

ORIGINAL

IN THE SUPREME COURT OF FLORIDA

RE: AMENDMENTS TO THE FLORIDA RULE
OF JUDICIAL ADMINISTRATION 2.050, 2.075
AND 2.160 AND FORM OF JUDICIAL
ADMINISTRATION 2.901

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FILED
DEBBIE CAUSSEAU
FEB 01 2000
CLERK, SUPREME COURT
BY _____

CASE NO: SC99- 162

COMMENTS OF THE FAMILY LAW RULES COMMITTEE

Larry K. Coleman, Chair, Family Law Rules Committee, and John F. Harkness, Jr., Executive Director, The Florida Bar, file these comments in the above-styled case.

This matter was generally addressed by the Family Law Rules Committee, without having the benefit of the report of the Ad Hoc Committee, at the Midyear Meeting on January 14, 2000. After the full report was provided to the committee, the following comments were unanimously adopted by the Executive Committee by telephone conference call and affirmed by a fax vote of the full committee of 12-3.

The consensus of the Family Law Rules Committee, no vote being taken at that time in the absence of the formal report for review, was in accord with the conclusions of the Ad Hoc Committee as stated in part: "A key issue of concern is whether the Legislature can require the judiciary to report to an executive branch agency. The [Ad Hoc] Committee believes that under separation of power principles, the Legislature cannot require the judiciary to make such reports." Ad Hoc Committee Report, page 6.

Considering the issue of neutrality and disqualification of the judiciary, it is recommended that the Rules of Judicial Administration limit the requirement that notice be provided to the Department of Children and Family Services until a judicial determination or other adjudication has been made that a child is the victim of abuse, abandonment, or neglect. To require the provision of earlier notice necessarily requires a preadjudication determination, thereby removing the neutrality of the judge and thereby necessarily requiring disqualification of the reporting judge to proceed further concerning those issues. Any judicial notice provided to the Department of Children and Family Services should also be

provided to the parties and an appropriate amendment to the Rules of Judicial Administration should be made.

Based on these considerations, if the proposed addition of subparagraph (i) to Rule of Judicial Administration 2.050 is adopted, thereby requiring the reporting by the judiciary to the Department of Children and Family Services before an adjudication has been made, then the provisions as proposed to Rule of Judicial Administration 2.160(2) should not be made and instead the following addition should be made:

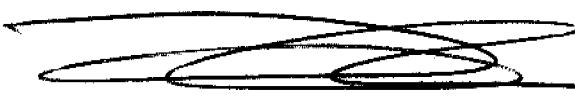
(2) A judge who issues a notice under rule 2.050(i) shall be disqualified solely on the basis of entering such a notice.

If Rule of Judicial Administration 2.050 is not amended and the proposed subparagraph (i) is not added, then the following proposed addition to Rules of Judicial Administration 2.160 should be added:


(2) A judge who provides notice to the Department of Children and Family Services that a child is a victim of abuse, abandonment, or neglect at the conclusion of an adjudicatory hearing shall not be disqualified solely on the basis of providing such notice.

No comments are made to the proposed legislation as these comments are limited to the proposed Rules of Judicial Administration.

Respectfully submitted January 28, 2000.



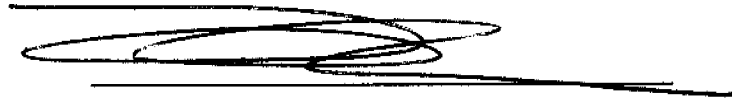
LARRY K. COLEMAN
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been provided by mail to Hon. Daniel P. Dawson, 2000 E. Michigan Street, Orlando, FL 32806; Hon. Robert Doyel, Polk County Courthouse, Post Office Box 9000, Bartow, FL 33831; Hon. Scott J. Silverman, 1351 N.W. 12th Street, Ste. 712, Miami, FL 33125 by U.S. mail on January 28, 2000.

A handwritten signature in black ink, appearing to read "LARRY K. COLEMAN", written over a horizontal line.

LARRY K. COLEMAN