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JUDICIAL ADMINISTRATION RULES COMMITTEE

THE FLORIDA BAR

PROPOSED AMENDMENTS AND REVISIONS TO
FLORIDA RULES OF JUDICIAL ADMINISTRATION
FOR CYCLE ENDING JULY 1, 1984

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6	2.140	JUDICIAL DISCIPLINE, REMOVAL RETIREMENT AND SUSPENSION (formerly Rule 9.520)	Subdivision (b) (2)	Provides for reply for J.Q.C. counsel

PRESENT RULE

RULE 2.050. TRIAL COURT ADMINISTRATION

(a) [NO CHANGE RECOMMENDED]

(b) Chief Judge.

(1) [NO CHANGE RECOMMENDED]

(2) [NO CHANGE RECOMMENDED]

(3) [NO CHANGE RECOMMENDED]

(4) The chief judge shall assign judges to the courts and divisions, and shall determine the length of each assignment. All judges shall inform the chief judge of any contemplated absences that will affect the progress of the court's business. If a judge is temporarily absent, is disqualified in an action, or is unable to perform his duties, the chief judge or his designee may assign a proceeding pending before the judge to any other judge or any additional assigned judge of the same court. The chief judge may assign any judge to temporary service for which the judge is qualified in any court in the same circuit. If it appears to the chief judge that the speedy, efficient, and proper administration of justice so requires, he shall request the Chief Justice of the Supreme Court to assign temporarily an additional judge or judges from outside the circuit to duty in the court requiring assistance, and shall advise

PROPOSED RULE

RULE 2.050. TRIAL COURT ADMINISTRATION

(a) [NO CHANGE RECOMMENDED]

(b) Chief Judge

(1) [NO CHANGE RECOMMENDED]

(2) [NO CHANGE RECOMMENDED]

(3) [NO CHANGE RECOMMENDED]

(4) The chief judge shall assign judges to the courts and divisions, and shall determine the length of each assignment. All judges shall inform the chief judge of any contemplated absences that will affect the progress of the court's business. If a judge is temporarily absent, is disqualified in an action, or is unable to perform his duties, the chief judge or his designee may assign a proceeding pending before the judge to any other judge or any additional assigned judge of the same court. The chief judge may assign any circuit judge to temporary service for which the judge is qualified in any court in the same circuit. The chief judge may assign any county court judge to temporary service for which the county judge is otherwise qualified in any court in the same circuit, provided, however, that said assignment shall not exceed thirty (30) days in a calendar year without the approval of the Chief Justice. If it appears to the chief judge that the speedy, efficient and proper administration of justice so requires, he shall request the Chief Justice

REASON FOR PROPOSED AMENDMENT

RULE 2.050. TRIAL COURT ADMINISTRATION

The present rule permits the chief judges to create additional circuit judge positions by assigning county judges to circuit judge responsibilities. This even though the Supreme Court has not recommended an additional circuit judge position nor has the legislature funded one.

COMMITTEE VOTE:

FOR: 3

AGAINST: 2

BOARD OF GOVERNORS RECOMMENDATION:

FOR: 24

AGAINST: 6

PRESENT RULE

the Chief Justice whether or not he has the approval of the chief judge of the circuit from which the assignment is to be made. The assigned judges shall be subject to administrative supervision of the chief judge for all purposes of this rule. Nothing in this rule shall restrict the constitutional powers of the Chief Justice of the Supreme Court to make such assignments as he shall deem appropriate.

(5) [NO CHANGE RECOMMENDED]

(6) [NO CHANGE RECOMMENDED]

(7) [NO CHANGE RECOMMENDED]

(8) [NO CHANGE RECOMMENDED]

(9) [NO CHANGE RECOMMENDED]

(c) [NO CHANGE RECOMMENDED]

(d) [NO CHANGE RECOMMENDED]

(e) [NO CHANGE RECOMMENDED]

(f) [NO CHANGE RECOMMENDED]

(g) [NO CHANGE RECOMMENDED]

PROPOSED RULE

of the Supreme Court to assign temporarily an additional judge or judges from outside the circuit to duty in the court requiring assistance, and shall advise the Chief Justice whether or not he has the approval of the chief judge of the circuit from which the assignment is to be made. The assigned judges shall be subject to administrative supervision of the chief judge for all purposes of this rule. Nothing in this rule shall restrict the constitutional powers of the Chief Justice of the Supreme Court to make such assignments as he shall deem appropriate.

(5) [NO CHANGE RECOMMENDED]

(6) [NO CHANGE RECOMMENDED]

(7) [NO CHANGE RECOMMENDED]

(8) [NO CHANGE RECOMMENDED]

(9) [NO CHANGE RECOMMENDED]

(c) [NO CHANGE RECOMMENDED]

(d) [NO CHANGE RECOMMENDED]

(e) [NO CHANGE RECOMMENDED]

(f) [NO CHANGE RECOMMENDED]

(g) [NO CHANGE RECOMMENDED]

REASON FOR PROPOSED AMENDMENT

PRESENT RULE

RULE 2.075. RETENTION OF COURT RECORDS

(a)-(d) (2) [NO CHANGE RECOMMENDED]

(3) Five years - Misdemeanor actions, criminal traffic violations, ordinance violations, civil litigation proceedings in county court other than those under the Rules of Summary Procedure and civil proceedings in circuit court except marriage dissolutions and adoptions.

(4) Ten years - Probate, guardianship and mental health proceedings.

(5)-(6) [NO CHANGE RECOMMENDED]

(7) Kept permanently - Progress dockets and their indices.

(8)-(j) [NO CHANGE RECOMMENDED]

PROPOSED RULE

RULE 2.075. RETENTION OF COURT RECORDS

(a)-(d) (2) [NO CHANGE RECOMMENDED]

(3) Five years - Misdemeanor actions, criminal traffic violations, ordinance violations, civil litigation proceedings in county court other than those under the Rules of Summary Procedure and civil proceedings in circuit court except marriage dissolutions, adoptions and cases affecting title to real property.

(4) Ten years - ~~Probate,~~ guardianship and mental health proceedings.

(5)-(6) [NO CHANGE RECOMMENDED]

(7) Kept permanently - Progress dockets and their indices, probate proceedings, and cases affecting title to real property, including but not limited to lien foreclosures, quiet title, condemnation, partition, boundary disputes, ejectment, reformation, rescission and cancellation of instruments, reestablishing lost instruments, actions to impress a trust, removal of restrictions and marriage dissolution resulting in a taking of title.

(8)-(j) [NO CHANGE RECOMMENDED]

REASON FOR PROPOSED AMENDMENT

RULE 2.075. RETENTION OF COURT RECORDS

Subsection (d)93) makes no exception as to cases involving real property. Accordingly, this five-year destruction rule would include all of our foreclosure cases, quiet title suits, marriage dissolutions resulting in a taking of title by one spouse from another, partition suits, condemnation proceedings, boundary disputes, cancellation of restrictive covenants, and, in fact, all cases involving property matters. It would no longer be possible to review the files in order to determine the adequacy of service and other such matters. There are many areas that must be examined in court files in order to determine the value of the final judgment. These include: (1) ascertaining whether all proper parties have been joined and how and why they have been joined; (2) checking the adequacy of personal service; (3) looking at the constructive service to determine the sufficiency of the sworn statement upon which the publication was predicated, and reviewing the sufficiency of the notice of action itself to determine its accuracy as to such important matters as the legal description; (4) checking the appointment of the guardian, attorney and administrator ad litem to represent known and unknown heirs who may be incompetent or who may be in the military service; (5) evaluating compliance with the Soldiers and Sailors Civil Relief Act; and (6) determining that all necessary parties

PRESENT RULE

PROPOSED RULE

REASON FOR PROPOSED AMENDMENT

remain in the action until its conclusion. These are only some of the important matters that have to be checked.

Under subsection (d)(4), probate files would be destroyed after ten years from the final entry or judgment or order. Maintaining the integrity of the probate files or at least certain valuable portions of them are essential in order to evaluate the ownership of real property in the event of death.

The time periods provided in the rule work well when dealing with money disputes and matters of that sort, but do not work well when dealing with real property cases. The time periods have not been tied into any real property Statute of Limitation or curative acts, such as the Marketable Record Title Act with its thirty year "root of title" concept.

COMMITTEE VOTE: Unanimous in favor

BOARD OF GOVERNORS RECOMMENDATION:

FOR: 24

AGAINST: 0

PRESENT RULE

RULE 2.130. PROCEDURE FOR AMENDING RULES

(a)-(b) (4) [NO CHANGE RECOMMENDED]

(5) [Rule not restated because change is in renumbering only. (5) will become (6)].

(6) [Same as (5)]

PROPOSED RULE

RULE 2.130. PROCEDURE FOR AMENDING RULES

(a)-(b) (4) [NO CHANGE RECOMMENDED]

(5) The Judicial Administration Rules Committee shall also serve as a Rules Coordinating Committee. Each rules committee shall have at least one of its members appointed to the Judicial Administration Rules Committee to serve as liaison. All proposed rules changes shall be submitted to the Judicial Administration Rules Committee which shall then refer all proposed rules changes to those rules committees that might be affected by the proposed change. All proposed changes shall be submitted by June 30 of each year of the rules cycle.

(6) [Same as (5)]

REASON FOR PROPOSED AMENDMENT

RULE 2.130. PROCEDURE FOR AMENDING RULES

This rule provides for a coordinating function to be assigned to the Judicial Administration Rules Committee. The intent is to insure that all proposed changes are referred to a rules committee that might be affected by a proposed change in a rule on another rules committee. The Committee felt this function was important to provide adequate review of the potential impact of a rules change in one area upon other rules.

COMMITTEE VOTE: Unanimous in favor

BOARD OF GOVERNORS RECOMMENDATION:

FOR: 34

AGAINST: 0

PRESENT RULE

RULE 9.520. JUDICIAL DISCIPLINE, REMOVAL, RETIREMENT AND SUSPENSION

(a) Filing. Any recommendation to the Supreme Court from the Judicial Qualifications Commission pursuant to Article V, Section 12 of the Florida Constitution shall be in writing. The original and seven copies shall be filed with the Clerk of the Court, and a copy shall be served expeditiously on the justice or judge against whom action is sought.

(b) Procedure.

(1) Promptly upon the filing of a recommendation from the Commission, the Court shall determine whether the Commission's recommendation complies with all requirements of the Constitution and the Commission's Rules. Upon determining that the recommendation so complies, and unless the Court otherwise directs, an order shall issue directing the justice or judge to show cause in writing why the recommended action should not be taken.

(2) The justice or judge may file a response in writing within the time set by the Court in its order to show cause.

(3) If requested by the Commission, or by a justice or judge at the time of filing a response, the Court may allow oral argument on the Commission's recommendation.

PROPOSED RULE

RULE 2.140. JUDICIAL DISCIPLINE, REMOVAL, RETIREMENT AND SUSPENSION

(a) Filing. Any recommendation to the Supreme Court from the Judicial Qualifications Commission pursuant to Article V, Section 12 of the Florida Constitution shall be in writing. The original and seven copies shall be filed with the Clerk of the Court, and a copy shall be served expeditiously on the justice or judge against whom action is sought.

(b) Procedure.

(1) Promptly upon the filing of a recommendation from the Commission, the Court shall determine whether the Commission's recommendation complies with all requirements of the Constitution and the Commission's Rules. Upon determining that the recommendation so complies, and unless the Court otherwise directs, an order shall issue directing the justice or judge to show cause in writing why the recommended action should not be taken.

(2) The justice or judge may file a response in writing within the time set by the Court in its order to show cause, and the Commission may serve a reply within 20 days from service of the response.

(3) If requested by the Commission, or by a justice or judge at the time of filing a response, the Court may allow oral argument on the Commission's recommendation.

REASON FOR PROPOSED AMENDMENT

RULE 2.140. JUDICIAL DISCIPLINE, REMOVAL AND SUSPENSION

Rule 9.520 has been relocated from Appellate Rules to Rules of Judicial Administration. It was considered and passed at the request of counsel for J.Q.C.

COMMITTEE VOTE: Unanimous in favor

BOARD OF GOVERNORS RECOMMENDATION:

FOR: 25

AGAINST: 0