

**SUPREME COURT OF FLORIDA**

**CASE NO. SC21-990**

**IN RE: AMENDMENTS TO FLORIDA  
RULES OF CIVIL PROCEDURE, FLORIDA RULES  
OF GENERAL PRACTICE AND JUDICIAL  
ADMINISTRATION, FLORIDA RULES OF  
CRIMINAL PROCEDURE, FLORIDA PROBATE RULES,  
FLORIDA RULES OF TRAFFIC COURT,  
FLORIDA SMALL CLAIMS RULES,  
AND FLORIDA RULES OF APPELLATE PROCEDURE**

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**COMMENT OF THE FLORIDA PROBATE RULES COMMITTEE**

Cady L. Huss, as Chair of the Florida Probate Rules Committee (FPR Committee), and Joshua E. Doyle, Executive Director of The Florida Bar, hereby submit the following comments to the Petition of the Workgroup on the Continuity of Court Operations and Proceedings During and After COVID-19 (“the Workgroup”) to Amend the Florida Rules of Civil Procedure, Florida Rules of General Practice and Judicial Administration, Florida Rules of Criminal Procedure, Florida Probate Rules, Florida Rules of Traffic Court, Florida Small Claims Rules, and Florida Rules of Appellate Procedure filed with this Court on July 1, 2021.

**I. Fla. R. Gen. Prac. & Jud. Admin. 2.530. Communication  
Technology**

The Rules of General Practice and Judicial Administration apply to administrative matters in all courts. One of the rules edited by the Workgroup and the Florida Rules of General Practice and Judicial Administration Committee (RGPJA Committee) is Fla. R. Gen. Prac. & Jud. Admin. Rule 2.530 regarding communication technology. The Probate Rules Committee commends the Workgroup and the Rules of General Practice and Judicial Administration Committee on their hard work and substantial edits to Rule 2.530.

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The FPR Committee generally agrees with the edits proposed by the RGPJA Committee to the Workgroup's proposal on rule 2.530. The FPR Committee further emphasizes the importance of authorizing communication technology in "all proceedings before a court official" as opposed to just "trial court proceedings" as trial court proceedings is not a defined term and may create ambiguity as to which proceedings this rule would apply. Substantial probate and guardianship matters are addressed by general magistrates and these hearings may not be captured by this rule. The FPR Committee believes the intent is for all proceedings before a court official to be covered by this rule.

The FPR Committee suggests one additional change to Rule 2.530(b)(2)(D):

(D) Limitation on the Form of Communication Technology Used. If the mental capacity or competency of a person is at issue in the proceeding, only audio-video communication technology may be authorized for the presentation of testimony of that person.

Guardianship proceedings in Florida involve the "capacity" of a person. A proceeding begins with a petition to determine incapacity pursuant to Fla. Prob. R. 5.550 and Section 744.3201, Florida Statutes. "Incapacitated person" is defined in Section 744.102(12), Florida Statutes. The FPR Committee believes it is necessary to require audio-video communication technology for the presentation of testimony by a person whose capacity is at issue and the inclusion of the terminology used in guardianship proceedings avoids any ambiguity.

## **II. Fla. Prob. R. 5.080 Discovery, Subpoena, and Taking Testimony**

The Workgroup concluded that the significant edits to Fla. R. Gen. Prac. & Jud. Admin. 2.530 relieve the need for Fla. R. Civ. P. 1.451 regarding testimony. Florida Probate Rule 5.080 notes that several rules of civil procedure apply to guardianship and probate proceedings, including Rule 1.451. The Workgroup proposes to remove reference to Rule 1.451 in Rule 5.080 in anticipation of the deletion of Rule 1.451 from the Florida Rules of Civil Procedure.

The FPR Committee, by a vote of 28-0, is agreeable to the Workgroup's edit to Rule 5.080 only if the edits proposed by the Workgroup and RGPJA Committee to Rule 2.530 are adopted. Once the edits to Rule 2.530 are adopted and Rule 1.451 is deleted, Rule 5.080 can be edited. The FPR Committee wants to ensure testimony is always authorized in probate and guardianship proceedings and that Rule 5.080 is not edited before there is another rule in place that authorizes testimony.

When the edits to Rule 2.530 are adopted and Rule 1.451 is deleted, the FPR Committee recommends modifying the title of Rule 5.080 to remove reference to taking testimony. The rule title should read:

**RULE 5.080.      DISCOVERY, AND SUBPOENA, AND TAKING  
TESTIMONY**

WHEREAS, based upon the reasons stated above, the Florida Probate Rules Committee requests the Court consider this Comment and adopt the revisions to the Fla. R. Gen. Prac. & Jud. Admin. 2.530 and Fla. Prob. R. 5.080, as modified by the Comment of the Florida Probate Rules Committee.

Respectfully submitted on September 30, 2021 by

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I certify that this comment was prepared in compliance with the font requirements of Florida Rule of Appellate Procedure 9.045(b).

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