

FILED

SID J. WHITE

JUN 8 1997 097

In the Supreme Court of Florida

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

Case Number 90,712

<p>In Re: Amendment to Florida Rules of Judicial Administration</p>

Emergency Petition to Amend the Florida Rules of Judicial Administration

Petitioners, **Rohan Kelley**, John Arthur Jones, John **G. Grimsley**, Wilson **Smith**, **William E.**

Sherman and Steven **L. Hearn** allege:

1. This is a proceeding under rule 2.130(a) and (b) of the Florida Rules of Judicial Administration.

2. The Court has jurisdiction pursuant to Article V, §2(a) of the Florida Constitution.

3. Petitioners propose that subsection (c) of rule 2.055 of the Florida Rules of Judicial Administration be amended to limit its application to those instances covered by §695.26, *Florida Statutes* (1995), to comply with the stated purpose of the rule. Specifically, petitioners propose amending subsection (c) as follows:

(c) On all papers by which the title to real property or any interest therein is conveyed, assigned, encumbered, or otherwise disposed of to be filed with the clerk of the court and subsequently recorded in the public records of any county, including but not limited to final money judgments and notices of lis pendens, a 3-inch by 3-inch space at the top right-hand corner on the first page and a 1 -inch by 3-inch space at the top right-hand corner on each subsequent page shall be left blank and reserved for use by the clerk of the court.

4. Petitioners are attorneys licensed to practice law in the State of Florida, who practice extensively in the area of wills, trusts and estates.

5. Petitioner Jones is chair of the Forms Committee, the committee of the Real Property, Probate and Trust Law Section of The Florida Bar having responsibility to maintain and update the Florida Bar Probate and Guardianship Forms (see reference below) and, over the past 20 years, has been principally responsible for drafting and maintaining these forms as a service to Florida lawyers.

6. Petitioner Kelley is chair of the Probate Law Committee, the committee of the Real Property, Probate and Trust Law Section of The Florida Bar having responsibility to recommend to the legislature changes to the Florida Probate Code, or other statutes touching the practice of wills and estates law.

7. Petitioner Grimsley is chair of the Principal and Income Committee, the committee of the Real Property, Probate and Trust Law Section of The Florida Bar having responsibility to recommend to the legislature changes to the principal and income act, Chapter 738, *Florida Statutes*.

8. Petitioner Smith is the probate division director of the Real Property, Probate and Trust Law Section of The Florida Bar, and is also chair of the Probate Rules Committee, a standing committee of The Florida Bar having responsibility to recommend changes to the Florida Probate Rules to this Court.

9. Petitioner Hearn is the secretary of the Real Property, Probate and Trust Law Section of The Florida Bar, and is also the Probate Rules Committee representative member of the Rules of Judicial Administration Committee of The Florida Bar.

10. Petitioners Jones, Grimsley and Sherman serve as members of the board of directors of Florida Lawyers Support Services, Incorporated (FLSSI), a not-for-profit corporation organized under Chapter 617, *Florida Statutes* and are each a past chair of the Real Property,

Probate and Trust Law Section of The Florida Bar.

11. FLSSI was organized and functions as an adjunct to the Real Property, Probate and Trust Law Section of The Florida Bar. Its major activities involve the publication of approximately 300 forms used in probate and guardianship proceedings in Florida. These forms are sometimes colloquially (but inaccurately) referred to as “The Florida Bar Probate Forms” or “The Florida Bar Guardianship Forms” (the Forms). FLSSI publishes the Forms in paper format and the Forms are also available in electronic format through independent licensed software publishers who integrate the Forms into probate practice software.

12. On October 1, 1996, FLSSI published and released its **1996**— 1997 version of the Forms prepared by the Forms Committee of the Real Property, Probate and Trust Law Section of The Florida Bar, for sale in paper format, and supplied electronic copies to licensees. Copies of the 1996 — 1997 revised Forms are attached as Composite Appendix A.

13. Thereafter, on October **24, 1996**, the Court adopted certain amendments to the Florida Rules of Judicial Administration which were effective January **1, 1997**. *Amendments to the Florida Rules of Judicial Administration*, 682 **So.2d** 89 (Fla. 1996) (the “Opinion”). One of the Rules of Judicial Administration which was amended was rule 2.055, specifically subsection (c), which was amended as follows:

(c) ~~A 1½ by 1½ inch square (1½ by 1½ inches) in the upper right hand corner of all papers filed shall be left blank~~ On all papers to be filed with the clerk of the court and subsequently recorded in the public records of any county, including but not limited to final money judgments and notices of lis pendens, a 3-inch by 3-inch space at the top right-hand corner on the first page and a 1-inch by 3-inch space at the top right-hand corner on each subsequent page shall be left blank and reserved for use by the clerk of the court.

14. The “Court Commentary” to this rule added a section explaining this change:

1996 Amendment, Subdivision (c) was amended to make the blank space requirements for use by the clerk of the court consistent with section 695.26, Florida Statutes (1995). . . . (At page 100,101.)

15. The last referred-to statute provides, *inter alia*:

(1) No instrument by which the *title to real property* or any interest therein is conveyed, assigned, encumbered, or otherwise disposed of shall be recorded by the clerk of the circuit court unless:

* * *

(e) a 3-inch by 3-inch space at the top right-hand corner on the first page and a 1 -inch by 3-inch space at the top right-hand corner on each subsequent page are reserved for use by the clerk of the court; . . . (*Emphasis supplied,*)

Subsection (3) specifically exempts a number of documents, including Wills of decedents, from this requirement. §695.26(3), *Florida Statutes*. Rule 2.055, as amended, does not include any of these exemptions and purportedly would require the 3" x 3" space on many documents (such as death certificates, documents prepared by the Internal Revenue Service and other governmental agencies) over which neither the courts nor lawyers have any practical control.

16. §695.26(3), Florida Statutes, pertains to instruments "by which the *title to real property* or any interest therein is conveyed, assigned, encumbered, or otherwise disposed of" while rule 2.055 pertains to "all papers to be filed with the clerk of the court and subsequently recorded in the public records of any county". The scope of the rule is much broader than the scope of the statute, even though the stated purpose in the Court Commentary was to make the rule and the statute consistent.

17. The intended scope of the change is stated in the report filed by the Rules of Judicial Administration Committee which initiated the rule change. That brief provided (on pages 6 and 7) "These changes would render the rule consistent with the provisions of Fla. Stat.

§695.26 (1995), relating to the requirements for recording instruments affecting real property.” To paraphrase Robert Browning, it would appear that the rule’s reach exceeds its grasp.

18. In the context of the rule amendment, the Committee and the Court may not have considered the provisions of 528.223, *Florida Statutes*, which provides:

(1) The clerk of the circuit [court] shall record all wills and codicils admitted to probate, orders revoking the probate of any wills and codicils, letters of administration, orders affecting or describing real property, final orders, orders of final discharge, and orders of guardianship filed in the clerk’s office. No other petitions, pleadings, papers, or other orders relating to probate matters shall be recorded except on the written direction of the court. . .

19. §695.26, *Florida Statutes*, does not contemplate the 3” x 3” requirement on papers which *do not* convey, assign, encumber or otherwise dispose of title to real property. Letters of administration issued to a personal representative do not convey, assign, encumber or otherwise dispose of title to real property, but §28.223(1) requires the recording of “orders of final discharge” and “letters of administration” (and other probate documents and papers). Neither does the order of final discharge (which is also required to be recorded) convey, assign, encumber or otherwise dispose of real property nor affect or describe real property!

¹ Death is the event by which title to real property in Florida is transferred. The documents which are **evidence** of that transfer of title are the will and the order admitting to probate in a testate estate and the order determining beneficiaries in an intestate estate. See *Jones v. Federal Farm Mortgage Corporation, 182 So. 226* (Fla. 1938). No “deed” of grant, bargain and sale is given by the personal representative to the beneficiary of the estate to “distribute” the real property. Rather, any document which specifically surrenders the personal representative’s right to possession of the property or the right to sell it for purposes of administration of the estate (see F.S. §§733.607, 733.608), or the order of discharge, in the absence of such document, terminates the rights of the personal representative, but does not transfer title. However, FLSSI forms P-5.0600 P-5.0610, various renditions of a “Personal Representative’s Release and Certificate of Distribution of Real Property,” does describe property and must therefore be recorded by the clerk (F.S. §28.223(1)) and “looks like” a deed. Petitioner Jones has therefore provided a 3 x 3 area on those forms, even though neither F.S. §28.223 nor F.S. §695.26 requires it. However, rule 2.055 does. See Composite Appendix A.

However, these documents are “caught” by the broad net cast by rule 2.055(c). For example, see a copy of the letter from E. D. “Bud” Dixon, clerk of the circuit court of Polk County, Florida, a copy of which is attached as Appendix B, returning letters of administration (on the FLSSI form) for failure to have the 3” x 3” space.

20. The Forms are used extensively by attorneys throughout the State of Florida in probate and guardianship administration and related matters. The purpose of the Forms is to provide a uniform set of documents, adequate to the task and in full conformity with the statutes and the rules, which can be used by attorneys in probate and guardianship matters, in order to save the attorney, the client and the courts both time and expense.

21. The clerk of the court for Volusia County has interpreted rule 2,055 of the Florida Rules of Judicial Administration to require the 3” x 3” (and 1” x 3”) space on twenty-six probate documents, six guardianship documents, and four trust documents. A copy of the list of the documents requiring that recording space as provided by that clerk is attached as Appendix C. Subsequently, the clerk agreed to suspend temporarily the implementation of the procedures and requirements in the memo, pending further clarification of rule 2.055(c).

22. Because §28.223 *Florida Statutes* or local probate administrative orders direct that the clerk of the Court in Volusia County record these 26 probate documents, she has interpreted rule 2.055 as requiring that all 26 of these probate documents contain a 3-inch by 3-inch space at the top right-hand corner on the first page and a 1 -inch by 3-inch space at the top right-hand corner on each subsequent page.

23. This does not appear to be the intended purpose of that rule.

24. The Forms are reviewed and revised annually by the volunteer efforts of Petitioner

Jones, and the committee he chairs. Revision of the Forms incorporating a 3" x 3" space to comply with the amended rule would require all those persons who purchased the October 1, 1996 set to repurchase new forms, and all FLSSI electronic licensees to reprogram their software and replace each copy sold, causing unnecessary inconvenience, expense and disruption to the practice of probate and guardianship law in Florida. Although the significant majority of circuit court clerks have not interpreted rule 2.055 to require the extensive inclusion of the 3" x 3" space in probate papers filed in the respective circuits, those who do interpret rule 2.055 in this manner cause the practice throughout the state to be inconsistent and create uncertainty among lawyers who may represent personal representatives or guardians in more than one circuit.

25. Furthermore, if some probate papers are recorded regularly in some counties, and not in others, petitioner Jones is uncertain whether the 3" x 3" block should be added to *all* probate and guardianship forms, to give them universal application.

Wherefore, petitioners request that this court adopt an emergency amendment to Rule of Judicial Administration 2.055(c) which either:

A. limits the application of the October 24, 1996 amendment to Rule 2.055 of the Florida Rules of Judicial Administration to those documents or papers specifically described in §695.26, Florida Statutes; or alternatively

B. defers its application to documents or papers other than those specifically described in §695.26, Florida Statutes, until January 1, 1999.

Petitioners further request that this court immediately issue its order staying the application of rule 2.055(c) as it relates to all pleadings, papers and documents filed with the clerk and

to be recorded under the provisions of §28.223, *Florida Statutes*, while this petition is pending and under consideration by the court.

Counsel for Petitioners:

Rohan Kelley, Esq.
3365 Galt Ocean Drive
Ft. Lauderdale, Florida 33308
voice: (954) 563-1400
fax: (954) 561-0211
email: rk@estatelaw.com
Fla. Bar. # 42060

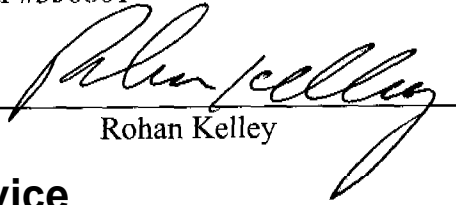
Wilson Smith, Esq.
200 South Biscayne Boulevard
Miami, Florida 33 13 1-2398
voice: (305) 577-7033
fax: (305) 374-4617
email: ws@steelhector.com
Fla. Bar # 75811

John Arthur Jones, Esquire
Post Office Box 1288
Tampa, Florida 3360 1
voice: (8 13) 227-666 1
fax: (813)229-0134
email: JAJONES@hkllaw.com
Fla.Bar #40511

William E. Sherman, Esq.
Post Office Box 48
Deland, Florida 3272 1-0048
voice: (904) 734-345 I
fax: (904) 736- 1350
Fla. Bar #73402

John G. Grimsley, Esquire
50 North Laura Street
2 150 Barnett Center
Jacksonville, Florida 32202
voice: (904) 354-9900
fax: (904) 354-9994
Fla. Bar #32039

Steven L. Hearn, Esquire
Post Office Box 500
Tampa, Florida 3360 1
voice: (813) 223-9395
fax: (813) 221-1348
email: slh@ketcheyhoran.com
Fla. Bar #350801

By 
Rohan Kelley

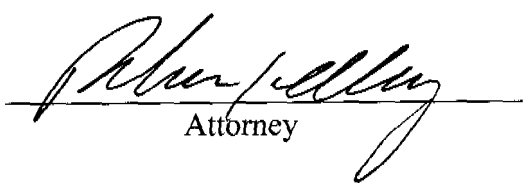
Certificate of Service

I certify that a copy of the foregoing has been furnished to:

John F. Harkness, Jr.
Executive Director
The Florida Bar
650 Apalachee Parkway
Tallahassee, Florida 32399-2300

Mignon Upchurch Beranek
Chair, Florida Rules of Judicial Administration
Committee
Office of the State Courts Administrator
Supreme Court
Tallahassee, Florida 32301

by U.S. mail on June 2, 1997.


Attorney