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FILED

W. J. WHITE

JUN 24 1997

IN THE SUPREME COURT OF FLORIDA

CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

IN RE: EMERGENCY PETITION TO AMEND
CURRENT PROVISIONS OF RULE 2.055(c),
FLORIDA RULES OF JUDICIAL ADMINISTRATION

CASE NO. 90,712

**RESPONSE OF THE RULES OF JUDICIAL ADMINISTRATION
COMMITTEE TO THE PETITION TO AMEND TO RULE 2.055(c)**

The Rules of Judicial Administration Committee of the Florida Bar submits this response to the Petition filed in this cause as follows:

The Petitioners filed their Petition on June 2, 1997, requesting this Court to review and amend the current provisions of Rule 2.055(c) of the Rules of Judicial Administration. Specifically, the Petitioners have requested the Court to consider amending subsection (c), which now requires the reservation of a three inch square on the first page of all papers to be filed with the clerk and subsequently recorded in the public records of any county, Petitioners seek to restrict application of the rule to only those papers by which the title to real property or any interest therein is conveyed, assigned, encumbered, or otherwise disposed of. In the alternative, the Petitioners have requested that the application of Rule 2.055(c) to documents or papers other than those specifically described in Section 695.29, Florida Statutes, on real estate conveyances be deferred until January 1, 1999.

On June 9, 1997, the Court requested that the Rules of Judicial Administration Committee of the Florida Bar file a Response to this Petition.

The Rules Committee had recommended the current language of Rule 2.055(c) as part of the 4-year cycle. This change concerned all real estate conveyances and all documents that would be recorded.

On April 7, 1995, the Rules of Judicial Administration Committee voted unanimously to approve in concept the recommendation of its subcommittee that Rule 2.055(c) be changed to require that "a pleading to be recorded" must have 3-inch square at the top right. (See Minutes, Rules of Judicial Administration Committee, March 7, 1995). This recommendation was not limited solely to real estate transfers, although the change was necessary to correspond to Section 695.26, which had been amended in 1994 to read:

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

In a letter to Rules of Judicial Administration Committee Chair Paul Regensdorf, subcommittee chair David Jones had explained the problem:

Apparently, Rule 2.055(c) was never amended for purposes of keeping it consistent with Section 695.26 and in any event, is still being chronically disregarded by practicing litigation attorneys and judges.

As a representative of the subcommittee, David Jones contacted several clerks offices around the state to determine whether the widespread noncompliance with this rule created

any procedural or operational difficulties for them. The consensus was that it does, but only with regard to documents which are recorded in the public records such as final judgments and notices of lis pendens. Judgments in particular are often recorded in several counties for the purposes of perfecting a lien on assets of the judgment debtor within those counties. Thus, when a single judgment is recorded in several counties and there is not sufficient room for the recording of information in the second and successive counties, it ends up being stamped over the text of the document and obscures its legibility. Furthermore, with the increased automation of the recording process in several counties, it becomes increasingly necessary to have the blank space for recording information located in a uniform place on all documents.

(letter from David Jones to Paul Regensdorf, March 14, 1995, emphasis added.) There are obviously numerous papers that the clerks are called upon to record which do not facially concern the transfer of real property. The petition currently before the Court points out some of them.

At its meeting on June 22, 1995, the Rules of Judicial Administration Committee voted unanimously to approve the final amendment to Rule 2.055(c):

(c) ~~A 1-1/2 inch square (1-1/2 by 1-1/2 inch square) 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 record of any county, including but not limited to final money judgments and notices of lis oendens, a a-inch by 3-inch space at the too riaht-hand corner on the first page and a i-inch by 3-inch. space at the too riaht hand corner of each subseauent oaae shall be left blank and reserved for use by the clerk of court.

The minutes stated: "The proposal is designed to make Rule **2.055(c)** consistent with a corresponding statute on the same subject matter." (Minutes, Rules of Judicial Administration Committee, June 22, 1995).

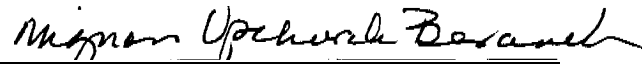
Since the adoption of the rule amendments in 1996, there has apparently been some confusion among the Clerks of Court as to the breadth of the new rule. Even though the rule expressly applies only to those documents which are to be subsequently recorded, some clerks have been requiring the reservation of a **3-inch** square on *all* pleadings and papers filed in the clerk's office. Therefore, further clarification might be helpful, although the text of the current rule seems clear.

The Rules of Judicial Administration Committee accordingly and respectfully advises the Court that the amending language proposed by Petitioners is consistent with -- but is narrower than -- the intent of the rules committee when it recommended the changes to Rule **2.055(c)** as part of the recent **4-year** cycle. The Committee expressly proposed that the three inch square was to be reserved for use by the clerk on *all* documents to *be* filed. . . and subsequently recorded." Petitioners point out that the Rules Committee argued that the amendment would render the rule consistent with the provisions of Section 695.26, Florida Statutes (**1995**), relating to recording instruments affecting real property. (See Amended Four Year Cycle Report of the Florida Bar Rules of Judicial Administration Committee). However, the proposed rule was, on its face, broader and reached all documents to be recorded.

The real problem raised by the Petitioners is the unfortunate fact that forms were

printed without the 3-inch square shortly before the effective date of the new rule. These forms are apparently revised annually (Petition, p.6). Certainly, a reasonable extension of the effective date of Rule 2.055(c) would address Petitioners' concerns and should be carefully considered. In addition, in view of the application of the new rule by some Clerks of Court to all papers filed with the clerk, whether or not they are subsequently recorded, clarifying amendments to the rule would apparently be useful.

Respectfully submitted this 24th day of June, 1997.



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CERTIFICATE OF SERVICE

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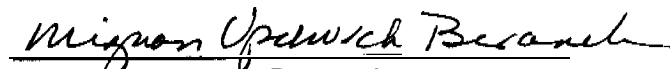
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by US. mail on June 24, 1997.


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