

**JUVENILE COURT RULES COMMITTEE AMENDMENTS
REGARDING DEPOSITIONS AND TESTIMONY OF SENSITIVE
WITNESSES AND CHILDREN**

The Juvenile Court Rules Committee invites comments on the proposed rule amendments anticipated to be included in a report to the Court. The full text of the proposals can be found below and on The Florida Bar’s website at www.FloridaBar.org/rules/ctproc/.

Interested persons have until November 30, 2021, to submit any comments, electronically, to Candice Brower, Chair of the Juvenile Court Rules Committee, at candice.brower@rc1.myflorida.com and to the Rules Attorney, Mikalla Davis, at midavis@floridabar.org.

<p>Rule 8.060 (Discovery)</p>	<p>27-0-0 as to (d)(7) and (d)(8) 23-1-0 as to subdivision (d)(9)(a) 32-0-0 as to other provisions in (d)(9)</p>	<p>Deletes subdivision (d)(7) and renumbers existing subdivision (d)(8) as the new subdivision (d)(7).</p> <p>Adds a news subdivision (d)(8), allowing telephonic statements of any witness if stipulated by the parties and with consent of the witnesses.</p> <p>In the title of subdivision (d)(9), adds “of Sensitive Witnesses” for greater specification for the reader.</p> <p>In subdivision (d)(9), adds subdivisions (A)-(C) for greater clarity for the reader.</p> <p>In subdivision (d)(9)(A), deletes “16” and replaces it with “18” in compliance with Section 92.55, Florida Statutes.</p> <p>In subdivision (d)(9), rewrites the subdivision to match provisions of the</p>
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		criminal procedure rules regarding taking depositions of sensitive witness.
Rule 8.104 (Testimony By Closed Circuit Television)	23-1-0	In subdivision (a), deletes “16” and replaces it with “18” in compliance with Section 92.55, Florida Statutes.
Rule 8.245 (Discovery)	23-1-0	<p>In the subdivision (i) title, deletes “16” and replaces it with “18” in compliance with Section 92.55, Florida Statutes.</p> <p>In subdivision (i)(1) and (2), deletes “16” and replaces it with “18” in compliance with Section 92.55, Florida Statutes.</p> <p>In subdivision (i)(2)(C), adds “or the relationship of the child to the parties in the case” for greater clarity for the reader.</p> <p>In subdivision (i)(4), deletes “16” and replaces it with “18” in compliance with Section 92.55, Florida Statutes.</p>
Rule 8.255 (General Provisions for Hearings)	23-1-0	In subdivision (d)(2)(C)(iii), adds “or the relationship of the child to the parties in the case” for greater clarity for the reader.

RULE 8.060. DISCOVERY

(a) Notice of Discovery.

(1) After the filing of the petition, a child may elect to utilize the discovery process provided by these rules, including the taking of discovery depositions, by filing with the court and serving upon the petitioner a “notice of discovery” which shall bind both the petitioner and the child to all discovery procedures contained in these rules. Participation by a child in the discovery process, including the taking of any deposition by a child, shall be an election to participate in discovery. If any child knowingly or purposely shares in discovery obtained by a codefendant, the child shall be deemed to have elected to participate in discovery.

(2) Within 5 days of service of the child’s notice of discovery, the petitioner shall serve a written discovery exhibit which shall disclose to the child or the child’s counsel and permit the child or the child’s counsel to inspect, copy, test, and photograph the following information and material within the petitioner’s possession or control:

(A) A list of the names and addresses of all persons known to the petitioner to have information which may be relevant to the allegations, to any defense with respect thereto, or to any similar fact evidence to be presented at trial under section 90.402(2), Florida Statutes. The names and addresses of persons listed shall be clearly designated in the following categories:

- (i) **Category A.** These witnesses shall include
 - (a) eye witnesses;
 - (b) alibi witnesses and rebuttal to alibi witnesses;
 - (c) witnesses who were present when a recorded or unrecorded statement was taken from or made by the child or codefendant, which shall be separately identified within this category;
 - (d) investigating officers;

(e) witnesses known by the petitioner to have any material information that tends to negate the guilt of the child as to the petition's allegations;

(f) child hearsay witnesses; and

(g) expert witnesses who have not provided a written report and a curriculum vitae or who are going to testify.

(ii) **Category B.** All witnesses not listed in either Category A or Category C.

(iii) **Category C.** All witnesses who performed only ministerial functions or whom the petitioner does not intend to call at the hearing and whose involvement with and knowledge of the case is fully set out in a police report or other statement furnished to the defense.

(B) The statement of any person whose name is furnished in compliance with the preceding paragraph. The term "statement" as used herein means a written statement made by said person and signed or otherwise adopted by him or her and also includes any statement of any kind or manner made by such person and written or recorded or summarized in any writing or recording. The term "statement" is specifically intended to include all police and investigative reports of any kind prepared for or in connection with the case, but shall not include the notes from which such reports are compiled.

(C) Any written or recorded statements and the substance of any oral statements made by the child and known to the petitioner, including a copy of any statements contained in police reports or summaries, together with the name and address of each witness to the statements.

(D) Any written or recorded statements, and the substance of any oral statements, made by a codefendant if the hearing is to be a joint one.

(E) Those portions of recorded grand jury minutes that contain testimony of the child.

(F) Any tangible papers or objects which were obtained from or belonged to the child.

(G) Whether the petitioner has any material or information which has been provided by a confidential informant.

(H) Whether there has been any electronic surveillance, including wiretapping, of the premises of the child, or of conversations to which the child was a party, and any documents relating thereto.

(I) Whether there has been any search or seizure and any document relating thereto.

(J) Reports or statements of experts made in connection with the particular case, including results of physical or mental examinations and of scientific tests, experiments, or comparisons.

(K) Any tangible papers or objects which the petitioner intends to use in the hearing and which were not obtained from or belonged to the child.

(3) As soon as practicable after the filing of the petition, the petitioner shall disclose to the child any material information within the state's possession or control which tends to negate the guilt of the child as to the petition's allegations.

(4) The petitioner shall perform the foregoing obligations in any manner mutually agreeable to the petitioner and the child or as ordered by the court.

(5) Upon a showing of materiality to the preparation of the defense, the court may require such other discovery to the child as justice may require.

(b) Required Disclosure to Petitioner.

(1) If a child elects to participate in discovery, within 5 days after receipt by the child of the discovery exhibit furnished by the petitioner under this rule, the following disclosures shall be made:

(A) The child shall furnish to the petitioner a written list of all persons whom the child expects to call as witnesses at the hearing. When the petitioner subpoenas a witness whose name has been furnished by the child, except for hearing subpoenas, reasonable notice shall be given to the child as to the time and location of examination pursuant to the subpoena. At such examination, the child through counsel shall have the right to be present and to examine the witness. The physical presence of the child shall be governed by rule 8.060(d)(6).

(B) The child shall serve a written discovery exhibit which shall disclose to the petitioner and permit the petitioner to inspect, copy, test, and photograph the following information and material which is in the child's possession or control:

(i) The statement of any person whom the child expects to call as a trial witness other than that of the child.

(ii) Reports or statements of experts made in connection with the particular case, including results of physical or mental examinations and of scientific tests, experiments, or comparisons.

(iii) Any tangible papers or objects which the child intends to use in the hearing.

(2) The child shall perform the foregoing obligations in any manner mutually agreeable to the child and the petitioner or as ordered by the court.

(3) The filing of a motion for protective order by the petitioner will automatically stay the times provided for in this subdivision. If a protective order is granted, the child may, within 2 days thereafter, or at any time before the petitioner furnishes the

information or material which is the subject of the motion for protective order, withdraw the demand and not be required to furnish reciprocal discovery.

(c) Limitations on Disclosure.

(1) Upon 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 such disclosure, which outweighs any usefulness of the disclosure to the party requesting it.

(2) The following matters shall not be subject to disclosure:

(A) 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 prosecuting or defense attorney or members of their legal staff.

(B) Disclosure of a confidential informant shall not be required unless the confidential informant is to be produced at a hearing or a failure to disclose the informant's identity will infringe upon the constitutional rights of the child.

(d) Depositions.

(1) Time and Location.

(A) At any time after the filing of the petition alleging a child to be delinquent, any party may take the deposition upon oral examination of any person authorized by this rule.

(B) Depositions of witnesses residing in the county in which the adjudicatory hearing is to take place shall be taken in the building in which the adjudicatory hearing is to be held, another location agreed on by the parties, or a location designated by the court. Depositions of witnesses residing outside the county in which the adjudicatory hearing is to take place shall take place

in a court reporter's office in the county and state in which the witness resides, another location agreed to by the parties, or a location designated by the court.

(2) Procedure.

(A) The party taking the deposition shall give reasonable written notice to each other party and shall make a good faith effort to coordinate the date, time, and location of the deposition to accommodate the schedules of other parties and the witness to be deposed. The notice shall state the time and the location of the deposition and the name of each person to be examined, and include a certificate of counsel that a good faith effort was made to coordinate the deposition schedule.

(B) Upon application, the court or the clerk of the court may issue subpoenas for the persons whose depositions are to be taken.

(C) After notice to the parties the court, for good cause shown, may change the time or location of the deposition.

(D) In any case, no person shall be deposed more than once except by consent of the parties or by order of the court issued on good cause shown.

(E) Except as otherwise provided by this rule, the procedure for taking the deposition, including the scope of the examination and the issuance of a subpoena (except for a subpoena duces tecum) for deposition by an attorney of record in the action shall be the same as that provided in the Florida Rules of Civil Procedure.

(F) The child, without leave of court, may take the deposition of any witness listed by the petitioner as a Category A witness or listed by a codefendant as a witness to be called at a joint hearing. After receipt by the child of the discovery exhibit, the child, without leave of court, may take the deposition of any unlisted witness who may have information relevant to the petition's allegations. The petitioner, without leave of court, may

take the deposition of any witness listed by the child to be called at a hearing.

(G) No party may take the deposition of a witness listed by the petitioner as a Category B witness except upon leave of court with good cause shown. In determining whether to allow a deposition, the court should consider the consequences to the child, the complexities of the issues involved, the complexity of the testimony of the witness (e.g., experts), and the other opportunities available to the child to discover the information sought by deposition.

(H) A witness listed by the petitioner as a Category C witness shall not be subject to deposition unless the court determines that the witness should be listed in another category.

(I) No deposition shall be taken in a case in which a petition has been filed alleging that the child committed only a misdemeanor or a criminal traffic offense when all other discovery provided by this rule has been complied with unless good cause can be shown to the trial court. In determining whether to allow a deposition, the court should consider the consequences to the child, the complexity of the issues involved, the complexity of the witness's testimony (e.g., experts), and the other opportunities available to the child to discover the information sought by deposition. However, this prohibition against the taking of depositions shall not be applicable if following the furnishing of discovery by the child the petitioner then takes the statement of a listed defense witness pursuant to section 27.04, Florida Statutes.

(3) Use of Deposition. Any deposition taken pursuant to this rule may be used at any hearing covered by these rules by any party for the purpose of impeaching the testimony of the deponent as a witness.

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

(5) Sanctions. A witness who refuses to obey a duly served subpoena for the taking of a deposition may be adjudged in contempt of the court from which the subpoena issued.

(6) Physical Presence of Child. The child shall not be physically present at a deposition except upon stipulation of the parties or as provided by this rule.

The court may order the physical presence of the child upon a showing of good cause. In ruling, the court may consider

(A) the need for the physical presence of the child to obtain effective discovery;

(B) the intimidating effect of the child's presence on the witness, if any;

(C) any cost or inconvenience which may result;
and

(D) any alternative electronic or audio-visual means available to protect the child's ability to participate in discovery without the child's physical presence.

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

(87) Depositions of Law Enforcement Officers. Subject to the general provisions of this rule, law enforcement officers shall appear for deposition, without subpoena, upon written notice of taking deposition delivered at the address designated by the law enforcement agency or department or, if no address has been designated, to the address of the law enforcement agency or department, 5 days prior to the date of the deposition. Law

enforcement officers who fail to appear for deposition after being served notice are subject to contempt proceedings.

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

(9) Videotaped Depositions of Sensitive Witnesses.

(A) Depositions of children under the age of ~~16~~18 shall be videotaped upon demand of any party unless otherwise ordered by the court.

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

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

(e) Perpetuating Testimony.

(1) After the filing of the petition and upon reasonable notice, any party may apply for an order to perpetuate testimony of a witness. The application shall be verified or supported by the affidavits of credible persons, and shall state that the prospective witness resides beyond the territorial jurisdiction of the court or may be unable to attend or be prevented from attending the subsequent court proceedings, or that grounds exist to believe that the witness will absent himself or herself from the jurisdiction of the court, that the testimony is material, and that it is necessary to take the deposition to prevent a failure of justice.

(2) If the application is well founded and timely made, the court shall order a commission to be issued to take the deposition of the witness to be used in subsequent court proceedings and that any designated books, papers, documents, or tangible objects, not privileged, be produced at the same time and place. The commission may be issued to any official court reporter, whether the witness be within or without the state, transcribed by the reporter, and filed in the court. The commission shall state the time and place of the deposition and be served on all parties.

(3) No deposition shall be used or read in evidence when the attendance of the witness can be procured. If it shall appear 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.

(f) Nontestimonial Discovery. After the filing of the petition, upon application, and subject to constitutional limitations, the court may with directions as to time, place, and method, and upon conditions which are just, require:

- (1) the child in all proceedings to:
 - (A) appear in a lineup;
 - (B) speak for identification by a witness to an offense;
 - (C) be fingerprinted;
 - (D) pose for photographs not involving reenactment of a scene;
 - (E) try on articles of clothing;
 - (F) permit the taking of specimens of material under the fingernails;

(G) permit the taking of samples of blood, hair, and other materials of the body which involve no unreasonable intrusion thereof;

(H) provide specimens of handwriting; or

(I) submit to a reasonable physical or medical inspection of his or her body; and

(2) such other discovery as justice may require upon a showing that such would be relevant or material.

(g) Court May Alter Times. The court may alter the times for compliance with any discovery under these rules on good cause shown.

(h) Supplemental Discovery. If, subsequent to compliance with these rules, a party discovers additional witnesses, evidence, or material which the party would have been under a duty to disclose or produce at the time of such 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.

(i) Investigations Not to Be Impeded. Except as otherwise provided for matters not subject to disclosure or restricted by protective orders, neither the counsel for the parties nor other prosecution or defense personnel shall advise persons having relevant material or information, except for the child, to refrain from discussing the case with opposing counsel or showing opposing counsel any relevant material, nor shall they otherwise impede opposing counsel's investigation of the case.

(j) Protective Orders. Upon a showing of good cause, the court shall at any time order that specified disclosures be restricted, deferred, or exempted from discovery, that certain matters are not to be inquired into or that the scope of the deposition be limited to certain matters, that a deposition be sealed and after being sealed be opened only by order of the court, or make such other order as is appropriate to protect a witness from

harassment, unnecessary inconvenience, or invasion of privacy, including prohibiting the taking of a deposition. All material and information to which a party is entitled, however, must be disclosed in time to permit such party to make beneficial use of it.

(k) Motion to Terminate or Limit Examination. At any time during the taking of a deposition, on motion of a party or of the deponent, and upon a showing that the examination is being conducted in bad faith or in such manner as to unreasonably annoy, embarrass, or oppress the deponent or party, the court in which the action is pending or the circuit court where the deposition is being taken may (1) terminate the deposition, (2) limit the scope and manner of the taking of the deposition, (3) limit the time of the deposition, (4) continue the deposition to a later time, (5) order the deposition to be taken in open court and, in addition, (6) may impose any sanction authorized by this rule. If the order terminates the deposition, it shall be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of any party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order.

(l) In Camera and Ex Parte Proceedings.

(1) Any person may move for an order denying or regulating disclosure of sensitive matters. The court may consider the matters contained in the motion in camera.

(2) Upon request, the court shall allow the child to make an ex parte showing of good cause for taking the deposition of a Category B witness.

(3) A record shall be made of proceedings authorized under this subdivision. If the court enters an order granting relief after an in camera inspection or ex parte showing, the entire record of the proceeding shall be sealed and preserved in the records of the court, to be made available to the appellate court in the event of an appeal.

(m) 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 pursuant to an applicable discovery rule, the court may:

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

(B) grant a continuance;

(C) grant a mistrial;

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

(E) enter such order as it deems just under the circumstances.

(2) Willful violation by counsel or a party not represented by counsel of an applicable discovery rule or an order issued pursuant thereto may subject counsel or a party not represented by counsel to appropriate sanction by the court. The sanctions may include, but are not limited to, contempt proceedings against the attorney or party not represented by counsel, as well as the assessment of costs incurred by the opposing party, when appropriate.

Court Commentary

1996 Amendment. This amendment generally conforms the rule to the 1996 amendment to Florida Rule of Criminal Procedure 3.220.

RULE 8.104. TESTIMONY BY CLOSED-CIRCUIT TELEVISION

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

(b) Persons Who May File Motion. The motion may be filed by:

- (1) the victim or witness or his or her attorney, parent, legal guardian, or guardian ad litem;
- (2) the trial judge on his or her own motion;
- (3) the prosecuting attorney; or
- (4) the defendant child or his or her counsel.

(c) Persons Who May Be Present During Testimony. Only the judge, prosecutor, witness or victim, attorney for the witness or victim, defendant child's attorney, operator of the equipment, an interpreter, and some other person who in the opinion of the court contributes to the well-being of the victim or witness and who will not be a witness in the case may be in the room during the recording of the testimony.

(d) Presence of Defendant Child. During the testimony of the victim or witness by closed-circuit television, the court may require the defendant child to view the testimony from the courtroom. In such case, the court shall permit the defendant child to observe and hear the testimony, but shall ensure that the victim or witness cannot hear or see the defendant child. The defendant child's right to assistance of counsel, which includes the right to immediate and direct communication with counsel conducting cross examination, shall be protected and, on the defendant child's

request, such communication shall be provided by any appropriate electronic method.

(e) Findings of Fact. The court shall make specific findings of fact on the record as to the basis for its ruling under this rule.

(f) Time for Motion. The motion referred to in subdivision (a) may be made at any time with reasonable notice to each party.

Committee Notes

1992 Adoption. Addition of this rule is mandated by section 92.55, Florida Statutes (1989).

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 1618.

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

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

- (A) 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 or the relationship of the child to the parties in the case.

(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~~18 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.

Committee Notes

1991 Amendment. (a)(1) Termination of parental rights proceedings have been added to discovery procedures.

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 or the relationship of the child to the parties in the case;
- (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 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.

(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 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.

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

(i) 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.