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IN THE SUPREME COURT OF THE STATE OF FLORIDA

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CLERK, SUPREME COURT
By ____________

CASE NO. 96,265

IN RE:

AMENDMENT TO THE FLORIDA RULES
OF JUDICIAL ADMINISTRATION
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RESPONSE OF THE
RULES OF JUDICIAL ADMINISTRATION COMMITTEE
OF THE FLORIDA BAR
AND
OPPOSITION TO EMERGENCY PETITION TO AMEND
FLORIDA RULE OF JUDICIAL ADMINISTRATION 2.052

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The Rules of Judicial Administration Committee of the Florida Bar [hereinafter referred to as the Committee], by and through the Honorable Scott J. Silverman, Chair, and Paul R. Regensdorf, Subcommittee Chair, files this Response and Opposition to the Emergency Petition to Amend Florida Rule of Judicial Administration 2.052 which has been filed with the Supreme Court by Frank A. Kreidler, a member of the Florida Bar, and John F. Harkness, Jr., Executive Director of the Florida Bar.

I. INTRODUCTION

The Committee files this Response to the above-described Petition, and respectfully opposes the Petition for four separate reasons.

A. Initially, as a matter of historical perspective, the Committee wishes to outline the purpose of the original Florida State-Federal Judicial Council Resolution Regarding Calendar Conflicts Between State and Federal Courts. This Resolution, approved January 13, 1995, was the genesis of Rule 2.052.

B. Secondly, the Committee, as the original promulgator of Rule 2.052, feels required to restate the intended purpose of the Rule as proposed to and approved by this Court in Amendments to the Florida Rules of Judicial Administration, 682 So. 2d 89 (Fla. 1996).

C. Thirdly, and probably most importantly, this Committee feels it imperative to delineate the reasons why the Rules of Judicial Administration Committee did not adopt or approve Mr. Kreidler's amendment which is the subject of this emergency petition.

D. Finally, should this Court be inclined to consider singling out cases involving the termination of parental rights (or any other type of case) for super priority status, then we respectfully suggest that this Court's consideration would be best accomplished in a setting **other** than an emergency rule change under Rule 2.130(a).

The Rules of Judicial Administration Committee is not insensitive to the importance of the prompt resolution of matters relating to the termination of parental rights, just as it is cognizant of the special status given the scheduling of civil suits brought by the elderly (Fla. Stat. §415.1115), the need for immediate hearings on involuntary placements of individuals thought to be mentally ill (Fla. Stat. §394.467), the public policy behind holding a final hearing on a domestic violence injunction on an expedited basis (Family Law Rules of Procedure, Rule 12.610), and the many other types of specific proceedings that are given various preferences on the dockets of state courts in the State of Florida, either by Legislative act, rule of procedure, or judicial decision.

This Committee is of the opinion that:

1. No "ranking" or "prioritization" of different types of specific proceedings should be incorporated into this or any other rule of procedure unless all other types of proceedings with priorities established by the legislature or the courts are evaluated and compared. Such a procedure would allow this Court to make informed decisions on the comparative priority of all such matters.

2. If this Court were to decide to undertake such an omnibus comparison (and this Committee does **not** recommend instituting that process), then such a comparison is probably not best accomplished in an emergency proposal to amend a general rule which gives broad guidelines to judges. Either the resolution of scheduling conflicts between individual types of cases that a lawyer might face should be addressed to the sound discretion of the trial or appellate judges faced with that conflict in a real world situation (this Committee's preference), or the global resolution of what priorities are more important than other priorities should be referred to this Committee or to a special commission, created by the Supreme Court and charged with evaluating and prioritizing all cases and hearings that warrant expedited treatment.

II. THE ORIGINAL 1995 STATE-FEDERAL RESOLUTION

In 1994-1995, the Florida State-Federal Judicial Council recognized a problem that was common to both judicial systems. Attorneys who practiced in both state and federal courts not infrequently found themselves with a court proceeding scheduled in one system which was in conflict with a separate proceeding in the other court system. The Judicial Council considered these calendaring conflicts and, on January 13, 1995, approved the Resolution which is contained, *in toto*, in the committee notes to Rule 2.052.

This 1995 Resolution is noteworthy for what it attempts to do, what it makes absolutely no attempt to do, and how it seeks to accomplish its goals.

A. The Resolution addresses only broad guidelines and makes no effort to itemize each and every (or even **any**) particular type of case that might be entitled to advancement on a docket when compared to a case without a statutory or procedural priority. The Resolution in fact does not attempt to give any absolute priority status to any type of proceeding or hearing. It was simply a set of principles for judicial use when comparing an attorney's two or more conflicting calendar obligations. The Resolution sought to assist the courts in resolving those conflicts in a manner most befitting the nature of the cases involved.

B. Obviously, no effort was made by the Judicial Council to create a matrix, a schedule of "priority values," or any other scheme that would dictate in advance how conflicts between any two specific types of cases, each of which had some public policy priority, would be resolved.

C. Instead, the Judicial Council left the specifics of any resolution of conflicts largely within the sound discretion of the involved judge or judges. Affected judges were directed to several general "case priorities," and then were told that the priorities "should be **considered**" (emphasis added) in resolving calendar conflicts. In short, a judge was directed to use his or her own discretion in deciding where an individual lawyer should first be required to appear; the judge was not directed to make a permanent policy decision among a variety of important issues in Florida jurisprudence. If the calendar conflict of the particular attorney was not easily resolved, then the judges scheduled to preside over the conflicting hearings were

directed to resolve the attorney's scheduling dispute among themselves. In practice, this procedure has proven workable and effective.

Again, it cannot be forgotten that the conflicts intended to be resolved by this Resolution are the personal scheduling conflicts of a lawyer who is required to be in no less than two different courts at the same time. The original State-Federal Resolution was never intended to address, or place an absolute priority upon, or evaluate the relative importance of the many different types of cases and hearings that are scheduled before a single judge (state or federal). The rule purposely did not establish a bright line ranking of the importance of individual cases and did not address the relative importance of any particular statutory or rule priority.

III. INITIAL PROPOSAL OF RULE 2.052 BY THE RULES OF JUDICIAL ADMINISTRATION COMMITTEE

When this Committee was presented with a copy of the Florida State-Federal Judicial Council 1995 Resolution, it believed that a corresponding rule should be incorporated into the Rules of Judicial Administration so as to assist state court judges and lawyers in appreciating how an individual lawyer's scheduling conflicts can be best and most fairly resolved.

After reviewing the issue, it was the Committee's opinion that the resolution of such conflicts was best left to the broad discretion of the affected judges, working within a broad set of guidelines to assist in the resolution of the conflicts. Secondly, the Committee determined that although some of the broad guidelines selected by the

Florida State-Federal Judicial Council were debatable[1], it made a great deal of sense to utilize the same guidelines in the state rule as in the State-Federal Resolution so as to ensure that all judges would use the same consideration.

On October 24, 1996, this Court, with little comment, approved the recommendation of the Rules of Judicial Administration Committee and adopted Rule 2.052 as proposed, noting that it would "set forth a procedure to be followed when an attorney has a scheduling conflict within the court system." No discussion or argument was made to this Court with respect to any individual case priorities. Rather, the rule was implemented as a set of broad guidelines to be utilized in an individual situation where an attorney had a conflict in his or her own personal schedule between two courts. No super priority for any type of case or proceeding was established.

IV. ACTION BY THE RULES OF JUDICIAL ADMINISTRATION COMMITTEE ON MR. KREIDLER'S PROPOSAL

The emergency petition **does not** fairly and accurately report the actions of the Rules of Judicial Administration Committee on the subject proposal.

Consistent with the internal procedures of the Committee, Mr. Kreidler's proposal, after being presented, was available for any member of the Committee to move its approval in concept (the first step in the approval process). No such motion

[1] For example, the State-Federal Resolution utilized as a guideline that "the case in which the trial date has been first set should take precedence." An argument could have been and was made that precedence should be given to the case that was **filed** first, but a desire for uniformity prevailed and the "case priorities" of the State-Federal Resolution were incorporated into Rule 2.052.

was made by any member of the Rules of Judicial Administration Committee and accordingly, the proposal was not approved nor was it the subject of any further Committee action.

The reasons for the Committee's rejection, or "nonapproval," of Mr. Kreidler's proposal are also not fully explicated in the emergency petition. Those members of the Committee who expressed their views sympathized with Mr. Kreidler on the importance of the issue that he so fervently advocates -- termination of parental rights proceedings are important and should receive prompt attention in the Florida court system. The Committee has two related reactions to the proposal. First, the Committee felt that Rule 2.052, a general rule to assist in the resolution of a lawyer's scheduling conflicts, is not the appropriate place to incorporate a super priority for cases involving the termination of parental rights, **or for any other particular type of proceeding**[2]. The rule is designed to be one of broad guidance for the judges in the State of Florida, leaving the ultimate resolution of individual conflicts up to the judges depending upon such priorities and characteristics as the cases involved might have, filtered through the judicious use of the court's broad discretion.

The Committee was also of the opinion that if there were going to be a "ranking" of the many types of proceedings and hearings that are given priorities in the State of Florida, then the process (1) should not be done as an emergency rule change,

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[2] In fact, if it is this Court's desire to give termination of parental rights cases, or any **other** type of case, a super priority, Rule 2.052 would not accomplish that result. The emergency petition would only create a priority in those matters in which a lawyer had a scheduling conflict, not in all circumstances.

(2) should not be done without a comprehensive analysis of **all** competing priorities, and (3) should not be done without giving interested persons who might advocate for other priorities an opportunity to advocate for the relative importance of other types of proceedings. For example, the Chair of the Elder Law Section of the Florida Bar could reasonably feel that the docket priority given civil actions involving elderly parties by Florida Statute §415.1115 should be given the highest priority in Florida. Had that Section of the Bar requested the Rules of Judicial Administration Committee to amend Rule 2.052 to place such actions by elderly persons at the "top" of the case priorities under Rule 2.052, it is believed that the response of the Committee would have been precisely the same as it was to Mr. Kreidler's petition.

At the meeting of the Committee where Mr. Kreidler's petition was formally considered, a subsequent motion regarding Rule 2.052 was made. It was moved and seconded that the Rule and/or its commentary note that the various priorities created by statute or rule should be considered by the involved judges, as well as the "case priorities" set forth in Rule 2.052. That motion failed by a vote of 7 to 11. The rationale for the rejection of that proposal was that the various priorities established by the legislature and by the courts for specific types of proceedings are generally known to the judiciary or can easily be brought to the involved judge's attention by the lawyer who has the scheduling conflict.

V. PROPOSED AMENDMENT DOES NOT APPEAR TO REQUIRE "EMERGENCY" TREATMENT UNDER RULE 2.130(a)

Finally, while the issue of termination of parental rights is certainly important in Florida, it does not appear to the Committee that the issue of the amendment to Rule 2.052 is appropriate for emergency consideration. The Bar is presently in the third year of its four-year cycle and a consideration of this issue, which singles out only one of numerous priorities recognized under Florida law for super priority status, would be best accomplished with some greater deliberation and broader participation. The Rules of Judicial Administration Committee was not formally represented at the time the Board of Governors of the Florida Bar approved Mr. Kreidler's proposal by a vote of 35 to 0. Consequently, the Committee cannot anticipate what the Bar's reaction would have been had other concerned advocacy groups or individuals sought to have the proceedings they favored inserted into Rule 2.052 as well.

The Bar may have received a full and complete presentation of the issues set forth in this Response from some other source and, if that occurred, then the 35 to 0 vote was a clear rejection of this Committee's views. On the other hand, if the Board of Governors received only the views of Mr. Kreidler, a concerned and devoted advocate for this cause, the broader views expressed in the Response may not have been heard.

To the knowledge of the Rules of Judicial Administration Committee, the Legislature has not directed that matters concerning the termination of parental rights should have super priority over all other types of proceedings pending anywhere in the

Florida court system. Chapter 39 certainly sets forth time limits at various stages of the proceeding and thus demonstrates the importance of these issues. As set forth above, however, there are other types of cases and other types of proceedings that have comparable legislative and judicial directives to expedite consideration.

This Committee does not in any way seek to denigrate the importance of cases involving the termination of parental rights, but respectfully suggests that this Court should not use this Rule amendment vehicle to create a super priority status for this, or any other, type of case or proceeding in Florida.

CONCLUSION

For the reasons set forth in the foregoing response, the Rules of Judicial Administration Committee respectfully suggests that the Emergency Petition to Amend Florida Rule of Judicial Administration 2.052 be denied.

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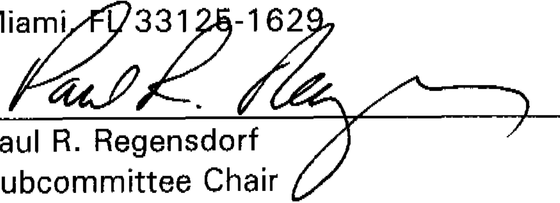

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true copy of the foregoing was furnished by mail this 30th day of September, 1999, to the individuals on the attached list.

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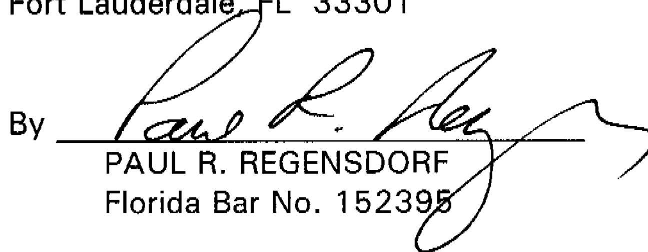

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