85,102

IN THE SUPREME COURT OF FLORIDA

IN RE:)

THE RULES OF JUDICIAL ADMINISTRATION)

)

FILED
SID J. WHITE
APR 2 1984
CLERK, SUPREME COURT
By _____ Chief Deputy Clerk

PETITION OF THE RULES OF JUDICIAL ADMINISTRATION COMMITTEE SUBMITTING PROPOSED AMENDMENTS TO RULES OF JUDICIAL ADMINISTRATION

The Rules of Judicial Administration Committee of The Florida Bar, pursuant to Rule 2.130(c) of the Rules of Judicial Administration, submits this Petition as its quadrennial report of the proposed changes in the Florida Rules of Judicial Administration.

Pursuant to the authority granted this committee by the Supreme Court, the Committee has met on regular occasions over the last four years and have received proposals and taken action which form the basis for this report. Each proposal was considered but only those proposals deemed to have merit by the Committee were forwarded to the Board of Governors.

In accordance with the provisions of Rule 2.130, the Committee's report was given to the Board of Governors in November 1983 and the vote of the Committee as well as the vote of the Board of Governors is shown in the "Reasons for Change" column of the report.

This report is for the purpose of advising the Court of all proposed rule modifications submitted to the Committee during the last four years and the action of the Committee and Board of Governors, if any. Where a minority position has been stated, that position together with its proponent, is set forth.

PROPOSED RULE MODIFICATION NUMBER ONE.

The Rules of Judicial Administration Committee should act as a coordinating committee for all rules

committees and there should be at least two members of all other rules committees as a member of the Rules of Judicial Administration Committee.

Committee Determination: The Committee felt the concept of coordination of the rules to be a desirable feature. On several occasions during the rules cycle, proposals for changes came to the Rules of Judicial Administration and the changes would obviously impact other Rules Committees. For example, a proposed rule amendment was submitted that would permit direct appeal from the County Court level to the District Court of Appeal. The Committee felt that proposal would have an impact on the Appellate Rules and should be reviewed by the Appellate Rules Committee. It was felt coordination would be of benefit. The Committee members present voted unanimously in favor of recommending the Rules of Judicial Administration Committee be made a central coordinating rules committee with at least two members from other committees being members of the Rules of Judicial Administration Committee. This proposal would alter Rule 2.130 by adding a (5) subsection to the rule. The Committee voted unanimously in favor. The Board of Governors voted 34 to 0 to approve the recommended changes.

PROPOSED RULE MODIFICATION NUMBER TWO.

The Committee was asked by the Real Property, Probate and Trust Law Section to consider amending Rule 2.075(d)(7) to require the permanent retention of court records involving probate proceedings and cases affecting title to real property.

Committee Recommendation: This recommendation came to the Committee late in the rules cycle and was strongly supported by the Real Property, Probate and Trust Law Section. Apparently under the earlier retention

rule, records could be destroyed by the Clerk's office following five (5) years after the final docket entry or final judgment. This resulted in the Clerk of the Circuit Court of Dade County destroying several thousand circuit court files involving real property for the year 1974. The position was outlined more succinctly by James L. Mack in a letter dated July 7, 1983 which is attached hereto in which Mr. Mack outlined the rationale for the request. The Committee voted unanimously to support the amendment and the Board of Governors voted 24 to 0 to support the proposal.

PROPOSED RULE MODIFICATION NUMBER THREE.

To relocate the present Rule 9.520 regarding judicial discipline, removal, retirement and suspension from the Rules of Appellate Procedure to the Rules of Judicial Administration.

Committee Disposition: The Committee took no strong position with regard to the proposed amendment but did agree that it was more appropriately located in the Rules of Judicial Administration. The proposal to change old Rule 9.520 to a new Rule 2.140 and relocate in the Rules of Judicial Administration was approved unanimously by the Committee and by the Board of Governors by a vote of 25 to 0.

PROPOSED RULE MODIFICATION NUMBER FOUR.

Consider staggering the years in which rules changes are made rather than having rules changes appear in one year.

Committee Disposition: The effect of this proposal would have staggered the years in which proposed rule changes were made. For example, civil rules might be proposed for change in 1985, appellate rules in 1986, etc. The members of the Committee debated this and while at first it seemed to be an idea that might

assist the Court, the Committee ultimately determined this concept would probably create more problems than it would solve. For example, if the appellate rules changes were made in the year after the civil rules changes, an appellate rule change that would affect civil rules would not be picked up by the next civil rules change until four years later. The Committee voted unanimously against this proposal. It was not presented to the Board of Governors.

PROPOSED RULE MODIFICATION NUMBER FIVE.

To amend Rule 2.050(b)(4) relating to the authority of the chief judge to assign any judge to temporary service for which the judge is qualified.

Committee Determination: This proposal came as a result of the procedure by which some chief judges create circuit judgeships from a county court judgeship merely by assigning a county court judge to a circuit judge's duties. The affect of the proposed rule was to appropriately define the word "temporary". The Committee discussed the concern of the proponent of this rule that this technique sidesteps the legislature's power to create judgeships. However, the Committee also recognizes the practical aspects of this situation especially in the more rural areas. The proposal to the Committee would have limited the time a county judge could sit to thirty (30) days without approval from the chief justice. This proposal passed the Committee stage by a vote of 3 to 2.

The Board of Governors voted 24 to 6 against the proposed amendment.

PROPOSED RULE MODIFICATION NUMBER SIX.

This proposal related again to modifying Rule 2.050(b)(4) and involved an amendment that would prohibit a chief judge from appointing a county judge not otherwise

qualified from sitting as a circuit judge.

Committee Determination: The Committee felt this was probably a semantic question involving the meaning of the word "qualified" under the contents of the rule. As an example this proposal would have prohibited a county judge with only four years at the Bar from serving as a circuit judge. The Committee rejected this proposal believing the intent of the word "qualified" is well understood and no modification should be made unless abuses appear. The Committee voted unanimously against the proposal and it was not presented to the Board of Governors.

PROPOSED RULE MODIFICATION NUMBER SEVEN.

To amend the Rules of Judicial Administration to permit certification of questions directly to the District Courts of Appeal by county court judges.

Committee Determination: This rule was proposed for the purpose of permitting a direct certified question to the District Court of Appeal by a county court judge under circumstances that would make the administration of justice more uniform in the particular county. For example, in a large county with several county judges, the rulings on various matters such as admissibility of DUI evidence or similar evidence might vary among the county judges. This proposal would permit a certification of this question direct to the District Court of Appeal. The Committee voted 3 to 0 to take no action on this proposal since the same proposal was before the Appellate Rules Committee and it was the opinion of the members present of the Committee this was more a matter for appellate rules than the Rules of Judicial Administration. The Committee noted the position of Judge James C. Hauser of Orlando who made the proposal and are submitting his request for the adoption of this rule as a

minority report. A copy of Judge Hauser's proposed rule is attached.

PROPOSED RULE MODIFICATION NUMBER EIGHT.

The addition to the Rules of Judicial Administration, Article 18 of the Integration Rule in effect adding to the Rules of Judicial Administration the law school civil and criminal practice programs.

Committee Determination: The Committee voted 3 to 0 against this proposal. It was the Committee's feeling that Article 18 dealing with the civil and criminal practice programs deals more with encouraging clinical instruction and the providing of legal services to the poor than the administration of the Florida judicial system. Accordingly, the Committee felt the addition of Article 18 into the Rules of Judicial Administration was inappropriate under the circumstances. The matter was not presented to the Board of Governors.

PROPOSED RULE MODIFICATION NUMBER NINE.

To amend the Rules of Judicial Administration and particularly Rule 2.050 to provide for the recall of a chief judge of the circuit.

Committee Determination: This proposal was made to the Committee based upon the fact there is a provision for the election of a chief judge of a judicial circuit but no provision for his removal. The suggested recommendation was removal upon vote of two-thirds of the judges of a circuit after a petition for recall filed by at least one more than half of the judges of a circuit. The Committee carefully considered this proposal and felt that while it may have merit, that any major occurrences which would necessitate the removal of the chief judge could probably be best handled through the chief justice rather than a recall election. It was the Committee's view that a recall

election probably would cause substantially more problems than it would solve. For example, the ability to react quickly to a circumstance would probably not be available under this proposal. It was further felt the chief justice would have the ability to react much faster and emphatically.

The rule was unanimously rejected by the Committee and was not presented to the Board of Governors.

In view of the proposals made, the Committee has prepared no "Committee Notes". The Committee's rationale and thoughts are contained in the "Reasons for Change" column of the proposed changes.

The Committee respectfully requests the Court to approve the amendments set forth and as approved or disapproved by the Board of Governors.

REQUEST FOR ORAL ARGUMENT

The Committee requests oral argument on the proposed rules changes at a time to be set by and convenient to the Supreme Court.

NOTICE TO THE BAR

The proposed rule changes, or a summary thereof, will be published in The Florida Bar News before oral arguments. The notice will request that any comments be in writing and be submitted to the Court.

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