

In the Supreme Court of Florida

097

In Re
Amendment to
Florida Rules of
Judicial Administration

Case Number 90,712

FILED

STJ J. WHITE

JAN 5 1998

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

Petition to Amend the Florida Rules of Judicial Administration

Petitioners, John Arthur Jones and Steven L. Hearn allege:

1. This is a proceeding under rule 2.130(b) and (f) of the Florida Rules of Judicial Administration. This proceeding also is initiated as directed by this Court's July 17, 1997, opinion amending Rule of Judicial Administration 2.055(c) and directing that "any suggested modification of this rule be submitted to the Court on or before January 1, 1998." See In re: Amendment to Florida Rule of Judicial Administration 2.055(c), 697 So.2d 144 (Fla. 1997).

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

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

4. 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 and, over the past 20 years, has been principally responsible for drafting and maintaining these forms as a service to Florida lawyers.

5. Petitioner Hearn is 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

and is also the Probate Rules Committee representative member of the Rules of Judicial Administration Committee of The Florida Bar.

6. 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). 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.

7. After the amendments to the rule became effective, the clerk of the court for Volusia County 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 documents¹. A copy of the list of the documents requiring that recording space as provided by that clerk was attached as Appendix C to an "Emergency Petition to Amend the Florida Rules of Judicial Administration," Case Number 90,712, filed with this Court in June of 1997 (the "Emergency Petition"). That list also was being relied upon by the Clerks of Court in Polk and Sarasota Counties. The list includes several documents prepared by government agencies or other parties over whom the filing party has no control, including Wills, Codicils, communications from the Internal Revenue Service regarding estate tax matters ("Estate Tax Clearance Letter"),

¹ The clerks apparently have unilaterally decided to record several probate documents, notwithstanding the provisions of Florida Statutes Section 28.223, which provides for recording of specified probate documents and further states that "No other petitions, pleadings, papers, or other orders relating to probate matters shall be recorded except on written directions of the court."

"Nontaxable certificate" from the Florida Department of Revenue, and "Copies [of foreign wills] admitted to record." Although Rule 2.055(d) expressly states that "No clerk shall refuse for filing any document or paper because of noncompliance with this rule...", some Clerks of Court were specifically refusing to accept documents that did not contain the spacing required in Rule 2.055(c). For example, see 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 to the Emergency Petition, returning letters of administration for failure to have the 3" x 3" space.

8. 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.

9. In the Emergency Petition filed with this Court, the Petitioners, along with several other practitioners, requested that this Court amend the rule or suspend its application. In response to that Emergency Petition, the Rules of Judicial Administration Committee stated that the amendment was intended to be broader than the requirements of §695.26, *Florida Statutes*, but also acknowledged that "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." See "Response of the Rules of Judicial Administration Committee to the Petition to Amend to [sic] Rule 2.055(c)," In re: Emergency Petition to Amend Rules of Judicial Administration, Case No. 90.712, at page 5. This Court subsequently suspended the effective date of the Rule 2.055(c) amendment until January 1, 1999, and requested that any

proposed modifications to the rule be submitted to the Court. See In re: Amendment to Florida Rule of Judicial Administration 2.055(c), 697 So.2d 144 (Fla. 1997).

10. Petitioners propose that subsections (c) and (d) of rule 2.055 of the Florida Rules of Judicial Administration be amended to limit the application of the space requirement to papers over which the filing parties have control. Specifically, petitioners propose amending subsections (c) and (d) as follows:

(c) On all papers and documents prepared and filed by the court or by any party to a proceeding to be filed with the clerk of the court which are to be subsequently recorded subsequently 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.

(d) Any papers or documents created by persons or entities over which the filing party has no control, including but not limited to wills, codicils, trusts, or other testamentary documents; documents prepared or executed by any public officer; documents prepared, executed, acknowledged, or proved outside of the State of Florida; or documents created by State or Federal government agencies, may be filed without the space required by this rule.

(e) [text of former subparagraph (d) with no changes]

11. The proposed amendment attempts to strike a balance between the broad scope of the rule promulgated by the Rules of Judicial Administration Committee and the practical problems caused by a rule that can be interpreted to apply to many documents over which the filing party has no control.² The exceptions in the proposed new section (d) include several that are specifically exempted from the space requirement by Florida Statutes §695.26. See

² Some clerks have suggested simply attaching a blank cover sheet to any such documents. This procedure accomplishes only two goals: it increases the volume of paper in Court files and in the public records, and it increases the revenue for a clerk's office charging per page fees for recording. The former result is somewhat inconsistent with the spirit of Rule 2.055(a), which attempts to encourage less use of natural resources by requiring filing on recycled paper.

§§695.26(3)(c),(d)&(f), *Fla. Stat.* (1996). The proposed amendment preserves the broader scope intended by the Committee, while recognizing the specific statutory exceptions envisioned by the Florida Legislature.

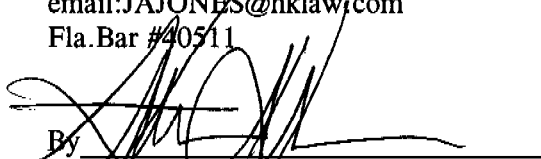
Wherefore, petitioners request that this court amend Rule of Judicial Administration 2.055(c) and (d) as described in paragraph 11 above.

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By


Steven L. Hearn

Certificate of Service

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

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The Honorable Marguerite Herr Davis
Chair, Florida Rules of Judicial Administration
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by U.S. mail on December 31, 1997.


Attorney