O.A. 5-31-96

FILED
SID J. WHITE
MAY 15 1996
CLERK, SUPREME COURT
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO THE FLORIDA RULES OF JUDICIAL ADMINISTRATION ) CASE 87,67

RESPONSE OF HENRY P. TRAWICK, JR.

Respondent HENRY P. TRAWICK, JR. shows:

1. He is a member in good standing of The Florida Bar.

2. He has the following comments on the amended report of the Rules of Judicial Administration Committee in this proceeding:

(a) Rule 2.135 has been recommended for adoption at the request of the Appellate Rules Committee to make appellate rules controlling if there are conflicting rules provisions in other rules. It is a corollary to proposed Rule 9.100(f) that is the subject of the pending amendments to the Florida Rules of Appellate Procedure in case 87,134. Respondent has made his objections in that proceeding. The reason for both proposals is that the Appellate Rules Committee seem to believe that the procedure in a matter should be governed by the name of the proceeding instead of the ability of the court in which it is being processed to handle it. It is an attempt sub rosa to eliminate Rule 1.630, adopted in 1984. The civil rule was adopted because the appellate procedure then governing extraordinary writs in the trial courts did not fit the procedure of trial courts and was cumbersome in the extreme. Rule 1.630 has worked well. The only objections to it have come from a small, but vocal, group of lawyers who simply oppose handling a trial court proceeding in accordance with the ability of the personnel in trial courts, the routine followed by trial courts and the experience of trial courts in handling extraordinary writs. Rule 1.630 has been attacked several times in the past. No good reason has ever been given by the persons objecting to it for its repeal. If it is to be eliminated, respondent submits that it should be attacked directly so it can be considered on its merits and not sub rosa through the appellate rules or the judicial administration rules. The

opponents can tell the Court what they conceive to be the disadvantages of the rule and the proponents can oppose them on those points. When the Court reviews the information submitted to it in the pending appellate rules petition and in this petition the Court will not find any reasons why Rule 1.630 should be repealed. In fact, without repealing the rule, the Court will leave a state of confusion about whether it is still in effect and, if so, to what extent. The rules of procedure should clarify procedures, not confuse them. Respondent submits that this rule should not be adopted. It does not appear that the Rules of Judicial Administration Committee has given it any consideration.

(b) Rule 2.180 is proposed in connection with changes of venue. It is intended to apply to so-called high profile criminal cases, but its language also applies to civil cases. To this extent, it impinges on statutory substantive rights in civil actions concerning venue. Respondent submits that this Court does not have the authority under the Constitution to eliminate or impinge on the substantive right of a civil litigant to have venue in a place specified by statute. The problem can be cured by deleting "or in any other case" from Rule 2.180(a). Respondent submits it would be superfluous to cite decisions from this Court concerning the substantive right of venue.

The undersigned certifies that a copy of the foregoing has been furnished to The Honorable Manuel Menendez, Jr. as chairman of the Rules of Judicial Administration Committee and John F. Harkness, Jr. as Executive Director of The Florida Bar by mail on May 14, 1996.

By _____
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