

# Supreme Court of Florida

WEDNESDAY, NOVEMBER 25, 1992

## ORIGINAL

THE FLORIDA BAR

RE: AMENDMENT TO FLORIDA RULES  
OF JUDICIAL ADMINISTRATION

CASE NO. 79,614

The Motion for Rehearing, having been considered in light of the revised opinion, is hereby denied.

A True Copy

JB

TEST:

cc: John F. Harkness, Jr., Esquire  
Claire K. Luten, Chairman  
Stuart H. Singer, Esquire  
Hon. Amy Steele-Donner  
Hon. Dorothy Harris Pate  
Robert W. Goldman, Esquire  
John A. DeVault, III, Esquire  
Henry P. Trawick, Jr., Esquire

Sid J. White  
Clerk Supreme Court.

# Supreme Court of Florida

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No. 79,614  
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THE FLORIDA BAR

RE: AMENDMENT TO FLORIDA RULES  
OF JUDICIAL ADMINISTRATION

[October 8, 1992]

CORRECTED OPINION

PER CURIAM.

The Florida Bar petitions this Court to amend the Florida Rules of Judicial Administration and to change the format of those rules generally to comply with style and gender requirements as mandated by this court and in response to Report of The Florida Supreme Court Gender Bias Study Commission, 42 Fla. L. Rev. 803 (1990). We have jurisdiction. Art. V, § 2(a), Fla. Const. We approve the recommendations subject to the modifications discussed below.

Rule 2.055, Fla. R. Jud. Admin.

The most controversial recommendation of the committee is proposed rule 2.055. It requires all papers filed in the courts of this state to be filed on recycled paper. This proposal is made to implement state policy established by the legislature and is already implemented in the executive and legislative branches. **The** Florida legislature has clearly stated that it is the policy of this state to support and encourage recycling. § 403.702, Fla. Stat. (1991). The legislature has directed counties **and** municipalities to reduce solid waste by a minimum of **30%** by the end of 1994. § 403.706(4), Fla. Stat. (1991). See also § 187.201(13)(b)1., Fla. Stat. (1991) (by 1994, all volume of solid waste requiring disposal must be reduced by **30%**). In support of its policy, the legislature requires the use of recycled paper by all state agencies and political subdivisions using state funds. § 403.7065(1), Fla. Stat. (1991). Additionally, the legislature has mandated each state agency and the judicial branch of state government to establish recycling programs and has mandated all state agencies to aid and promote the development of recycling through their procurement policies. §§ 403.702(m), 403.714(1), Fla. Stat. (1991). Because of this policy mandate, this rule proposal has been strongly supported by, among others, the governor, the Florida Department of Environmental Regulation, and a number of Florida counties.

After an investigation that included testimony from experts, **the** Florida Rules of Judicial Administration Committee

determined that this rule could **be** implemented in accordance with state established policy without adversely affecting the legal profession or litigants in our courts. The committee's investigation revealed that there is no discernible difference in quality between recycled and non-recycled paper of similar grade and weight. The committee also determined that the prices of recycled and non-recycled paper are about the same and that seldom does the price between recycled and non-recycled paper of comparable quality vary more than 10%. The board of governors of The Florida Bar opposes the proposal primarily because it is another mandatory regulation. The board also questions the enforceability of the proposed rule. Because the legislature has expressly established a policy for governmental entities of this state to use recycled paper and to promote the development of markets for recycled paper, we conclude that we should follow that policy unless we can show its implementation would have an adverse effect.

Proposed rule 2.055 properly implements legislatively established public policy and places the judicial branch in a position consistent with the other branches of state government on this issue. This record presents no justifiable reason for this court not to adopt the committee's proposal. Accordingly, we approve the proposed amendments to rule 2.055, Florida Rules of Judicial Administration.

Rule 2.070, Fla. R. Jud. Admin.

The proposed amendments to rule 2.070 regarding court reporters were previously submitted to this court in In re Amendments to Florida Rules of Judicial Administration, 595 So. 2d 928 (Fla. 1992). The committee included those proposals with this petition because a petition for rehearing was pending in that case at the time this petition was filed. The petition was denied. For the reasons set forth in that case, we decline to adopt the proposed changes.

Rule 2.071, Fla. R. Jud. Admin.

**The** committee proposes to change rule 2.071 to mandate, absent a showing of good cause to the contrary, granting requests to appear at motion hearings by telephone so long as the hearing is set to last no more than fifteen minutes. **This** change would not apply to criminal, delinquency, and appellate proceedings. As written, **the** proposal would eliminate a court's ability to hold telephone hearings for pretrial and status Conferences. We approve the proposal but modify it to retain the option **far** pretrial and status telephone conferences. Additionally, we incorporate the suggestion of the board of governors to allow only the "requesting" party, rather than "any" party, to appear by telephone when **the** hearing is set to last for not more than fifteen minutes. We reject the board's request to eliminate the court's right to require a telephone appearance on its own motion.

Rule 2.160, Fla. R. Jud. Admin.

Regarding rule 2.160, the committee's proposal clarifies the means to disqualify trial judges consistent with this court's opinion in Brown v. St. George Island, Ltd., 561 So. 2d 253 (Fla. 1990). Currently, two statutory provisions, sections 38.02 and 38.10, Florida Statutes (1991), authorize a party to seek disqualification of a judge. In Brown we determined that the circumstances under which a party is entitled to seek a second disqualification are substantive rather than procedural in nature and that the statutory provisions regarding disqualification control. In light of that opinion, the committee's proposal creates rule 2.160 to incorporate the disqualification dictates of the statutes. While we agree most of these changes are appropriate and consistent with this court's opinion, we do not adopt that portion of the committee's recommendation allowing a judge to defer ruling on a disqualification motion until after completion of the evidence or receipt of the verdict. We find the motion should be ruled on immediately following its presentation to the court. We also decline to adopt a review authority in this rule. Authority for review must be in the Florida Rules of Appellate Procedure. We therefore request The Florida Bar Appellate Procedure Rules Committee to consider **the** appropriate authority for reviewing orders of disqualification and to consider whether an amendment to the Rules of Appellate Procedure is necessary. The committee may submit its proposal to this Court out of the four-year sequence.

We approve each of the proposed amendments to the Florida Rules of Judicial Administration as modified and set forth in the appendix to this opinion. Because new rule 2.160 establishes the process for disqualification in all trial court proceedings, by this opinion we repeal the following rules governing disqualification of judges: Florida Rule of Civil Procedure 1.432, Florida Rule of Criminal Procedure 3.230, and Florida Rules of Juvenile Procedure 8.175 and 8.280. These amendments shall be effective at 12:01 a.m. on January 1, 1993.

It is so ordered.

**BARKETT, C.J., and OVERTON, McDONALD, SHAW, GRIMES, KOGAN and HARDING, JJ., concur.**

**THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER THE EFFECTIVE DATE OF THESE RULES.**

Original Proceeding - Florida Rules of Judicial Administration

Benjamin H. Hill, 111, President, The Florida Bar, Tampa, Florida; Alan T. Dimond, President-elect, The Florida Bar, Miami, Florida; John F. Harkness, Jr., Executive Director, The Florida Bar, Tallahassee, Florida; Anthony C. Musto, Chair, Florida Rules of **Judicial** Administration Committee, Miami, Florida; John J. Copelan, Jr., County Attorney and Maite Azcoitia, Assistant County Attorney for Broward County, Fort Lauderdale, Florida; Charles Vitunac, County Attorney for Indian River County, Vero Beach, Florida; Frank A. Baker, County Attorney for Jackson County, Marianna, Florida; and James G. Yeager, County Attorney for Lee County, Fort Myers, Florida,

for Petitioner

John A. DeVault, 111, Jacksonville, Florida; and Henry P. Trawick, Jr., Sarasota, Florida,

Respondents