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.

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

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

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

**(ij) Written Notice.** The court must provide written notice of the right to participate in a private adoption plan, pursuant to chapter 63, Florida Statutes, when required by law.

### Committee Notes

**1991 Amendment.** (b) This change allows a child to be present instead of mandating the child's presence when the child's presence would not be in his or her best interest. The court is given the discretion to determine the need for the child to be present.

**1992 Amendment.** This change was made to reflect a moderated standard for in-camera examination of a child less rigid than the criminal law standard adopted by the committee in the 1991 rule revisions.

**2005 Amendment.** Subdivision (i) was deleted because provisions for general masters were transferred to rule 8.257.

**20 Amendment.** This rule allows the parties to agree, or one or more parties to request, that the court authorizes presentation of witness testimony by contemporaneous video or audio communications equipment. A party seeking to present such testimony over the objection of another party must still satisfy the good-cause standard. In determining whether good cause exists, the trial court may consider such factors as the type and stage of proceeding, the presence or absence

of constitutionally protected rights, the general substance of the testimony, the importance of the testimony to the resolution of the case, the relative cost or inconvenience of requiring the presence of the witness in court, the ability of counsel to use necessary exhibits or demonstrative aids, the limitations (if any) placed on the opportunity for opposing counsel and the finder of fact to observe the witness's demeanor, the potential for unfair surprise, the witness's affiliation with one or more parties, and any other factors the court reasonably deems material to weighing the justification the requesting party has offered in support of the request to allow a witness to testify by communications equipment against the potential for prejudice to the objecting party. With the advance of technology, the cost and availability of contemporaneous video testimony may be considered by the court in determining whether good cause is established for audio testimony.

Florida law favors the timely resolution of dependency proceedings for the benefit of children and their families. It relaxes evidentiary standards at certain hearings to promote efficient resolution of issues and prevent lengthy litigation and delays from having to arrange for witnesses to appear and provide testimony to the court. Florida law allows the court at different types of dependency hearings including shelter hearings, disposition hearings, and judicial review hearings to consider any evidence to the extent of its probative value including unsworn statements, hearsay, and unauthenticated documents. See, e.g., Fla. R. Juv. P. 8.305(b)(5); §§ 39.0139(4)(b), .504(3), .521(2), and .701(2)(c), Fla. Stat. (2018). The oath procedures, which may require the presence of a notary with a witness who was appearing remotely, would thus not be necessary prior to the court considering statements from the witness at these types of hearings. Further, since the parties may stipulate to any matter in the litigation, the rule creates an exception to the oath procedures if the court and parties stipulate to waive the procedures.

**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, ELECTRONIC RECORDING OF PROCEEDINGS, OR STIPULATION BY THE PARTIES OF THE EVIDENCE CONSIDERED BY THE GENERAL MAGISTRATE AT THE 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~~these rules.

(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 TRANSCRIPT OF PROCEEDINGS, ELECTRONIC**

**RECORDING OF PROCEEDINGS, OR STIPULATION BY THE PARTIES OF THE EVIDENCE CONSIDERED BY THE GENERAL MAGISTRATE AT THE 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.**

(1) 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:

(A) the court file;

(B) all depositions and evidence presented to the general magistrate; and

(C) the transcript of the proceedings, electronic recording of the proceedings, or stipulation by the parties of the evidence considered by the general magistrate at the proceedings.

(2) The transcript of the proceedings, electronic recording of the proceedings, or stipulation by the parties of the evidence considered by the general magistrate at the 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.

(3) If less than a full transcript or electronic recording 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 or electronic recording that have been ordered. The responding party shall be permitted to designate any additional portions of the transcript or electronic recording necessary to the adjudication of the issues raised in the exceptions or cross-exceptions.

(4) The cost of the original and all copies of the transcript or electronic recording of the proceedings shall be borne initially by the party seeking review. Should any portion of the transcript or electronic recording 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 or electronic recording.

**(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.