

# GENERAL LEGAL ISSUES

## Continuances

Judges should develop a clear, written continuance policy for dependency cases and share it with stakeholders.

General provisions relating to dependency proceedings.

- The Florida Legislature has found that time is of the essence for establishing permanency for a child in the dependency system. Chapter 39 and the Florida Rules of Juvenile Procedure set forth specific time limitations that affect how long a child may be kept in shelter care, when a petition for dependency must be filed, and when shelter, shelter review, arraignment, adjudicatory, and disposition hearings must be held. Certain circumstances exist in which these limitations do not apply. These circumstances may involve:
  - unavailability of evidence;
  - exceptional need for additional preparation;
  - need to accomplish notice to the parents; or
  - reasonable continuances.  
*See* §§ 39.402(14), 39.0136.
- Rule 8.255(f) allows the court to grant a continuance before or during a hearing on a showing of good cause.
  - Continuances and extensions of time are limited to the number of days absolutely necessary to complete a task in order to preserve the best interests of a child or the rights of a party. §§ 39.0136(4), 39.402(14)(e).
  - Time limitations are a right of the child and they may not be waived, extended, or continued at the request of any party except as provided by § 39.0136. This provision prevents parties from agreeing to a general waiver of all time frames, as was previously the practice in certain areas of the state.
  - Continuances may not total more than 60 days for all parties within any 12-month period during proceedings under Chapter 39. §§ 39.0136(3), 39.402(14)(f).
  - A continuance or extension of time beyond 30 days may be granted only for extraordinary circumstances, such as:
    - when substantial evidence demonstrates that the best interests of the child will be harmed without granting of such;
    - those necessary to preserve constitutional rights of a party.  
§ 39.0136(3).
- The court should cite the specific provision of § 39.0136 when granting continuances.
- Cases have addressed the propriety of whether to grant a continuance when a parent has a criminal case and a dependency case pending simultaneously. In such circumstances, judges should exercise discretion in balancing the child's interest in permanent placement at the earliest possible time with affording fairness to the parents. *See A.C. v. DCF*, 798 So. 2d 32 (Fla. 4th DCA 2001) (upholding trial court's denial of continuance when the

mother claimed she would be required to invoke her Fifth Amendment privilege at the TPR trial and could not present a viable defense because of her pending aggravated child abuse charge); See *C.J. v. DCF*, 756 So. 2d 1108 (Fla. 3rd DCA 2000) (holding that absent exceptional circumstances, it would be unreasonable to postpone a determination of TPR during the time of the father's first-degree murder trial, which could take one to three years).

- If parents or legal custodians of a child who has been placed in shelter appear for a shelter hearing without legal counsel, the hearing may be continued up to 72 hours, at their request, to enable them to consult legal counsel.
  - If such a continuance is granted, the child shall remain in shelter care for the length of the continuance. § 39.402(5)(b)(2).

**Continuances and the adjudicatory hearing.** Pursuant to Rule 8.310(c), a continuance may be granted on a motion and showing that an amendment to the petition prejudices or materially affects any party.

- If the child is in shelter care, the court must follow the requirements of § 39.402(14) in determining whether to grant the continuance.
- When a continuance is granted, the court must determine whether a child should remain in shelter care (using the same criteria used in the initial shelter determination).

**Adjudicatory hearings in dependency proceedings.**

- Subject to the 60-day limitation in § 39.0136, guardians ad litem, counsel for children, parents, or custodians can consent to reasonable delays. The court may also grant continuances requested by other parties in limited circumstances. § 39.0136(2).
- If a continuance is granted on a motion by requesting party due to unavailability of evidence, the requesting party must be prepared to proceed within 30 days.
- If the requesting party is unprepared, any other party may request (through a motion for an order to show cause) that the court assess appropriate sanctions. § 39.0136(2)(b)(1).
- Such appropriate sanctions may include dismissal of the petition. § 39.0136(2)(b)(1).
- Additional time to prepare may also be granted to the requesting party in exceptional circumstances. § 39.0136(2)(b)(2).

**Adjudication in termination of parental rights proceedings.** The adjudicatory hearing on a petition for TPR must be held within 45 days of the advisory hearing. §§ 39.808(3), 39.809(2).

- Reasonable continuances may be granted, as necessary, for:
  - investigation;
  - discovery;
  - procuring counsel or witnesses.

See § 39.809(2).