

IN THE TENTH JUDICIAL CIRCUIT OF FLORIDA

IN AND FOR POLK COUNTY, FLORIDA

ADMINISTRATIVE ORDER 6-18.0

RE: JUVENILE DEPENDENCY PROCEDURES

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 the Juvenile Dependency Division; and

WHEREAS, the proper administration of justice in this circuit will be served by the adoption of the recommended administrative provisions.

NOW, THEREFORE, it is ORDERED:

SECTION 1: APPLICABILITY

These provisions shall apply to dependency and termination of parental rights actions in the Juvenile Subdivision of the Circuit Court of the Tenth Judicial Circuit in and for Polk County, Florida, in addition to any other administrative orders applicable to the court generally, and are intended to complement the Florida Rules of Juvenile Procedure. These provisions supersede all conflicting provisions in prior administrative orders adopted in this circuit.

SECTION 2: GENERAL PROVISIONS

A. Shelter Hearings - Shelter petitions are heard every day of the week including weekends and holidays. As such, the clerk shall provide a copy of all shelter petitions and orders that were considered and disposed of over a weekend or holiday to the dependency case manager on the first workday after the weekend or holiday.

B. Arraignments - An arraignment date shall be set by the clerk at the shelter hearing. The clerk shall inform all parties present at the shelter hearing of the arraignment date set for their case. The clerk shall present two sealed and certified copies of the shelter order to the Department of Children and Families (hereinafter referred to as "the DCF"), one non-certified copy to the GAL, and one non-certified copy to Juvenile Court Administration at the conclusion of all shelter hearings held that day.

C. Ex-Parte Motions (Generally) - The DCF or any other interested person may file an ex-parte motion when notice to the parents is impossible, or there is a threat of harm to the child(ren) as a result of either giving notice or as a result of the time required for giving notice. Notice to all parties and participants is not required when filing an ex-parte motion. The motion shall be accompanied by a sworn affidavit and proposed order, and shall be provided to the judge assigned to the case. The motion and sworn affidavit shall set forth the grounds showing why providing notice to the parents is impossible, or there is a threat of harm to the child(ren) if the parents are afforded notice they are otherwise entitled to.

D. Procedures for Incarcerated Parties and/or Witnesses - In accordance with Fla. R. Juv. P. 8.305(2), the DCF shall specify and highlight on the shelter petition, or any subsequent filing, the jail status of any parent (i.e. whether in jail, and, if so, whether in state prison or county jail). It is the responsibility of the DCF to notify the Court by phone or fax whenever the DCF is aware that a party or a witness is incarcerated at the time of any pre-disposition hearing. It is the responsibility of defense counsel to notify the court if their client is incarcerated at the time of any post-disposition hearing. Notice shall be provided to the court 24 to 48 hours prior to each and every court proceeding. Once notified, the Court shall call the Polk County Jail and arrange for the inmate to be brought to the hearing. The juvenile case manager shall also notify the courtroom bailiff that an inmate is being brought to the hearing.

Within 21 working days of a pre-disposition hearing, the DCF shall simultaneously file with the Clerk and the presiding judge a Motion to Transport and an Order to Transport the party or witness incarcerated in a state prison facility or out of county jail. The DCF is responsible for preparing the motion and order to transport defending parties for pre-disposition hearings, and the DCF's witnesses who are incarcerated. Likewise, defense counsel is responsible for preparing the motion and order to transport their clients for post-disposition matters, and their witnesses. When a party or witness is incarcerated in the Polk County Jail and needs to be brought to court for a hearing, the DCF and/or defense counsel shall notify the court 24 to 48 hours prior to each and every court proceeding.

SECTION 3: REMOVAL OF PREVIOUSLY ADJUDICATED CHILDREN REMAINING UNDER THE JURISDICTION OF THE COURT

A. Shelter of a Child or Children Previously Adjudicated Dependent - The DCF may take a previously adjudicated child or children into custody if there is probable cause that the child(ren) has/have been abused, neglected, or abandoned, or is/are suffering from or is/are in imminent danger of illness or injury as a result of abuse, neglect, or abandonment; (b) that the parent(s) or legal custodian(s) of the child(ren) has/have materially violated a condition of placement imposed by the court; or (c) the child(ren) has/have no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care as set forth in Fla. Stat. § 39.401.

If the Court grants the shelter and finds that probable cause exists to remove the previously adjudicated dependent child(ren), the parent(s) or legal custodian(s) shall have an opportunity, in person or through counsel, to deny or admit the need for a change in the condition of protective services or placement, pursuant to Fla. Stat. § 39.522. If the parent(s) or legal custodian(s) are present, in person or through counsel, at the shelter hearing, the denial or admission may be entered at that time. Upon an admission of a need for change, the Court shall enter an order changing the placement, modifying the conditions of protective services or continuing the conditions of protective services as ordered.

If the parent(s) or legal custodian(s) deny the need for a change in the condition of protective services or placement, either in writing or orally, the Court shall set an evidentiary hearing, pursuant to Fla. Stat. § 39.522, within twenty-eight (28) days. If the motion is granted, the Court shall enter an order

changing the placement, modifying the conditions of protective services or continuing the conditions of protective services as ordered.

The DCF shall prepare, pursuant to Fla. Stat. § 39.522, distribute pursuant to Fla. R. Juv. P. 8.225, and file a postdisposition Motion to Modify Placement and/or the Condition of Protective Services within seventy-two (72) hours of the conclusion of the shelter proceeding unless otherwise specified by the Court. The DCF may request an extension of time upon good cause shown. If the postdisposition Motion to Modify Placement is not filed within seventy-two (72) hours, or a time frame otherwise ordered by the Court, the parent(s) or legal custodian(s), through counsel, may file a Motion to Vacate the Shelter Order and set the matter for hearing. If the Motion to Vacate the Shelter Order is granted, the child(ren) shall be reunified with the parent(s) or legal custodian(s).

B. Emergency Ex-Parte Motions (without notice) - The DCF or any other interested person, may file a postdisposition Emergency Ex-parte Motion to modify the conditions of protective services or foster care of a previously adjudicated child or children when there is a threat of imminent harm to the child(ren) as a result of either giving notice or as a result of the time required for giving notice. Notice to all parties and participants is not required when filing this emergency ex-parte motion. The motion shall be accompanied by a sworn affidavit and proposed order, and shall be provided to the judge assigned to the case. The motion and sworn affidavit shall set forth the grounds showing there is a threat of imminent harm to the child(ren) if the parents are afforded notice they are otherwise entitled to. The movant shall include a space in the proposed order wherein the judge's judicial assistant will assign a return hearing date at which all parties and participants will have an opportunity to be heard. The movant shall provide sufficient copies for the distribution of all documents to the parties, participants and counsel of record.

A return hearing shall be set within 5 business days upon the granting of the emergency ex-parte motion. The Court shall hear from all parties in person or by counsel or both, pursuant to Fla. Stat. § 39.522. Upon an admission of a need for a change the Court shall enter an order modifying the conditions of protective services.

If the parent(s) or legal custodian(s) deny the need for a change in the conditions of protective services or placement, the Court shall set an evidentiary hearing, pursuant to Fla. Stat. § 39.522, within ten (10) days of the return hearing. If the motion is granted, the Court shall enter an order changing the placement, modifying the conditions of protective services or continuing the conditions of protective services as ordered.

Emergency Motions (with notice) - The DCF, or any other interested person,

may file a post disposition emergency motion to modify the placement of a previously adjudicated child or children when there is a threat of harm to the child(ren) and the circumstances do not rise to the level of an emergency ex-parte motion or a shelter. Notice, pursuant to Fla. R. Juv. P. 8.225, to all parties, participants and counsel of record is required. Contemporaneously with scheduling the hearing, the movant shall provide a copy of the motion, notice of hearing, and any additional documents to be filed with the Court to the parties, participants and counsel of record.

Upon admissions of a need for a change at the hearing, the Court shall enter an order changing the placement, modifying the conditions of protective services or continuing the conditions of protective services as ordered, pursuant to Fla. Stat. § 39.522.

If the parent(s) or legal custodian(s) deny the need for a change in the condition of protective services or placement at the emergency motion, return hearing, through a written denial, or at a subsequent hearing, the Court shall set an evidentiary hearing, pursuant to Fla. Stat. § 39.522, within ten (10) days. If the motion is granted, the Court shall enter an order changing the placement, modifying the conditions of protective services or continuing the conditions of protective services as ordered.

Motion to Modify (ex-parte proceeding or emergency motion without prior

shelter) – The DCF or any other interested person, may file a post disposition motion to modify the placement of a previously adjudicated child or children, pursuant to Fla. Stat. § 39.522 when the movant is desirous of changing the conditions of protective services or placement. The motion shall be filed pursuant to Fla. R. Juv. P. 8.235(a), and all relevant administrative orders. Notice, pursuant to Fla. R. Juv. P. 8.225, to all parties, participants and counsel of record is required. The movant shall provide a copy of the motion, notice of hearing, and any additional documents to be filed with the Court to the parties, participants and counsel of record at the time of filing.

SECTION 4: DEPENDENCY MEDIATION

Any contested dependency matter may be ordered to mediation by the Court on its own motion or by motion of a party in accordance with Fla. Stat. § 39.4075. A referral to mediation may occur at any stage in a dependency proceeding. The Tenth Circuit Mediation Services is authorized to provide a dependency mediation program. Policies and procedures of the program will be those as found in [Attachment A](#) to [Administrative Order 5-33.1](#).

Only certified dependency mediators employed by the Tenth Judicial Circuit Court are authorized to provide mediation services through Mediation Services. Cases referred to the program shall be referred by court order. All parties and participants to a juvenile dependency matter, as defined by Rule 8.210, Florida Rules of Juvenile Procedure, and their counsel, may be required to attend mediation sessions as ordered by the Court.

All issues raised and facts discussed during the course of mediation shall be confidential to the extent provided by law and shall not become part of the court record. However, any written agreement executed by all parties and approved by the Court shall become part of the court record.

Nothing contained herein shall abrogate any rights and/or obligations provided by law. If a party wishes to object to participation in mediation, they may do so by filing a written objection and setting a hearing on the matter to be heard by the Court.

SECTION 5: HEARINGS NOTICES, CANCELLATIONS, AND CONTINUANCES

Scheduling Trials and Hearings – The judicial assistant for the judge assigned to a case – will schedule all hearings unless the judge schedules a hearing in the courtroom on the record. No hearings will be set until the Court has received a copy of the motion to be heard. Judicial reviews are scheduled by the Court pursuant to Fla. Stat. §39.701(4). A party or attorney desiring to schedule a trial or hearing may obtain available dates from the judicial assistant. Attorneys shall request adequate time to hear their motion. When requesting hearing time, the attorney setting the hearing should consider how

much time opposing counsel will need to defend the motion. At the hearing, it is the responsibility of opposing counsel to inform the Court of the time to defend the motion, not to exceed fifty percent (50%) of the time reserved. All hearing dates shall be cleared with opposing counsel prior to notices being filed. This fact shall be shown on the face of the notice itself by inserting the following: "The above hearing has been cleared with opposing counsel's calendar on (date)". In the alternative, if counsel's good faith attempt to clear a hearing has been unsuccessful, the following language shall be used: "The above hearing date has not been cleared with opposing counsel's calendar because (factual statement)".

B. Notices of Hearing - All notices of hearing shall be separate from the pleading for which the hearing is scheduled. All notices of hearing shall clearly specify the purpose, place, date, time and length of the hearing. All notices of hearing shall comply with the Americans with Disabilities Act. Copies of the notice of hearing shall be provided to all parties and the judge consistent with Fla R. Juv. P. 8.225(5). For all final hearings, even after a default has been entered, counsel setting the hearing shall provide a copy of the notice of hearing to opposing counsel and any unrepresented opposing party.

C. Additional Motions - Counsel shall not notice additional motions to be heard at the same time as motions previously noticed for hearing unless both counsel determine that the docket will accommodate the additional motion(s) at the scheduled time, and both counsel stipulate that all motions can be heard at the same time, the judicial assistant is informed, and an amended notice of hearing is served.

Cancellation of Hearings - All hearings scheduled for two (2) hours or more

may not be canceled without the mutual consent of the attorneys and approval of the Court. Other hearings may be cancelled only by the attorney setting the hearing.

E. Continuances - A Motion to Continue will not be granted unless in compliance with Fla. Stat. §39.0136. Pursuant to Rule 8.240(d) of the Florida Rules of Juvenile Procedure, all motions for continuance shall be in writing and shall be signed by the party requesting the continuance. On a showing of good cause, the Court shall allow a motion for continuance to be made *ore temus* at any time during the proceedings. All motions for continuance shall include a statement that opposing counsel has been contacted and that opposing counsel either agrees or disagrees with said continuance request. Further, the movant shall set forth a specific procedure for compliance with the Order to Appear set forth in § 39.506(3) and Fla. R. Juv. P. 8.525(d).

F. Stipulated Motions - If the parties stipulate to a motion, the movant may submit a proposed order without the necessity of a hearing. The Motion must specifically state that opposing counsel does not object to the Motion.

SECTION 6: PRETRIAL ORDER

A pretrial status conference is required in all termination of parental rights (TPR) proceedings as set forth in Fla.R.Juv.P. 8.510(b), and may be requested by any party or scheduled by the court in dependency proceedings as provided for in Fla.R.Juv.P. 8.315(c). The Court will issue an Order Setting Pretrial Conference in all TPR cases and in any dependency case which is set for more than one-half day (three hours). [Said order is attached hereto as Attachment A.](#)

SECTION 7: ORDERS AND FINAL JUDGMENTS

Contents of Order - Orders and final judgments must be styled pursuant to

Rule 8.220, Florida Rule of Juvenile Procedure, and shall contain:

1. The case number and style.
2. A title with a description stating the issue, pleading, or motion ruled upon. The description SHALL NOT simply recite "order" or "final judgment".
3. An introductory paragraph reciting:
 - a. the date(s) on which the hearing was held;
 - b. the parties present and their respective counsel, if any, and;
 - c. the title of all motions ruled upon by the order.
4. Findings of fact and conclusions of law announced by the Court.
5. Judgments and orders announced by the Court.

Format - All orders and judgments submitted to the Court shall be on blank

stationery. The signature block of the order shall include the name of the presiding judge followed by the words "Circuit Judge" and shall not include terms such as "The Honorable" or "Honorable", unless authorized by the Court.

C. Submitting Proposed Orders - Every proposed order or judgment shall be submitted by the attorney designated by the Court for signature within ten (10) working days after the decision, unless the order is an Order on Judicial Review in which case it shall be submitted by the attorney designated by the Court for signature within fifteen (15) working days after the decision. In the event the designated attorney fails to submit a proposed order or judgment within said ten (10) working days, the opposing attorney or unrepresented party may submit a proposed order or judgment within ten (10) working days after certifying that he/she has made a good faith effort to contact the designated attorney and has received no reason for the delay.

D. Objections to Proposed Orders - The judicial assistants will hold any proposed order or final judgment for five (5) working days after receiving it to allow opposing counsel or unrepresented party time to file any objections to it. If the judicial assistant receives no objection within five (5) working days, the order or final judgment shall be entered if approved by the Court. Objections made by telephone must be followed up by a written explanation to the Court and opposing counsel or unrepresented party within five (5) working days of the telephone objection. Opposing counsel should notify the judicial assistant when there are no objections so the order can be distributed before the five (5) working days period. Upon receipt of any written objection, the judicial assistant shall present the matter to the judge for resolution.

E. Copies – Copies of all orders and judgments entered in dependency and termination of parental rights actions shall be mailed to the parties, attorneys, and appropriate agencies, except when the orders or judgments are distributed in court. The attorney submitting the proposed order or judgment shall furnish the Court with sufficient copies of the proposed order or judgment for all parties entitled to receive them along with stamped and addressed envelopes for such purposes. The return address shall read:

(Name of Judge)

Circuit Judge

P.O. Box 9000, Drawer _____

Bartow, Florida 33831-9000

(The title "Honorable" shall not be used on the return address)

Orders and judgments will not be mailed out without compliance with the above requirements. The judicial assistant will file any returned copies in the court file and notify the appropriate attorney. It will then be the responsibility of the attorney to attempt service.

SECTION 8: GUARDIAN AD LITEM

Counsel may request the Court to appoint a guardian ad litem ("GAL") at any time. The motion requesting appointment of a GAL shall be in writing unless otherwise authorized by the Court. The party seeking appointment of a GAL must schedule a hearing on the matter before the Court. The moving party shall provide notice of the hearing to the GAL's office. Because of a shortage of GAL volunteers, all cases in which appointment of the program is requested will be subjected to a standardized case prioritization matrix and will be assigned based on an objective scoring system determined by the GAL's office, subject to approval of the Court. If appointed, the GAL's office shall prepare the order, unless otherwise directed by the Court. Once appointed, the GAL program is a party to the case and shall be served with all orders, notices, pleadings, motions, and other documents placed in the court file.

SECTION 9: CASE NUMBERING SYSTEM

A. The Pleadings/Motion Form included in this Administrative Order, as [Attachment B](#), shall accompany all pleadings and motions filed with the clerk of court following the shelter petition or in-home dependency petition. The form shall be located on the first page of the pleading or motion, immediately after the style of the case. The intended purpose of the form is twofold: first, to prevent confusion by the clerk of court regarding the filing of any particular pleading or motion, and second, to provide notice to the Court and parties of the child to be addressed by any particular pleading or motion. To effectuate its intended purpose, the form must be filled out in its entirety. Each pleading shall be filed under the case number denoted on the form. Only one case number may be denoted on each form.

B. The clerk will no longer create separate Dependency and TPR files. The filing of a TPR petition shall be denoted in the court file by the clerk with a divider labeled "TPR".

A new case number shall be assigned by the clerk when a shelter petition or

in-home petition alleging dependency is filed, unless the matter is currently pending before the Court. For example, if a new child is brought into the litigation prior to disposition on a pending dependency petition, then the DCF or other interested person may move to amend the petition to include the additional child. However, if a new child of the same mother is sheltered post disposition, this is considered new litigation and hence a new case number and case file are necessary.

All pleadings will be filed in date order.

Administrative Order 6-5.1 is hereby SUPERSEDED.

DONE AND ORDERED on this 12th day of September, 2006.

RONALD A. HERRING

Chief Judge

ATTACHMENT A

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT
IN AND FOR POLK COUNTY, FLORIDA
JUVENILE DIVISION

IN THE INTEREST OF:

CASE NO:

CHILD(REN)

_____ /

ORDER SETTING PRETRIAL CONFERENCE

Pursuant to Florida Rules of Juvenile Procedure, the following is hereby ORDERED:

1. SCHEDULE: The Pretrial Conference is set on _____ at _____ a.m./p.m. before the Honorable _____ Circuit Judge, in Courtroom _____, _____ Floor, _____ Elevator, _____ Tower, in the Polk County Courthouse, 255 N. Broadway Avenue, Bartow, Florida.
2. ATTENDANCE: Each party shall be present and represented at the Pretrial Conference by the person who will try the case.
3. CONFLICTS: Within ten (10) days of this Order, or at the Pretrial Conference, counsel shall notify the Court if inadequate time has been allowed for trial, if a scheduling conflict exists, or if discovery cannot be completed.
4. MEDIATION: The parties shall set and attend mediation prior to the Pretrial Conference.
5. SETTLEMENT: In the event this case settles, DCF counsel shall immediately notify the undersigned Judge by written fax memorandum or by a phone call. Counsel should not release witnesses until the settlement is approved by the Court.
6. CONTINUANCES: No continuance will be granted unless good cause is demonstrated in writing, signed by counsel and the parties he or she represents.
7. CONSULTATION: At least ten (10) days before Pretrial Conference, DCF counsel shall conduct a consultation, by telephone or in person, with all opposing counsel in order to:
 - a. Discuss settlement
 - b. Arrange to examine all trial exhibits and demonstrative aids.

ATTACHMENT A

- c. Review witness lists with the goal of identifying those witnesses each party reasonably anticipates will be called to testify at trial.
- d. Review the five (5) items found in Rule 1.200(b), Fla.R.Civ.P., in preparation for the Pretrial Conference.
- e. Prepare the mutual stipulation and proposed Pretrial Order as required below.

8. MUTUAL STIPULATION AND PROPOSED PRETRIAL ORDER: At least three (3) working days before Pretrial Conference, a Stipulation (in one document) shall be submitted directly to the Court's Chambers either by U.S. mail or by hand delivery, **not** by facsimile. DCF counsel shall have the responsibility for drafting the Stipulation which shall contain a statement of:

- a. Factual issues that have been resolved.
- b. Factual issues that remain to be litigated.
- c. Legal and evidentiary issues likely to arise at the adjudicatory hearing or trial.
- d. A final witness list.
- e. A final exhibit list.
- f. Whether any party or witness has raised a possibility of the application of The Indian Child Welfare Act (ICWA), 25 U.S.C. 1901.
- g. Whether the use of the child witness room and/or interpreter services are needed.
- h. The signatures of counsel for all parties.

DCF counsel, unless otherwise directed by the Court, will have responsibility for drafting the proposed Pretrial Order which shall contain:

- a. The incorporated mutual Pretrial Stipulation.
- b. The Court's rulings upon all matters requiring Court Action.

The Pretrial Order shall thereafter control the course of action.

9. DISCOVERY: The Court directs that all discovery in TPR cases shall be completed before Pretrial Conference. In Dependency cases all discovery shall be completed before Mandatory Docketing. Discovery conducted thereafter will be at the risk of counsel.

10. MOTIONS: No Motions will be heard at or after the Pretrial Conference absent compelling circumstances and consent of the Court.

11. COMMUNICATIONS NOTICING COURT PROCEEDINGS: All communications noticing court proceedings, including but not limited to, subpoenas for trial, summons, notices of hearings, notices for depositions and all other court-related proceedings shall provide that a person with a disability who needs a special accommodation shall contact the Office of the Court Administrator to insure that

ATTACHMENT A

reasonable accommodations are available. Such communications noting Court proceedings shall include the following substantive language.

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled to, at no cost to you, to the provision of certain assistance. Please contact the Office of the Court Administrator (863) 534-4699 within two (2) working days of your receipt of this (described notice); if you are hearing or voice impaired, call TDD (863) 534-7777 or Florida Relay Service 711.

DONE and ORDERED at Bartow, Polk County, Florida this _____ day of _____, _____.

CHARLES LEE BROWN
Circuit Judge

Copies furnished to:

ATTACHMENT B

PLEADINGS / MOTION FORM

(DIVISION OF COURT TO BE FILED IN - CIRCLE ONE) J1 J4 J9

- | | | | |
|----|----------------------------|--------------|------------------|
| 1. | CASE STYLE | CASE#: | insert case # |
| | TYPE PLEADING: | insert title | |
| | RE: CHILD: | insert name | |
| | IN THE INTEREST OF | COURT DATE: | insert hrg. date |
| | COMPLETE CASE STYLE | | |

***This section should encompass the following: COMPLETE CASE STYLE - on the left-hand side the case style denoted since the inception of the case and any additional children's names that have been added. The case style should denote whether a given child has aged out or whether p.s. has been terminated etc.....**

On the right hand side the case number and child that is the subject of the attached pleading/motion, as well as an indication of the type of pleading motion is attached and the hearing date, if required.