

Supreme Court of Florida

No. 84,572

AMENDMENT TO FLORIDA RULE
OF JUDICIAL ADMINISTRATION
2.070--COURT REPORTING
(GRAND JURY PROCEEDINGS)

[October 5, 1995]

PER CURIAM.

On our own motion, we amend rule 2.070 of the Florida Rules of Judicial Administration with regard to its provision concerning the reporting of grand jury proceedings. We have jurisdiction. Art. V, § 2(a), Fla. Const.

We determined that nine of the judicial circuits in this State record their grand jury proceedings, while eleven circuits do not record these proceedings. We find that fairness dictates that the testimony of all witnesses in grand jury proceedings should be recorded so that transcriptions of that testimony can be made available to either side when appropriately approved by

the court that has responsibility for the grand jury. The proposed amendment was published in The Florida Bar News, and we solicited comments from interested parties. The amendment as advertised modified section 2.070(a). Rule 2.070 was subsequently modified and the provision at issue was renumbered as 2.070(b). We have considered the comments received regarding this amendment and have modified the published version accordingly. We hereby amend rule 2.070(b) as follows:

(b) When Reporting Required. All criminal and juvenile proceedings, and any other judicial proceedings required by law or court rule to be reported at public expense, shall be reported. Any proceeding shall be reported on the request of any party. The party so requesting shall pay the reporting fees, but this requirement shall not preclude the taxation of costs as authorized by law. ~~Grand jury proceedings, upon order of the chief judge of the circuit,~~ Testimony in grand jury proceedings shall be reported stenographically or by an electronic recording device. Other parts of grand jury proceedings, including deliberations and voting, shall not be reported. ~~;~~ ~~however,~~ no transcription of testimony may be made unless required by an order of a court of competent jurisdiction. The stenographic records, electronic recordings, and transcripts of grand jury proceedings shall be filed with the clerk of the court who shall keep them in a sealed container not subject to public inspection.

This amendment shall become effective at 12:01 a.m. on January 1, 1996.

It is so ordered.

OVERTON, SHAW, KOGAN, WELLS and ANSTEAD, JJ., concur.
HARDING, J., dissents with an opinion, in which GRIMES, C.J., concurs.

THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER THE EFFECTIVE DATE OF THIS AMENDMENT.

HARDING, J., dissenting.

I disagree with the majority's decision to change a long-standing rule without being asked to do so and without more than the tenuous explanation that "fairness dictates" the rule be changed. Majority op. at 1. While fairness is a necessary component of justice, stability of the law is also an integral part of justice. This Court normally changes a long-standing principle of law only when "demanded by public necessity or to vindicate fundamental rights." Waite v. Waite, 618 So. 2d 1360, 1361 (Fla. 1993). In this instance, the rule change appears to be precipitated by nothing more than the whim of the Court.

While a change in the rules of judicial administration may not have the same status as decisional law upon which the doctrine of stare decisis attaches, I believe that stability in the law is just as important for our rules of procedure as it is for our rules of law. Grand jury proceedings are a part of a centuries old tradition. Florida Rule of Judicial Administration 2.070 currently gives the chief judge of each circuit the discretion to order the reporting of grand jury proceedings. Fla. R. Jud. Admin. 2.070(b) ("Grand jury proceedings, upon order of the chief judge of the circuit, shall be reported; however, no transcription may be made unless required by an order of a court of competent jurisdiction."). Where the chief judge has not ordered such reporting, the decision of whether to record testimony at grand jury proceedings has been left to the

discretion of the state attorney. As the majority notes, eleven circuits currently do not record grand jury proceedings, while nine others record the proceedings. I find it inappropriate for this Court to suddenly take away the chief judges' and the state attorneys' discretion regarding the reporting of grand jury proceedings when there has been no request to do so and no evidence that this discretion has been abused or resulted in unfairness.

As I explained in State v. Schopp, 653 So. 2d 1016, 1023 (Fla. 1995) (Harding, J., dissenting),

[t]he doctrine of stare decisis provides stability to the law and to the society governed by that law. While no one would advocate blind adherence to prior law, certainly a change from that law should be principled. Where a rule of law has been adopted after reasoned consideration and then strictly followed over the course of years, the rule should not be abandoned without a change in the circumstances that justified its adoption.

The doctrine of stare decisis requires that we examine "'the possible impact on settled expectations and the risk of undermining public confidence in the stability of our basic rules of law'" before we change a rule of law. Perez v. State, 620 So. 2d 1256, 1259 (Fla. 1993) (Overton, J., concurring) (quoting John P. Stevens, The Life Span of a Judge-Made Rule, 58 N.Y.U. L. Rev. 1, 9 (1983)).

I believe that the instant rule change goes beyond just changing rule 2.070 to require the reporting of testimony in grand jury proceedings. Because this rule change was not

prompted by a change in circumstances or a petition from interested parties, it potentially undermines public confidence in the stability of our basic rules of law. If it can be done here for no reason, then is it fair to ask, "What change is next?"

I find it ironic that I dissent from the majority in this decision. If I were a state attorney involved in grand jury proceedings, I would exercise my discretion to require that testimony be reported. However, I find "fairness dictates" no reason to impose my choice on other state attorneys.

Therefore, I respectfully dissent.

GRIMES, C.J., concurs.

Original Proceeding - Florida Rules of Judicial Administration

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responding with comments regarding amendment