

62,699

IN THE SUPREME COURT OF FLORIDA

IN RE: :
SUPREME COURT COMMITTEE FOR :
STUDY OF COURT DOCUMENTS DISPOSAL :
_____ :

62,699
CASE NO. ~~55,134~~ **FILED**

OCT 4 1982

SID J. WHITE
CLERK SUPREME COURT
[Signature]

COMMITTEE PETITION FOR AMENDMENT OF
RULE 1.310(f), FLORIDA RULES OF CIVIL PROCEDURE

COMES NOW the Supreme Court Committee for Study of Court Documents Disposal and would respectfully show this Court as follows:

INTRODUCTION - REASON FOR PETITION

Since the appointment of this committee and the subsequent adoption by this Court of recommended amendments to the Florida Rules of Civil Procedure and Florida Rules of Judicial Administration, this committee has received various comments and suggestions directly or by reference from this Court, from members of the Bar, members of the Bench, and other interested persons regarding the amendments as approved by the Court.

From time to time the committee has responded to these inquiries and has also reported to the Court concerning its activities and responses to these inquiries.

In general it has been the committee's recommendation to the Court that any further changes to the rules be accomplished as part of the regular four year cycle of presentation of proposed rule amendments by the various Florida Bar Rules Committees.

Recently it has come to the attention of the committee that one of the rules as proposed by the committee and adopted by the Court contained an ambiguity which could result in the rule being interpreted in a manner contrary to the intent of the committee.

It has further come to the attention of the committee that the Court will be receiving a report of the Civil Procedure Rules Committee concerning amendments to the discovery rules of the Civil Procedure Rules. The Court had ordered the submission of such report outside of the usual four year cycle of rule amendments.

Since the Court will be considering the report of the Civil Procedure Rules Committee for amendment to the discovery rules and

since the committee is of the opinion that the amendments submitted by this committee need further clarification and correction, this petition is submitted with the request that it be considered along with the rule changes requested by the Civil Procedure Rules Committee.

PROBLEM

Rule 1.310(f)(2) provides that a court reporter shall furnish a copy of the deposition to any party or to the deponent for a reasonable charge. Rule 1.310(f)(3) has a provision requiring "a party" to furnish a copy of the deposition to any other party or witness requesting it after payment of the reasonable cost of reproducing the copy.

It was the intention of the committee that a party or deponent desiring a copy of a deposition be able to obtain such copy from either the court reporter or any party having such copy.

Rule 1.310(f)(3) as written, however, is subject to the interpretation that a party need only furnish a copy of a deposition to another party or to a deponent if the deposition has been previously filed. Thus, for example, if a new third party defendant becomes a party to litigation after a deposition had been taken and transcribed, such third party defendant would be required to purchase a copy of the deposition from the court reporter unless that deposition had been previously filed by one of the other parties, in which event the new third party defendant could obtain a copy either from the court reporter or from the party causing the deposition to be filed.

This problem and possible ambiguity in the rule as written was circulated to the members of the Supreme Court Committee for Study of Court Documents Disposal and by a divided vote of 9 to 2 the committee recommended that the rule be further amended. The amendment proposed hereafter is approved by a substantial majority of the committee.

ISSUES

Since there is a divided opinion of the committee, the issue for the Court's consideration is framed as follows:

1) Should a deponent or a party be able to obtain a copy of a deposition previously transcribed from either the court reporter or any other party having a copy of the deposition at any time? If this is the intended result, the rule should be amended as set forth hereafter.

2) Should a deponent or a party be able to obtain a copy of a deposition previously transcribed from a party having a copy of the deposition only if a copy of the deposition has been previously filed with the Court and be required to purchase a copy of the deposition from the court reporter if the deposition has not been previously filed with the Court? If this is the intended result, the rule should remain as presently written.

The committee respectfully moves the Court to amend Rule 1.310(f) by amendment to paragraph (3) thereof and addition of a new paragraph (4) thereto so that Rule 1.310(f) will read as follows: (new material underlined; deleted material ~~struck through~~)

RULE 1.310(f)

(1) (As in existing rule)

(2) (As in existing rule)

(3) A copy of a deposition may be filed only:

(A) By a party or the witness when the contents of the deposition must be considered by the court on any matter pending before the court. Prompt notice of the filing of the deposition shall be given to all parties, unless notice is waived. A party filing the deposition shall not be required to furnish a copy of the deposition to other parties ~~but shall furnish a copy of the deposition to any party or witness requesting it after payment of the reasonable cost of reproducing the copy by the requesting party or witness.~~ except as provided in sub-paragraph (f)(4) of this rule.

(B) If the court determines that a deposition previously transcribed is necessary for the determination of a matter pending before the court, the court may order that a copy be filed by any party.

(4) Any party having possession of a copy of a deposition shall furnish a copy of the deposition to any other party or witness requesting it after payment of the reasonable cost of reproducing the copy by the requesting party or witness.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of this petition has been served upon The Florida Bar by serving its Executive Director, Jack Harkness, The Florida Bar, Tallahassee, FL and a copy of this petition has been served upon the Civil Procedure Rules Committee of The Florida Bar by serving Wilfred Varn, its Chairman, at P.O. Drawer 1170, Tallahassee, FL 32302.

Respectfully submitted,

SUPREME COURT COMMITTEE FOR STUDY
OF COURT DOCUMENTS DISPOSAL

BY


BILL WAGNER, Chairman