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In re: Amendments to Florida Rule of Juvenile Procedure 8.255

SC08-1236

>> -- SUBSIDIZE INDEPENDENT LIVING SERVICES IS A TYPE OF PERMANENT PLACEMENT YOU CAN OBTAIN AFTER AGE 16 AND WE USED AS OFTEN WHEN WE ARE PLACING YOUTH WITH A TEACHER, A COACH, OR HIS BEST FRIEND IN SCHOOL.

>> BUT THE STATUTE ACTUALLY PROVIDES THIS FROM AGE SEVEN, CORRECT?

>> UNDER CHAPTER 39, THE TRANSITION PLAN THAT THE COURTS HAVE REVIEWED UNDER CHAPTER 39 PROVIDES THAT THE USED SHALL HAVE THE OPPORTUNITY TO BE PRESENT-- AS THE 17-YEAR-OLD TRANSITION PLAN.

>> AS FAR AS THE STATUTORY LAW REQUIREMENT, THAT RUNS FROM AGE SEVEN-- 17?

>> THAT PROVISION IS 16-YEAR-OLD, THE TIME THE 16-YEAR-OLD COMES INTO PLAY UNDER CHAPTER 39 COMICS

16-YEAR-OLD CAN REQUEST THE
REMAINING CARE IN THE TEEN
ANOTHER PLAN PERMIT LIVING
ARRANGEMENT.

16-YEAR-OLD CAN BE ADOPTED FOR
PLACING THE PERMANENT
GUARDIANSHIP UNDER CHAPTER 409
AND STILL QUALIFY FOR
INDEPENDENCE BENEFITS.

>> I UNDERSTAND BUT WHAT I AM
REACHING FOR IS THE FACT THAT
WHERE THERE IS A STATUTORY
REQUIREMENT, AS OPPOSED TO WHAT
IS CONCEIVED HERE IS A
PROCEDURAL REQUIREMENT FOR THE
CHILD TO APPEAR BEFORE THE
COURT.

AND THAT IS AT AGE 17, CORRECT?

>> THE WAY CHAPTER 39 -- YES IS
WRITTEN ON THE 17-YEAR-OLD
TRANSITION, THAT IS CORRECT.

>> WHAT IS DCF'S POSITION ON
GOING BELOW AGE 17?

>> POSITION, OF COURSE IN
CHAPTER 39 THERE IS THE BEST
INTEREST STANDARD ON WHETHER THE
CHILD SHOULD BE IN COURT OR NOT.

DCF PARTICIPATED IN MY

SUBCOMMITTEE AND A MAJOR ISSUE
RAISED WAS THE TRANSPORTATION
COST WITH THE YOUTH COMING TO
COURT.

>> HOW HAS THAT BEEN DEALT WITH?

>> IT IS, IT IS AN ISSUE IN

WHICH IN EFFECT, THE CBC'S, AT
LEAST IN GUILFORD COUNTY, WE
HAVE THE CBC'S TRANSFERRED TO
COURT.

THEY HAVE ADJUSTED AND MADE THAT
TRANSITION.

>> JUST SO WE UNDERSTAND WHAT WE
ARE TALKING ABOUT HERE, FOR THE
INDEPENDENT LIVING DOCKET, TO
HAVE WHAT WE ARE TRYING TO DO --
#NAME?

CARE HAVE SERVICES IN PLACE AND
THOSE SERVICES START EARLY
ENOUGH.

FOR ME, JUST THINKING ABOUT IT,
I DON'T KNOW HOW YOU CAN DO THIS
WITHOUT THE PRESENCE-- FOR YOU.

[INAUDIBLE]

>> PROBABLY ALMOST THREE YEARS
NOW.

>> FROM THE POINT OF VIEW OF THE
JUDGES, WHAT IS THE SIGNIFICANCE
OF NOT HAVING THE PRESENCE OF

THE-- OR HAVING THE PRESENCE --

>> I DON'T SEE HOW WE CAN

AFFECT-- CIRCUIT JUDGES CAN

EFFECTIVELY DO OUR JOB WITHOUT

THE CHILD PRESENT BECAUSE THE

INQUIRIES WE ARE TRYING TO MAKE

IS DEVELOP A PLAN FOR THE CHILD

DURING THE PROCESS AND OF COURSE

WE ARE DEALING WITH TEENAGERS

AND IT IS DIRECT INTERACTION.

>> UNDER THE CURRENT RULE, IS

THERE ANY THING THAT PRECLUDES

THE JUDGE FROM REQUIRING THAT A

CHILD BE PRESENT FOR ANY

HEARING?

>> IT IS A SIMPLE BEST INTEREST

STANDARD.

>> TO THE EXTENT THAT THE JUDGE

BELIEVES THAT IT IS NECESSARY TO

HAVE A CHILD THERE FOR A

PARTICULAR HEARING UNDER THE

CURRENT FRAMEWORK, WITHOUT

CHANGES IN-- WITHOUT THIS

CHANGE, THAT IS SOMETHING THE

JUDGE CAN REQUIRE?

>> CORRECT.

>> WHY ISN'T THAT A POSITION?

>> IT WAS THE OPINION OF MY

COMMITTEE THAT, IN EFFECT, THE
BEST INTEREST STANDARD HASN'T
REALLY BEEN UTILIZED TO COMPEL
THE OLDER YOUTH TO COME TO COURT
AND BECAUSE ALTHOUGH WE HAVE THE
BEST INTEREST STANDARD FOR ALL
CHILDREN IN CARE AT A PARTICULAR
AGE, THE STATUTE IS 17 CLEARLY,
BUT AT A PARTICULAR AGE THE
STATUTORY LANGUAGE REQUIRES IN
MY OPINION, INTERACTION BETWEEN
THE COURT AND THE CHILD.

>> WHAT AGE IS THAT?

>> IN OUR OPINION IT WAS 16.

17 WAS--

>> YOU REFER TO CHAPTER 409.

WHAT SPECIFIC PROVISION OF
CHAPTER 409, WHAT SPECIFIC
PROVISION OF 409 DO YOU THINK
JUSTIFIES THE 16 AGE YOU FOCUSED
ON?

>> THE CHILD CANNOT--

>> I AM ASKING ABOUT A SPECIFIC
PROVISION.

>> THERE IS NOTHING SPECIFIC IN
THAT STATUTE OTHER THAN OUR
COMMITTEE AND MY READING OF THE
ABILITY TO GO INTO PERMANENT
GUARDIANSHIP ADOPTION, SUBSIDIZE

INDEPENDENT LIVING.

>> I UNDERSTAND THAT BUT THERE IS NO PARTICULAR PORTION OF THE STATUTE.

IT IS SOMETHING YOU JUST GENERALLY EXTRACTED FROM IT?

>> THAT IS CORRECT OTHER THAN AT AGE 17 IN CHAPTER 39, IT SPECIFICALLY SAYS THAT YOU SHALL HAVE THE OPPORTUNITY TO ADDRESS THE COURT.

>> IT ALSO SAYS WITHIN 90 DAYS OF THE CHILD BECOMING 17, SO I WOULD ASSUME-- DOES THAT MEAN AFTER 17 OR THE 90 DAYS COULD BE ON THE OTHER SIDE OF 17?

>> IT CONTEMPLATES AFTER 17, AND THE REASON IT DOES THAT IS WITHIN 30 DAYS OF THE 17TH BIRTHDAY THE CHILD IS SUPPOSED TO HAVE THEIR INDEPENDENT LIVING TRANSITION PLAN AND WITHIN 60 DAYS--

>> NOT A SITUATION, WITHIN 90 DAYS BEFORE?

>> CORRECT.

>> WHAT I AM CONCERNED WITH AND FOLLOWING UP WITH WHAT THE JUDGE

SAID, RIGHT NOW THE STATUTE SAYS

THE CHILD HAS--

[INAUDIBLE]

FROM WHAT YOU SAID, IT REALLY

SOUNDS LIKE FROM THE TIME HE

REALIZED THAT CHILD HAS NOT BEEN

PLACED IN A PERMANENT HOME AND

NOW YOUR GOAL IS TO MAKE SURE WE

ARE GIVING THAT CHILD A CHANCE

TO FLOURISH AS AN ADULT, THAT IF

THE CHILD HAS A GUARDIAN AD

LITEM, THAT CHILD SHOULD BE

EXERCISING HIS OR HER RIGHTS TO

BE PRESENT AND THE ONLY WAY THAT

THE COURT CAN REFUSE THE

PRESENCE IS IF IT IS NOT IN THE

BEST INTEREST OF THE CHILD.

I DON'T KNOW HOW IT COULD BE IN

THE BEST INTEREST OF THE CHILD

IF WHAT YOU ARE DOING FOR THESE

HEARINGS IS PLANNING THEIR

FUTURE.

WHY, WHEN YOU LOOKED AT THIS,

DIDN'T YOU THINK THAT THE RULE

THAT IS IN PLACE SHOULDN'T

REALLY BE SAYING, YES THIS CHILD

HAS A RIGHT TO BE PRESENT AND

REALLY THE PROBLEM WE ARE

DEALING WITH ARE EITHER JUDGES

OR SOMETHING HAS GONE WRONG WITH
THE SYSTEM THAT THESE CHILDREN
ARE NOT COMING TO THE HEARING.

>> WELL, AND OUR COLLECTIVE
INPUT FROM AROUND THE STATE IS
THEY ARE NOT HAVING THE
OPPORTUNITY TO COME TO THE
HEARING.

YES, I AGREE THE BEST INTEREST
STANDARD COULD BE UTILIZED TO
COMPEL ATTENDANCE AT HEARINGS.

>> IT SAYS THEY HAVE A RIGHT
UNLESS THEY FIND IT IS NOT IN
THEIR BEST INTEREST, SO MY
CONCERN ACTUALLY IS A LITTLE BIT
DIFFERENT.

THE BEST INTEREST, PHYSICAL OR
MENTAL CONDITION, COULD CAUSE,
COULD BE USED TO SAY WELL NO, WE
ARE NOT GOING TO BECAUSE IT IS
TOO COSTLY.

THAT IS NOT IN THE BEST INTEREST
OF THE CHILD, SO I AM CONCERNED
YOU MIGHT FIND THAT THERE IS
MORE THAN AN EXCUSE, THAN BEST
INTEREST.

AM I WRONG ON THAT?

ISN'T REALLY THE BEST INTEREST

HERE SAYING THEY HAVE THAT
RIGHT, UNLESS THE JUDGE MAKES AN
AFFIRMATIVE FINDING, THAT IT IS
NOT IN THEIR BEST INTEREST?

>> I BELIEVE THE ARGUMENT
BROUGHT UP BY THE RULES
COMMITTEE AND YES, I UNDERSTAND
THAT ARGUMENT AS IMPLEMENTED
TODAY IN THE STATE OF FLORIDA.
IT IS OUR OPINION THAT THE BEST
INTEREST STANDARD HAS BEEN
WATERED DOWN IN THIS CONTEXT AND
WE WERE TRYING TO CREATE A RULE
THAT WOULD COMPEL THE OLDER
YOUTH AGING OUT OF CARE.
TO BE A LITTLE MORE FORCEFUL TO
COME IN, TO MAKE THEM BE IN
COURT, AND IN OUR OPINION, TRACK
WHAT IS MANDATED.

>> SO, YOU ARE SAYING WHAT WE
HAVE DONE IS TO USE THE BEST
INTEREST STANDARD TO NOT BRING
THE CHILDREN INTO COURT AND NOW
WE NEED SOMETHING TO COMPEL THAT
THESE OLDER CHILDREN AREN'T--

>> CORRECT AND I AM SAYING THAT
WE HAVE A STATUTORY BASIS TO DO
THAT BASED UPON CLEARLY AT AGE
17 -- THERE ARE SEVERAL CRITICAL

THINGS AT AGE 16, WHICH IN MY
OPINION REQUIRE A DIRECT
CONVERSATION BETWEEN THE USE AND
THE--

>> WOULD YOU GO THROUGH THOSE
BECAUSE EACH TIME YOU HAVE
ATTEMPTED TO OUTLINE THOSE, YOU
HAVE BEEN CUT OFF.

WHAT ARE THE THINGS THAT SEEM,
IN YOUR MIND, OR THE MIND OF THE
COMMITTEE, TO MANDATE THAT THIS
YOUNG PERSON COME BEFORE THE
COURT FOR WHATEVER IT IS THEY
ARE TRYING TO SAY?

>> OKAY, AND EFFECTIVELY WE ARE
LOOKING AT THREE EPISODES.

ONE IS, AT AGE 16 THE YOUTH CAN
EXPRESS THE DESIRE TO REMAIN IN
FOSTER CARE AND AGE OUT OF
FOSTER CARE.

THAT IS CONTAINED IN CHAPTER 39
UNDER THE OPTIONS FOR AN APPLA
OR ANOTHER ARRANGED LIVING GOAL.

AT AGE 16 UNDER 409, THE CHILD
CAN BE SET UP IN A SUBSIDIZED
INDEPENDENT LIVING PROGRAM,
WHICH MEANS HE CAN LIVE WITH ANY
INDIVIDUAL HE CHOOSES AND THE

STATE PAYS MONEY TO LET HIM LIVE
RELATIVELY INDEPENDENTLY, WITH
MINIMAL SUPERVISION AND STILL HE
QUALIFIES FOR INDEPENDENCE.

FINALLY, THE THIRD, IS THE
ADOPTION OF PERMANENT
GUARDIANSHIP ALSO CONTAINED IN
409

AT THE AGE OF 16, THE CHILD CAN
BE ADOPTED AND GO INTO PERMANENT
GUARDIANSHIP.

THEY STILL QUALIFY FOR
INDEPENDENCE BENEFITS, BUT THAT
FACILITATES A LOT OF PERMANENT
PLACEMENT BECAUSE THE PERSON
ADOPTING OR PROVIDING THE
GUARDIANSHIP AT LEAST KNOWS THE
CHILD'S EDUCATION AND WELFARE
POST 18 WILL BE TAKEN CARE OF.

>> SO, THOSE ARE ALL SUBSTANTIVE
PROVISIONS AND YOUR GROUP IS
COMING UP WITH A PROCEDURAL RULE
TO ENSURE THAT THE PERSON, THE
CHILD, COMES BEFORE THE COURT TO
KNOW AND UNDERSTAND AND HAVE
INPUT INTO WHAT THEIR ARE
SUBSTANTIVE PROVISIONS ARE THAT
BEGAN AT THAT AGE AND THERE IS
NO OTHER RULE THAT MANDATES THAT

RIGHT NOW?

>> NO THERE IS NOT, OTHER THAN
THE CURRENT BEST INTEREST
STANDARD, AND SO--

>> I THOUGHT THAT THE PROPOSED
RULE WAS TO TRY TO IMPLEMENT
39.7016A.

IS THAT RIGHT?

>> THAT IS ALSO CORRECT, AND WE
ARE TRYING TO CAPTURE -- WE ARE
TRYING TO CAPTURE THE RIGHT OF
THE CHILD, THE STATUTORY RIGHT
OF THE CHILD TO BE PRESENT IN
COURT AND SHALL BE GIVEN THE
OPPORTUNITY TO ADDRESS THE COURT
AT AGE 17 AS THE TRANSITION
PLAN.

WE WENT BACK TO AGE 16 BECAUSE
OF THOSE PROVISIONS AND, I
BELIEVE, TO MAKE THE 17-YEAR-OLD
TRANSITION PLAN A MEANINGFUL
INTERACTION.

>> WHAT I AM STRUGGLING WITH,
ALTHOUGH THAT SOUNDS LIKE A GOOD
IDEA, IS NOT WHAT THE
LEGISLATURE HAS DONE, SO WHY IS
IT REALLY A CHANGE IN THE
STATUTE IN THE FORM OF A RULE

BY HAVING AGE 16 INSTEAD OF 17?

>> BECAUSE OF THOSE -- BECAUSE
OF THOSE THREE EVENTS.

WE WERE BASICALLY TRYING TO
MAKE, BY IDENTIFYING THESE THREE
EPISODES IN WHICH WE INTERACT
WITH THE CHILD, ON CHILDREN
GOING TO AGE OUT OF CARE, TO BE
ELIGIBLE FOR INDEPENDENT
BENEFITS MAKES THE 17-YEAR-OLD
TRANSITION HEARING MEANINGFUL,
SO WE PLAN TO USE, AND WE ARE
TRYING TO THEN MAKE SURE THAT
CHILD IS IN COURT FOR THOSE
CRITICAL HEARINGS.

SO, THAT WAS OUR REASON FOR
CHOOSING 16.

THAT WAS OUR -- WE WERE NOT
TRYING TO DO ANYTHING BUT
IMPLEMENT SOME PROCEDURE OR A
RULE CHANGE THAT WOULD PUT --
WOULD REALLY MAKE IT MORE
COMPELLING, TO MAKE SURE THE
YOUTH IN THAT CATEGORY WAS
PRESENT IN COURT TO TALK ABOUT
THEIR FUTURE.

>> ARE YOU SAYING THAT YOU NEED
SOME THINGS THAT HAPPEN BEFORE
THAT STATUTORY MANDATORY

HEARING-- THE YOUTH NEEDS TO
HAVE INFORMATION SO WHEN THAT
MANDATORY HEARING OCCURS, THAT
YOU CAN FULFILL THE REQUIREMENTS
OF THE LEGISLATURE?

>> YES.

IN PARTICULAR, THERE ARE A LOT
OF EDUCATIONAL OPPORTUNITIES
THAT OPEN UP AT AGE 16 IN THE
STATE OF FLORIDA THAT YOU NEED
TO HAVE A DISCUSSION WITH THE
YOUTH AT AGE 16.

IT IS NOT PART OF 39 OR 409, BUT
THE EDUCATIONAL OPTIONS WITH
REGULAR HIGH SCHOOL AND FOR THE
LONG-TERM PLAN OF THE CHILD
BECAUSE THE LEGISLATIVE VISION,
OUR INQUIRY OF BEING, IN MY
OPINION, MANYFOLD, BUT
SPECIFICALLY WHAT DO YOU WANT TO
DO FOR A LIVING?
WHERE DO YOU WANT TO LIVE WHEN
YOU TURN 18 AND WHAT JOB DO YOU
WANT AND WHAT EDUCATIONAL GRANT
DO YOU WANT TO TAKE TO GET
THERE?

>> WE THANK YOU VERY MUCH FOR
YOUR ARGUMENTS.

IS MR. YOUNG GOING TO ARGUE NOW?

>> MAY IT PLEASE THE COURT.

TOM YOUNG.

I AM APPEARING FOR THE STATE

GUARDIAN AD LITEM PROGRAM.

THE COMMONALITY BETWEEN ALL OF

THE PARTICIPANTS TODAY IS THAT

THEY ALL FAVOR INCREASED

PARTICIPATION BY YOUTH.

THE GUARDIAN AD LITEM PROGRAM

SUPPORTS ANY MEASURE THAT

INCREASES PARTICIPATION BY

YOUTH, AND SO WITH THE TWEAK TO

THE WORDING IN THE PROPOSED RULE

THAT WAS OUTLINED IN THE

GUARDIAN AD LITEM PROGRAM'S

COMMENTS, WE WOULD RECOMMEND

THAT THE COURT APPROVE IT.

>> ON THAT SPECIFIC THING, WAS

IT THE RULES COMMITTEE THAT SAID

IT WOULD BE MORE ACCURATE IN

IDENTIFYING WHO THE CHILD WAS

AND REFERRED TO THAT CHILD AS

ANY CHILD WHO IS ELIGIBLE FOR

INDEPENDENT LIVING?

[INAUDIBLE]

THAT IS SOMETHING THAT IS

STATUTORY LANGUAGE.

TO YOU AGREE WITH THAT?

>> YES, YES YOUR HONOR.

THAT WAS IN THE GUARDIAN AD
LITEM COMMENT.

CORRECT.

>> WHEN THIS COURT MANDATES,
THAT SOMEBODY BE SOMEWHERE,
THEN THERE ARE COSTS ASSOCIATED
WITH THAT MANDATE.

CORRECT?

IN THIS INSTANCE THE COSTS ARE
TRANSPORTATION.

>> THAT IS CORRECT.

>> AND, WHAT IS THE ARRANGEMENT
FOR THOSE WHO PAY FOR THE COST
OF TRANSPORTATION?

>> THE CHILD IS IN THE LEGAL
CUSTODY OF THE DEPARTMENT OF
CHILDREN AND FAMILIES.

>> IS THERE A BUDGETARY
COMPONENT TO THIS IN THE
DEPARTMENT'S BUDGET?

>> THE COMMUNITY-BASED CARE
PROVIDER IS UNDER CONTRACT WITH
THE DEPARTMENT.

I DON'T KNOW WHAT THAT BIDDING
PROCESS IS.

I WOULD THINK THAT WOULD BE
SOMETHING THAT WOULD GO INTO

WHATEVER BID.

>> ONE OF THE THINGS THAT COMES TO MY MIND IN THIS DISCUSSION IS THAT THE LEGISLATURE HAS A STATUTORY SUBSTANTIVE LAW NOW THAT AT AGE 17 THERE HAS TO BE SOMETHING DONE.

AND, WHEN THE LEGISLATURE DOES THAT, THEN IT IS INCUMBENT FOR THE LEGISLATURE TO HAVE A COST ANALYSIS AND TO APPROPRIATE THE COST FOR DOING THAT.

BUT, WHEN WE PASS A RULE, WE DON'T HAVE THE SAME TYPE OF FUNDING AND I AM ALWAYS CONCERNED ABOUT PASSING SOMETHING THAT DOESN'T REALLY HAVE ANY TEETH.

>> WELL YOUR HONOR, THE ONLY RESPONSE I CAN GIVE YOU TO THAT IS SIMPLY THIS.

CHILDREN ARE A PARTY TO THE PROCEEDINGS, AND THEY HAVE A DUE PROCESS RIGHT TO PARTICIPATE IF THEY WANT TO PARTICIPATE AND THE RULES ALREADY ALLOW A PARTY TO FILE A MOTION TO "REQUIRE THE CHILD'S ATTENDANCE AT THE HEARING" SO I DON'T BELIEVE THAT

WHAT THE STEERING COMMITTEE IS
PROPOSING IS ACTUALLY THAT
DIFFERENT.

>> PRESENTLY, THAT WOULD BE IN
THE DISCRETION OF THE TRIAL
COMMITTEE, CORRECT?

>> CORRECT.

CORRECT.

>> THE DAO, IF THE STATUTORY FEE
WOULD WORK AND THERE WERE--
THE PRACTICAL QUESTION THAT I
HAVE IS ON THE GRANT.

AROUND THE STATE, THE CHILD IS
DIRECTLY PRESENT AT THE HEARING
UNLESS THE COURT FINDS THAT THE
CHILD'S MENTAL OR PHYSICAL
CONDITION OR AGE IS SUCH THAT
THE APPEARANCE IS NOT IN THE
BEST INTEREST OF THE CHILD.

HOW CAN THERE BE ANY ORDER THAT
A CHILD FROM 13 UP IN A
SITUATION WHERE THEY ARE GOING
TO BE STARTING INDEPENDENT
LIVING SERVICES, NOTHING IN THE
BEST INTEREST OF THE CHILD IS
THERE AND IS THE GUARDIAN AD
LITEM ADVOCATING FOR THEIR
PRESENCE WITH THE JUDGE SAYING,

NO THEY ARE NOT GOING TO BE ABLE
TO COME?

I GUESS I DON'T UNDERSTAND THE
PROBLEM THAT EXISTS BECAUSE,
AGAIN, I AGREE THE RULE IS
WRITTEN, WHICH THE RULE SAYS THE
CHILD HAS A RIGHT TO BE PRESENT
AT A HEARING.

WHAT WE ARE REALLY SAYING IS
WHEN THEY GET TO BE 13, 14, 15,
16, IT IS WITHIN THEIR BEST
INTEREST, AND SOMEBODY BETTER
HAVE A DARNED GOOD REASON FOR
NOT HAVING THEM THERE.

WITH THE REALITY OUT THERE, WHAT
IS GOING ON?

>> I THINK THE PRACTICE VARIES
FROM CIRCUIT TO CIRCUIT.

>> THE RULE SAYS, EVEN THOUGH
THE CHILD HAS A RIGHT TO BE
PRESENT, WE ARE NOT GOING TO
REQUIRE, WE ARE NOT GOING TO
ORDER THEIR PRESENCE?

>> YES YOUR HONOR.

I HAVE HEARD REPORTS THERE ARE
CIRCUIT JUDGES WHO DO NOT WANT
TO SEE CHILDREN IN COURT.

I AM NOT PREPARED TO GIVE YOU
NAMES TODAY BUT I HAVE HEARD

THAT FROM THE FIELD WHEN I WAS
THE APPELLATE DIRECTOR FOR THE
PROGRAM.

THOSE WERE COMMENTS.

>> WHEN A JUDGE DECIDES
SOMETHING, IS THAT DONE BY A
BLANKET ORDER?

>> I THINK THAT THERE ARE JUDGES
WHO, IT IS KNOWN THEY DON'T WANT
CHILDREN IN COURT SO THE
ATTORNEYS DON'T PUSH THAT ISSUE.

I THINK WHAT THEIR ROLE
CONTEMPLATES, AND WHAT IT SHOULD
REQUIRE, IS THAT IF A CHILD
ISN'T GOING TO BE THERE, THAT A
MOTION IS FILED AND EVIDENCE
THAT IT WOULD NOT BE IN THE
CHILD'S BEST INTEREST TO BE
THERE, BE PRESENTED AND THE
JUDGE MAKE A DECISION ON THE
MERITS.

THAT IS WHAT I BELIEVE THE RULE
SAYS AND REQUIRES BUT THAT IS
NOT WHAT HAPPENS.

IT IS JUST SIMPLY THE STEERING
COMMITTEE COMMENTS AND RESPONSE
THAT IT IS NOT IN THE BEST
INTEREST.

>> BUT, WHY CAN'T THAT SAME
THING HAPPEN IF THE JUDGES ARE
INCLINED TO HAVE THE CHILDREN
THERE?

WHY CAN'T THEY ACCOMPLISH THE
SAME RESULTS UNDER THE NEW RULE?

WHAT WOULD BE THE DIFFERENCE?

THEY ARE JUST GOING TO HAVE TO
ENTER THE COURT HAVING TO COME
TO GOOD CAUSE THAT THE CHILD NOT
BE PRESENT.

>> I THINK, YOUR HONOR, THE
ANSWER TO THAT IS THAT THE
DIFFERENCE IS BECAUSE THE
PROPOSED RULE SAYS THE CHILD
MUST ATTEND, WHICH THEN REQUIRES
THAT A MOTION BE FILED TO EXCUSE
THE CHILD'S PRESENCE, WHICH THEN
REQUIRES THE COURT TO GO ON THE
RECORD THAT MAKE A FINDING WHICH
THEN COULD BE--

>> IT DOESN'T SAY THAT A MOTION
HAS TO BE FILED.

IT JUST SAYS THAT THEY MUST
ATTEND UNLESS THE CHILD'S
PRESENCE IS EXCUSED BY THE COURT
UPON A SHOWING OF GOOD CAUSE.
IT SOUNDS TO ME LIKE THAT COULD
BE A DETERMINATION, NOT A

PREREQUISITE THERE BE A MOTION

FILED BY A PARTY.

>> AGAIN, I AGREE THAT A JUDGE

WHO IS WANTING TO TAKE A LIBERAL

VIEW OF THAT TO HAVE THAT

INTERPRETATION, AND THAT IS WHY

I THINK THE RULE COULD STAND A

TWEAKING.

I THINK I HAVE GONE BEYOND MY

FIVE MINUTES.

>> I HAVE ONE QUESTION.

I AM CONCERNED ABOUT ANSWERS AND

THIS ISSUE OF COST BEING

DISCUSSED THIS MORNING WITHOUT A

DEFINITIVE KIND OF ANALYSIS

HERE.

RIGHT NOW, DID THE YOUNG PEOPLE

YOU ARE TALKING ABOUT HAVE THE

RIGHT TO COME BEFORE THE JUDGE?

>> YOUR HONOR, THEY ARE PARTY TO

THE PROCEEDING AND I BELIEVE

HAVE A DUE PROCESS RIGHT IF THEY

CHOOSE TO.

IF THEY WANT TO BE THERE, THEY

HAVE A RIGHT TO BE THERE.

>> DOES THAT RIGHT CARRY WITH IT

THAT SOMEBODY IS GOING TO

BRING--

>> THAT DOESN'T ALWAYS HAPPEN.

>> I UNDERSTAND, BUT I AM ASKING ABOUT THE COST ISSUE.

WE ARE DISCUSSING THE PRACTICAL IMPACT, SO I'M WONDERING WHETHER RIGHT NOW, WITHOUT DOING ANYTHING, THAT YOUNG PERSON HAS A RIGHT TO BE AT A HEARING AT A PARTICULAR TIME?

>> I THINK TO PURSUE WRIT OF MANDAMUS, TO REQUIRE THE CHILD BE TRANSPORTED TO A HEARING.

>> THOSE PRESENTLY-- I AM SURE THAT SOME HEARINGS CHILDREN ARE THERE AND WHEN THOSE CHILDREN ARE THERE, THEY ARE TRANSPORTED. EITHER THEIR FOSTER CARE PARENTS OR DCF.

>> NORMALLY, TRANSPORTATION BY EMPLOYEES WITH THE COMMUNITY-BASED PROVIDER, BUT SOMETIMES IT IS A CAREGIVER, A FOSTER PARENT.

LET ME CONCLUDE BY SAYING THAT I HAD THE PRIVILEGE LAST YEAR OF OBTAINING A REVERSAL ON AN ORDER TO THE TERMINATION OF PARENTAL RIGHTS FOR AN 8-YEAR-OLD.

THAT 8-YEAR-OLD, UPON TESTIFYING

BEFORE THE COURT-- AND I THINK
THAT GOES TO STRESS THE
IMPORTANCE OF PARTICIPATION BY
NOT JUST OLDER YOUTH, BECAUSE
THESE KIDS DO KNOW WHAT IS GOING
ON IN THEIR LIVES.

THEY DO HAVE OPINIONS AND THEY
DO WANT TO BE HEARD.

IF I COULD JUST READ BRIEFLY HER
TESTIMONY.

DO YOU KNOW HOW LONG YOU HAVE
BEEN IN FOSTER CARE?

AGAIN, THIS IS AN 8-YEAR-OLD.

ANSWER: PRETTY MUCH ALL MY LIFE,
BUT AS LONG AS I CAN REMEMBER I
HAVE BEEN IN FOSTER CARE, MAYBE
SINCE I WAS 3.

THAT IS AS FAR AS I CAN
REMEMBER.

I CAN STILL REMEMBER THE DAY I
GOT DROPPED OFF.

>> THANK YOU.

>> AND MR. SILVERSTEIN?

>> GOOD MORNING.

MAY IT PLEASE THE COURT.

MY NAME IS DAVID SILVERSTEIN AND
I AM AN ATTORNEY GENERAL IN
TAMPA.

>> YOU HAVE A DIFFERENT POSITION FROM WHAT WE HEAR TODAY.

>> AS CHAIR OF THE JUVENILE RULE COMMITTEE, AS YOU CAN SEE FROM OUR COMMENTS THAT WE PRESENTED TO THE COURT, WE HAD NOT TOTAL CONSENSUS ON THE ISSUE, AND WE HAD A LOT OF ALTERNATIVE COMMENTS.

IN THEORY, I BELIEVE THAT EVERYONE ON THE RULES COMMITTEE SUPPORTS THE CONCEPT, LIKE THE GUARDIAN AD LITEM--

>> WHAT IS YOUR DIFFERENCE?

>> OKAY, WHAT OUR DIFFERENCE IS IS THAT THE CURRENT PROPOSAL REQUIRES THE CHILD BE 16 AND WHO IS IN FOSTER CARE, PERHAPS ANOTHER PLAN FOR PERMANENT LIVING ARRANGEMENT, OR WHAT WE CALL APPLA CASE PLAN GOAL, AND WHEN WE WERE LOOKING AT THE STATUTE, THAT JUDGE CITED, REGARDING THE ROAD TO INDEPENDENCE BENEFITS, CHILDREN DON'T NECESSARILY NEED TO BE IN FOSTER CARE IN ORDER TO BECOME ELIGIBLE FOR THESE BENEFITS.

CHILDREN WHO ARE 16 AND ARE

LATER PLACED IN A PERMANENT
GUARDIANSHIP, THEY CAN BE
ELIGIBLE FOR THOSE BENEFITS.

>> YOU SAID THE CHILDREN HE WAS
TALKING ABOUT, AT AGE 16, HAVE
THAT, SO YOU WANT THE RULE TO BE
MORE INCLUSIVE?

>> RIGHT, TO BE MORE INCLUSIVE
OF THE CHILDREN WHO MAY BE
ELIGIBLE FOR THE ROAD TO
INDEPENDENCE PROGRAM.

>> THAT WOULD BE-- BUT I THOUGHT
THE BASIC, IN LOOKING AT THE
COMMENT, IT IS A GREAT IDEA.

[INAUDIBLE]

HELP US TODAY WITH THE
UNDERSTANDING WHAT THE COMMITTEE
SAYS THEY BELIEVE IS THE
CONFUSION, SINCE THE COURT
REQUIRES THE PRESENCE OF THE
CHILD.

BUT, IN FACT IT IS NOT JUST
UNDER THE FIRST PART OF THE RULE
THAT THEY MAY BE ABLE-- UNLESS
IT IS NOT IN THEIR BEST
INTEREST, SO ISN'T REALLY THE
ANSWER TO THIS THAT MAYBE THAT
RULE NEEDS TO BE TWEAKED, TO

REALLY TALK ABOUT THAT YOUTH IS
IN A SITUATION WHERE A CHILD IS
AT A CERTAIN AGE AND SEEKING
INDEPENDENT LIVING, THAT IT SAYS
SOMETHING ABOUT THE BEST
INTEREST?

AND THERE HAS TO BE IN ORDER, IN
THAT CASE, IN FINDING WHY IT IS
NOT IN THEIR BEST INTEREST FOR
THEM TO BE EXCUSED?

SOMETHING THAT DOESN'T CONFLICT
WITH THE OVERALL PLAN.

BUT, IT SEEMS TO ME THAT WE
ALREADY HAVE THIS MECHANISM IN
THE FIRST PART OF THE RULE, SO
HAS THE RULES COMMITTEE LOOKED
AT THAT TO MAKE THE FIRST PART
OF THE RULE.

THE FOSTER CARE SYSTEM IS GOING
TO BE IMPROVED IF THE CHILD'S
FUTURE IS GOING TO BE IMPROVED.

SO, WHAT IS THE RULES COMMITTEE
WORKING ON?

IF YOU HAD TO SAY FOR THE COURT
TO DO THIS, WHAT IS IT THAT YOU
WOULD--

CHANGE THE WORDING OF THE RULES
OR LEAVE IT ALONE?

>> WELL, I THINK THAT, WITH THE

JUVENILE RULES COMMITTEE, AND
AGAIN, LIKE I SAID, THE REASON
WHY WE HAVE THE DISPARATE
COMMENTS IS BECAUSE WE COULD NOT
GET AN AGREEMENT.

WE HAVE NOT BEEN WORKING ON THE
ISSUE.

WE SPENT ONE MEETING WORKING ON
A COMMENT FOR THE STEERING
COMMITTEE PROPOSAL.

I THINK WHAT WOULD REALLY BE
HELPFUL, IF YOU SAID WHAT THEY
ARE PROPOSING IS WRONG BECAUSE
OF THIS, AND TELL US WHAT YOU
WOULD PUT IN THAT RULE, IF THERE
IS SUCH A RULE.

>> OKAY, WELL, RIGHT NOW WE ARE
SAYING WE WOULD LIKE THE WORDING
CHANGED, AS FAR AS IT SHOULD
READ ANY CHILD WHO IS 16 AND MAY
BE ELIGIBLE FOR INDEPENDENT
LIVING SERVICES.

I BELIEVE THE JUVENILE RULES
COMMITTEE HAD GREAT CONSENSUS
THAT THEY WANTED TO OPEN THAT UP
TO MORE CHILDREN THAT ARE NOT
NECESSARILY PLACED IN FOSTER
CARE.

THEN WE DID NOT HAVE TOTAL
CONSENSUS, BUT A MAJORITY OF THE
MEMBERS OF THIS COMMITTEE WANTED
TO OPEN IT UP TO CHILDREN WHO
ARE 13 AND ABOVE, AND THE REASON
FOR THE CHANGE FROM 16 TO 13
WOULD BE BECAUSE MEMBERS OF THE
COMMITTEE THOUGHT THAT INVOLVING
CHILDREN IN THE PROCESS, THAT
THEY COULD IDENTIFY PLACEMENT BE
INVOLVED IN PLANNING FOR
INDEPENDENT LIVING.

>> IS THERE ANYPLACE IN ANY
STATUTE, WHETHER WE ARE TALKING
ABOUT 409 OR 39, THAT WOULD
REQUIRE THE PRESENCE OF A
13-YEAR-OLD?

>> WELL, BESIDES THE CURRENT
STATUTE AND RULE THAT INDICATES
THE RIGHT, BUT THERE IS A
PROVISION, FLORIDA STATUTE
SECTION 39.7018J, AND THAT
PROVIDES THE JUDICIAL REVIEW
HEARING.

THE COURT IS GOING TO, WHEN THE
CHILD TURNS 18, TO START LOOKING
AT THE FREE INDEPENDENT LIVING
AND PLANNING FOR INDEPENDENT
LIVING, SO THIS IS FOR CHILDREN

WHO ARE 13 AND IN FOSTER CARE.

SO THERE IS SOME STATUTORY BASIS

THAT SOME JUDICIAL REVIEW

HEARING, THAT THE JUDGE IS GOING

TO MAKE A DECISION ABOUT

PLANNING FOR INDEPENDENT LIVING,

SO YOU DON'T HAVE THE CHILD

THERE.

SO, THAT WAS THE COMMITTEE'S

RATIONALE.

AS YOUR HONORS HAVE ALREADY

POINTED OUT, THE JUVENILE RULES

COMMITTEE WAS CONCERNED WHETHER

IT BE 13 OR ALL THE WAY UP TO 16

OR 17.

THERE WAS SOME CONCERN THAT

ENHANCING THE ROLE, IT IS GOING

TO HAVE THE FISCAL AND OTHER

BURDEN.

FOSTER PARENTS MAY HAVE TO

TRANSPORT THE CHILDREN, THE

STATE EXPENDING FUNDS TO

TRANSPORT THE CHILDREN.

>> WHAT I AM HAVING TROUBLE

WITH--

[INAUDIBLE]

THE CHILD HAS A RIGHT TO BE

PRESENT.

UNLESS THE COURT FINDS-- RIGHT

NOW THERE IS A FISCAL IMPACT.

I DON'T UNDERSTAND THIS FISCAL

IMPACT THING AS FAR AS THE COURT

IN THE PROCEDURAL RIGHT, IF THE

PARTY IS PRESENT.

SO, IT SEEMS TO ME THAT WHETHER

WE SAY THEY ARE 13 OR 8, THE

PROBLEM IS THAT THE RULE IS NOT

BEING FOLLOWED, RATHER THAN THAT

WE NEED ANOTHER RULE.

AND, IS THAT SOMETHING THE

JUVENILE RULES COMMITTEE MAY

NEED TO STUDY?

[INAUDIBLE]

IS THAT ON YOUR PLATE?

>> YES, I GUESS WE CAN.

WE WOULD GLADLY WORK ON THE

ISSUE.

I THINK IN PRACTICE, AS YOU HAVE

ALREADY HEARD, THE SITUATION IS

THAT, ALTHOUGH IT IS A RIGHT,

ONE A CASE COMES THROUGH THE

DOOR THAT THE CHILD HAS BEEN

ABUSED OR NEGLECTED, AND YOU ARE

NOT GOING TO BRING THAT CHILD IN

FOR MEETINGS WHERE THERE IS

GOING TO BE THINGS SAID IN THE

CHILD'S PRESENCE THAT MAY CAUSE

HARM TO THE CHILD, SO I THINK
THAT THIS IS KIND OF HOW THE
SYSTEM IS SET UP.

>> CERTAINLY AT THE VERY
BEGINNING-- BUT WHEN THE CHILD
GETS TO BE PLANNING THEIR
FUTURE, WHAT YOU ARE SAYING IS
ON THE RULES COMMITTEE?

[INAUDIBLE]

>> WELL, AS THE CHAIR OF THE
RULES COMMITTEE, I BELIEVE THE
RULES COMMITTEE SUPPORTS THE
RULE AND THE STATUTE AS IT
STANDS, BUT THE REALITY IS THAT,
AS THE JUDGE POINTED OUT, THERE
IS, IN PRACTICE, THERE IS A
PRESUMPTION THAT THE CHILD DOES
NOT COME TO COURT BECAUSE THE
THINGS THAT ARE SAID IN THE
CHILD'S PRESENCE MAY CAUSE
EMOTIONAL HARM OR DISTRESS TO
THE CHILD.

>> THERE ARE ALSO A LOT OF OTHER
THINGS IN A HEARING.
THE TRIAL JUDGE MAKES THE
DETERMINATION THAT IT IS NOT A
MATTER THAT IS GOING TO REQUIRE
THE PRESENCE OF THE CHILD.

IN RURAL COUNTIES, THERE IS
DISTANCE BETWEEN THE COURTHOUSE
AND WHERE THE CHILD IS LIVING,
SO THEY CAN PUT IT IN THE
BALANCE, WHAT IS GOING ON ON THE
GROUND AS TO WHETHER THE CHILD
REALLY IS TO BE BENEFITED AT THE
HEARING.

>> CORRECT.

AND, IN PART OF HER COMMENTS WE
TALKED ABOUT THAT, AND THAT IS
THE CONCERN WE HAD WITH A GOOD
CAUSE STANDARD.

TO EXCUSE THE CHILD'S PRESENCE
AND GOOD CAUSE COULD BE, WELL WE
ARE IN THE RURAL AREA AND IT IS
GOING TO TAKE AN HOUR TO GET THE
CHILD TO COURT AND A LOT OF
EXPENSE.

>> CAN I ASK A QUESTION?

THAT IS MAKING A FUNDAMENTAL--
I FULLY UNDERSTAND WHEN YOU ARE
TALKING ABOUT THE ABUSE OF
CONDUCT THAT MAY HAVE HAPPENED
TO A CHILD OR EMOTIONAL OR
PSYCHOLOGICAL TRAUMA TO THAT
CHILD, BUT IT JUST SEEMS TO ME
THAT WHEN YOU WERE TALKING ABOUT
AGING OUT COMMENT YOU ARE

GETTING READY TO PLACE THESE
YOUNG PEOPLE ON THE STREET, THAT
THERE IS ANY FEAR THAT YOU ARE
GOING TO HARM THEM BY LETTING
THEM PARTICIPATE IN WHAT STREET
THEY ARE GOING TO BE PLACED OUT
ON?

THAT IS WHAT I AM TRYING TO
UNDERSTAND.

>> THAT IS WHY THE JUVENILE
RULES COMMITTEE, AS I SAID, IN
CONCEPT, SUPPORTS THE HEARING
COMMITTEE PROPOSAL THAT THERE BE
A PROVISION THAT SAYS THE
CHILDREN THAT ARE GOING TO AGE
OUT OF FOSTER CARE, WHO ARE
ELIGIBLE FOR INDEPENDENT LIVING
SERVICES, THAT THEY MUST BE
PRESENT, BECAUSE IT SEPARATES
THOSE CHILDREN FROM--

>> I AM TRYING TO UNDERSTAND
WHAT YOU ARE IN FAVOR OF.
ARE WE SAYING THAT A CHILD WHO
HAPPENS TO LIVE IN A RURAL
AREA-- THEY CAN'T PARTICIPATE,
AND WHAT IS HER FUTURE BECAUSE
SHE JUST LIVES TOO FAR AWAY AND
THAT IS WHAT WE ARE DOING NOW?

>> WELL, THE GOOD CAUSE STANDARD THAT IS PROPOSED, THAT THIS COURT ADOPTS, THE JUVENILE RULES COMMITTEE HAD A PROBLEM WITH THAT BECAUSE ANYTHING COULD BE A GOOD CAUSE.

>> SO, YOU WANT A STRONGER STANDARD.

YOU WANT TO MAKE SURE WHENEVER THAT CAUSE IS BECAUSE IT IS IN THE BEST INTEREST OF THE CHILD, THAT IS WHAT YOU ARE SAYING?

>> THESE CHILDREN WHO ARE ELIGIBLE FOR THE SERVICES NEED TO LEARN ABOUT IT, NEED TO BE ADVISED BY THE COURT AND FIND OUT WHETHER THE CHILDREN ARE RECEIVING THESE SERVICES SO IT WOULD ALWAYS BE IN THE CHILD'S BEST INTEREST TO BE PRESENT UNDER THE CURRENT STANDARD.

>> DO YOU HAVE ANOTHER QUESTION?

>> WOULD IT BE BETTER, INSTEAD OF TRYING TO HAVE A RULE, THAT THE LEGISLATURE JUST CHANGE THE STATUTE FROM 17 TO 16 IN CHAPTER 39?

WOULDN'T THAT CURE THIS?

>> YES IT WOULD.

>> IF THAT IS ALL THAT HAPPENS,
HOW DO THEY PREPARE FOR THAT
HEARING?

YOU HAVE HEARD THEM SAY THAT
THEY NEED THESE FOR THAT
HEARING.

THEY HAVE TO KNOW WHAT THEIR
OPTIONS ARE BEFORE THE HEARING,
SO WOULD IT REALLY CORRECT THE
ISSUE?

>> WELL, IT WOULD AS FAR AS
PROVIDE A STATUTORY BASIS TO
REQUIRE THAT A CHILD BE HEARD AT
THE AGE OF 16, BECAUSE THE
CURRENT STATUTE SAYS THAT, AFTER
THE CHILD TURNS 17, AT THAT
HEARING THE CHILD IS GOING TO BE
HEARD, SO THERE IS THE
PRESUMPTION THAT THE CHILD IS
GOING TO BE THERE TO BE HEARD

>> THANK YOU VERY MUCH.
I WILL GIVE YOU A COUPLE OF
MINUTES TO SUM UP.

>> SORT OF ADDRESS SOME OF THE
ISSUES.

1,500.00
THAT IS THE NUMBER OF YOUTHS
ELIGIBLE APPROXIMATELY EACH AND

EVERY YEAR.

WE ARE TALKING 1,500 YOUTH AGING
OUT OF THE SYSTEM AND THOSE ARE
THE KIDS WE WANT IN COURT.

WEST PALM, WEST PALM BEACH
COUNTY IN A MAJOR HIGH SCHOOL
THEY HAVE-- THERE ARE ALTERNATE
METHODS BUT, EACH OF THOSE 1500,
IF THEY PICK UP A DELINQUENT ACT
YOU CAN BET THEY ARE GOING TO BE
TRANSPORTED TO MY COURT.

EACH OF THEM WILL BE IN MY COURT
IF THEY ARE DELINQUENT, SO I
WANT THEM IN COURT AND OUR
PROPOSAL WANTS THEM IN COURT.

WE ARE PLANNING THEIR LIVES AND
REALLY THAT IS WHAT WE ARE
TALKING ABOUT, HELPING THESE
YOUNG PEOPLE PLAN THEIR LIVES.

SO I APPRECIATE THE COURT'S TIME
THIS MORNING AND THANK YOU VERY
MUCH.

>> I THANK ALL OF YOU FOR YOUR
ARGUMENTS AND YOUR DILIGENCE IN
THIS VERY IMPORTANT AREA OF OUR
CHILDREN AGING OUT OF THE
SYSTEM.