

O/A 11-5-84

IN THE SUPREME COURT OF FLORIDA

IN RE: )  
THE RULES OF JUDICIAL )  
ADMINISTRATION )

**FILED**

SID J. WHITE

OCT 28 1984

CLERK, SUPREME COURT

By Chief Deputy Clerk

#65282

*Not a  
new  
case*

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 submits this Petition as its report to the Supreme Court of Florida of a proposed Rule of Judicial Administration to be numbered 2.071.

Proposed Rule 2.071 would be a new rule to be added to the Rules of Judicial Administration. The proposal for this rule came from Judge Alison DeFoor by letter to Chief Justice Boyd on May 7, 1984. This rule change had not been considered by the Rules of Judicial Administration Committee during the previous four year cycle which ended in 1984. In fact, the proposal was made to the Court shortly after oral arguments on the other proposed rule changes for this cycle had been concluded.

The Supreme Court, through Justice Alderman, asked the Rules of Judicial Administration to consider this proposed rule change for presentation to the Court in time for argument in November 1984. It was felt that although the rule might not be an emergency rule as defined by the Rules of Judicial Administration, it was a worthy concept deserving of expedited attention by the Committee.

Pursuant to the appropriate rules, 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.

## BACKGROUND OF COMMITTEE ACTIVITIES

After its receipt, the Committee Chairman immediately placed the proposed Rule on the agenda for Committee discussion at the Committee's meeting scheduled for the Bar Convention in June 1984. Additionally, the proposed Rule was noticed in The Florida Bar News and copies were sent to each Rule Committee Chairman.

As a result of the Bar Convention meeting, Judge William Norris of Bartow agreed to submit the proposed Rule to the Conference of Circuit Judges for their input. Additionally input from county judges as well as other sections of the Bar were anticipated.

After the advertisement in The Florida Bar News, the canvassing of the various judges and input from various individuals, the full Committee met on Thursday, September 6, 1984 and adopted as a proposed Rule, the Rule that was thereafter submitted to the Board of Governors of the Florida Bar on September 20, 1984.

The Rules of Judicial Administration Committee voted four to one (4 to 1) to approve the draft in the form attached to this Petition. The one Committee member who voted against the proposed Rule did not do so because he objected to the concept of the Rule but rather because his objection was to the deletion of subsection (c) regarding testimony. The Committee was unanimous in its approval of the other sections of the proposed Rule.

The proposed Rule changes was submitted to the Florida Bar Board of Governors at its September meeting, 1984. When presented, the proposed rule change generated substantial discussion.

The Board of Governors voted seventeen to thirteen (17 to 13) to approve the draft of the Rule as written. The Board, however, voted sixteen to ten (16 to 10) to place the proposed Rule in the Rules of Civil Procedure rather than the Rules of Judicial Administration. Additional discussion resulted in the Board

voting twenty-three to five (23 to 5) to also place the Rule in the Florida Probate Rules.

In the final analysis, the Board of Governors approved the Rule as drafted seventeen to thirteen (17 to 13) but only approved the Rule being placed in the Rules of Civil Procedure and the Florida Rules of Probate. Your Committee Chairman is candidly unclear as to whether or not the Board voted against placing the Rule in the Rules of Judicial Administration.

The principle reason apparently articulated by the Board of Governors for placing the Rule in the Civil Procedure and Probate Rules was that by its inclusion in the Rules of Judicial Administration it would be in effect "hidden" and not as visible to the practitioners.

Substantial discussion resulted from the proposed subsection (ultimately deleted) regarding the taking of testimony over the telephone. A minority report had been given to the Board of Governors on behalf of Judge Paul Elliot who was the one vote against the Rule vote, voting against because he felt the section permitting testimony should have been included.

It is anticipated that proponents of the subsection permitting testimony will present their views to the Court at oral argument. The principle concern expressed by the Board members regarding the testimonial aspect involved perceived problems of a judge being able to determine the candor and demeanor of a witness as well as the problem of a witness prompting or intimidation. It was felt that once more sophisticated video telecommunications exist, that problem would be eliminated.

The Rules of Judicial Administration Committee is uncertain as to how to further report to the Court regarding this particular Rule. It is the firm opinion of the Committee that the Rule has substantial merit and should be included in the various Court rules at some location. Some members of the Committee

wanted to include the testimonial aspect but that was voted out. The vote by the Board of Governors indicates the concern for location of such a rule by the Board. The most significant area of concern involved the fact that by location of the Rule in the Rules of Judicial Administration it would be applicable to criminal cases and concern as to the testimonial subsection as it related to criminal matters was expressed.

The Rules of Judicial Administration Committee submit to the Court the proposed Rule is one that is timely, useful and serves the purpose of the administration of justice.


The Committee respectfully requests the Court to approve the Rule as set forth.


REQUEST FOR ORAL ARGUMENT

The Committee requests oral argument on the proposed Rule 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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JUDICIAL ADMINISTRATION RULES COMMITTEE

THE FLORIDA BAR

PROPOSED RULE 2.071  
USE OF COMMUNICATION EQUIPMENT

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RULES

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|-------------|-------------|--------------------------------|--------------------------------|--|
| 1-3         | 2.071       | USE OF COMMUNICATION EQUIPMENT | NONE                           | USE OF COMMUNICATION EQUIPMENT FOR MOTION HEARING, PRE-TRIAL CONFERENCE, OR A STATUS CONFERENCE. |

PRESENT RULE

N O N E

PROPOSED RULE

RULE 2.071 USE OF COMMUNICATION EQUIPMENT

(a) Definition

Communication equipment means a conference telephone or other electronic device that permits all those appearing or participating to hear and speak to each other, provided that all conversation of all parties is audible to all persons who have requested to hear the proceeding.

(b) Use

A county, circuit or a district court may, upon the Court's own motion or on the written or oral request of a party, direct that communication equipment be used for a motion hearing, pre-trial conference, or a status conference. Any request made by a party shall contain a statement or certificate by the party's counsel that he has consulted opposing counsel and that he is authorized to represent that opposing counsel

REASON FOR PROPOSED AMENDMENT

RULE 2.071 USE OF COMMUNICATION EQUIPMENT

This Rule is proposed for the purpose of defining the scope and use of telephones or other electronic equipment in court proceedings. The essence of the Rule is to permit telephone hearings either by conference call or speaker phone when one of the parties might not be present. The Committee believes the proposed Rule covers in large measure what is already a wide spread practice among the judiciary in the state. The application of the Rule is not limited merely to civil matters. It may just as easily be utilized in criminal or any other matters requiring the Court's disposition of matters in litigation. The only exception deals with testimony. The Rule states the Court may on its motion or that of a party direct that a motion hearing, pre-trial conference or status conference be heard using the telephone. Any request that is made must note whether the opposing attorney has any objection to the procedure and if so, the party

PRESENT RULE

N O N E

PROPOSED RULE

either has no objection or will file ~~an~~ make a timely objection. ~~within seven-(7)-days-of-the-date-of-the request.~~ A judge shall give notice to the parties before directing on the Court's own motion that communication equipment be used. A party's request must be made ~~at-least-fifteen-(15)-days~~ within a reasonable time before the day on which communication equipment is sought to be used. If an oral request is granted, the party making the request shall file a Notice of Telephonic Hearing within ten (10) days. The notice shall state the day and time of the hearing.

~~(c)-~~Testimony

~~A-judge-may,with-the-consent-of-all the-parties, direct-that-the-testimony of-a-witness-be-taken-through-communication-equipment.~~

~~(d)~~ (c) Burden of Expense

The cost for the use of the communi-

REASON FOR PROPOSED AMENDMENT

objecting must make timely notice. There are no time limits imposed in the Rule since it was felt a major advantage of the Rule was in the ability to arrange a telephonic hearing on very short notice. The notice must, however, be made within a reasonable time prior to the date on which communication equipment is to be used. It is believed the Court can be the best judge of what is reasonable under the circumstances. If an oral request for a hearing is granted, the party making the request must file a Notice of Hearing within (10) days stating the day and time of the hearing. A proposed subsection (c) regarding testimony was deleted. The committee vote on this proposed Rule was four (4) to one (1) in favor of deletion. This deletion would remove a sanction that permitted the judge to hear testimony upon agreement of all parties. Comments made in opposition raised questions regarding criminal law and the right to confrontation as well as the comments of many judges regarding their strong belief the judge must be able to observe the demeanor



PRESENT RULE

N O N E

PROPOSED RULE

cation equipment is the responsibility of the party whose motion is being heard unless otherwise directed by the Court.

REASON FOR PROPOSED AMENDMENT

of the witness for the purpose of determining candor.

The subsections regarding Definition, Use and Burden of Expense were approved unanimously by the Rules of Judicial Administration Committee. Subsection (c) regarding testimony was disapproved by the Committee by a vote of four (4) to one (1).