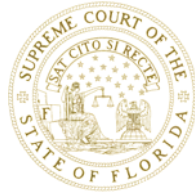


RECEIVED, 03/07/2022 07:21:24 PM, Clerk, Supreme Court

**APPENDIX C**

**CRIMINAL COURT STEERING COMMITTEE  
THE HONORABLE DEBRA J. RIVA, CHAIR**



# Supreme Court of Florida

500 South Duval Street  
Tallahassee, Florida 32399-1925

CHARLES T. CANADY  
CHIEF JUSTICE  
RICKY POLSTON  
JORGE LABARGA  
C. ALAN LAWSON  
CARLOS G. MUÑIZ  
JOHN D. COURIEL  
JAMIE R. GROSSHANS  
JUSTICES

JOHN A. TOMASINO  
CLERK OF COURT

SILVESTER DAWSON  
MARSHAL

July 14, 2021

The Honorable Debra J. Riva  
Chair, Criminal Court Steering  
Committee  
Post Office Box 48927  
Sarasota, Florida 34230

Dear Judge Riva:

The Workgroup on the Continuity of Court Operations and Proceedings During and After COVID-19 recently completed its charge to propose amendments to the Florida Rules of Court in order to implement its recommendations to establish permanent, broader authorization for the remote conduct of court proceedings.<sup>1</sup> While the Workgroup was refining its proposal, Workgroup member Sheriff Dennis Lemma, on behalf of the Florida Sheriffs Association, raised an issue relating to the use of audio-video communication technology to conduct depositions in criminal cases. As further discussed below, I request that the Criminal Court Steering Committee review the Florida Sheriffs Association's concerns.

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<sup>1</sup> See *In re: 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*, Supreme Court Case No. 21-990 (filed July 1, 2021).

Sheriff Lemma expressed concern that photographs or audiovisual recordings of depositions in criminal court proceedings could result in the widespread release of images or videos of witnesses, such as victims of crime or law enforcement officers, for the purpose of harassment.<sup>2</sup> Although relief to protect the identity of a witness during a deposition may currently be sought by a motion for protective order pursuant to Florida Rule of Criminal Procedure 3.220(l), Sheriff Lemma believes this case-by-case solution will be inadequate over the long term given that the use of audio-video communication technology to conduct depositions is likely to increase significantly in the future.<sup>3</sup> To address this issue, Sheriff Lemma has proposed rule amendments that would prohibit the photographing and audiovisual recording of witnesses at most depositions in criminal cases.<sup>4</sup>

The Workgroup reviewed this matter and determined that issues relating to the protection of witness identities during depositions require in-depth consideration by subject matter experts and may exceed the Workgroup's scope of authority.<sup>5</sup> Therefore, as recommended by the Workgroup, I am referring this issue to the Criminal Court Steering Committee for review. The Steering Committee should determine whether existing procedures and laws are adequate to address this matter or whether amendment of the rules of procedure or other action by the Supreme Court is warranted. In conducting this review, the Steering Committee should consult with Florida Bar rules committees, other court committees, and other justice stakeholders, as needed.

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<sup>2</sup> See Attachment A at pages A-1, A-2, and A-10 through A-15.

<sup>3</sup> *Id.* at page A-2.

<sup>4</sup> *Id.* at pages A-3, A-6, and A-9 (proposing the amendments shown in green font to Florida Rule of Civil Procedure 1.310(b) and Florida Rule of Criminal Procedure 3.220(h)).

<sup>5</sup> See Attachment B at pages B-1 through B-2.

Honorable Debra J. Riva  
July 14, 2021  
Page 3

If the Steering Committee determines that rule amendments are warranted, it should file those via petition with the Clerk of the Supreme Court of Florida by December 31, 2021. If the Steering Committee finds that rule amendments are not warranted or recommends other action be taken, it should report those findings and recommendations by December 31, 2021.

Sincerely,

  
Charles T. Canady

CTC:TW:dgh

Attachments

cc: Justice John D. Couriel, Liaison, Criminal Court Steering  
Committee  
Chief Judge Lisa T. Munyon, Chair, Workgroup on the  
Continuity of Court Operations and Proceedings During  
and After COVID-19  
Lisa Kiel, State Courts Administrator  
John A. Tomasino, Clerk, Florida Supreme Court  
Diane West, Director of Central Staff, Florida Supreme Court  
C. Erica White, General Counsel, Office of the State Courts  
Administrator  
Bart Schneider, Senior Attorney II, Office of the State Courts  
Administrator



June 22, 2021

Tina White, J.D.  
Chief, Innovations and Outreach Unit  
Office of the State Courts Administrator  
Supreme Court Building  
500 South Duval Street  
Tallahassee, FL 32399  
Via e-mail: whitet@flcourts.org

**RE: Proposed additions to Draft Rule amendments by the Civil and Criminal Subgroups for Workgroup meeting set Thursday, 06/24/21.**

Dear Ms. White,

As currently written, the criminal discovery rules only address videotaped depositions of sensitive witnesses. However, the criminal rules also provide that the civil rules apply where not addressed in the criminal rules. The current and proposed rules essentially allow for depositions to be videotaped without leave of the court or any stipulation by the parties.

Attached, please find a suggested draft amendment to Florida Rule of Civil Procedure 1.310 and Florida Rule of Criminal Procedure 3.220. I have shared my concerns for law enforcement depositions being allowed to be videotaped in my previous letters. In an effort to draft a proposal that might resolve this concern, it became evident that this is a concern reaching well beyond witnesses within the law enforcement community.

Currently, Florida Statute Chapter 119 provides protections for a variety of state personnel. Law enforcement personnel are only a part of the group who are provided statutory protection of their photographic image. Separate from state personnel, certain crime victims are also afforded the protection of their identity. These victims include victims of sexual battery, aggravated child abuse, aggravated stalking, harassment, aggravated battery, and domestic violence. Also illustrative is Florida Statute Chapter 119, which makes any information held by law enforcement in a videotaped statement of a minor who is alleged to be, or who is, a victim of sexual battery, lewd acts, or other sexual misconduct proscribed in Chapter 800 or in s. 794.011, s. 827.071, s. 847.012, s. 847.0125, s. 847.013, s. 847.0133, or s. 847.0145, which reveals that minor's identity, including, but not limited to, the minor's face confidential and exempt from disclosure.

Provisions protecting a victim's identity have been expanded with the enactment of Marsy's Law, which provides identity protection for all crime victims. There are also non-victim witnesses in criminal cases, such as confidential informants, whose identity should not be permitted to be memorialized and shared by videotape. The Public Records law only applies to records held by a public agency.

It is clear that “communication technology” is here to stay and should be embraced for various reasons. Although already allowed under the civil rules, videotaping depositions was not a practice used in criminal depositions. However, with the emergence of remote depositions using platforms supporting new and existing communication technology, the videotaping of criminal depositions is becoming a tool sought to be used by attorneys conducting criminal discovery depositions.

In the proposed amendments, nothing prohibits a party from videotaping a deposition of witnesses and victims whose identity is exempt and, in many cases, made confidential from disclosure under the public records law. A law enforcement or governmental agency with possession of protected identity information cannot disclose this information, but an attorney who conducts a criminal deposition and videotapes it may disclose it to others, and there is nothing to preclude their further disclosure even onto a social media platform.

One purpose of identity type exemptions in Chapter 119, and in Marsy’s Law, is to protect a person from harassment. Videotaped depositions allow people to be visually identified within the community on a large scale and would defeat the purpose of the exemptions in Chapter 119 and in Marsy’s Law.

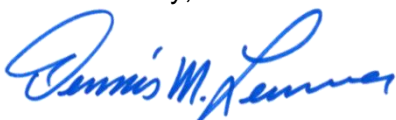
The current and proposed Rules do not address these concerns. Given the expansion into video technology and the expected widespread continued use of video technology to conduct depositions, I think it is best to address these concerns now.

As the representative Sheriff on behalf of the Florida Sheriff’s Association, I request that going forward, the Rules of Criminal and Civil Procedure be amended further to address these concerns by adopting the additional revisions made in the attachment.

Audio/video recordings of criminal depositions should not be permitted. We need to protect witnesses and victims involved in the criminal court process from harassment and from having their image potentially placed into the public domain. Allowing videotaped depositions may have a detrimental effect upon crime victims and undermine the sanctity of the actual court proceedings. It will enable these preliminary proceedings to be used to “try the case” in the public, therefore compromising the fair and impartial determination of cases on the merits.

The proposed Rule Amendments did not contain any materials related to the Rules of Juvenile Procedure but these similar concerns and draft changes should be considered in these rules as well.

Sincerely,



Dennis M. Lemma  
Sheriff, Seminole County

## **RULE 1.310. DEPOSITIONS UPON ORAL EXAMINATION**

### **(b) Notice; Method of Taking; Production at Deposition.**

(1) A party desiring to take the deposition of any person on oral examination must give reasonable notice in writing to every other party to the action. The notice must state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced under the subpoena must be attached to or included in the notice.

(2) Leave of court is not required for the taking of a deposition by plaintiff if the notice states that the person to be examined is about to go out of the state and will be unavailable for examination unless a deposition is taken before expiration of the 30-day period under subdivision (a). If a party shows that when served with notice under this subdivision that party was unable through the exercise of diligence to obtain counsel to represent the party at the taking of the deposition, the deposition may not be used against that party.

(3) For cause shown the court may enlarge or shorten the time for taking the deposition.

(4) Except as provided in subdivision (b)(9) a Any deposition may be audiovisually recorded ~~by videotape~~ without leave of the court or stipulation of the parties, provided the deposition is taken in accordance with this subdivision.

**(A) Notice.** In addition to the requirements in subdivision (b)(1), Aa party intending to ~~videotape~~audiovisually record a deposition must:

i. ~~state in the notice~~ that the deposition is to be ~~videotaped~~ audiovisually recorded in the title of the notice; and

ii. identify the method for audiovisually recording the deposition and must give, if applicable, provide the name and address of the operator of the audiovisual recording equipment in the body of the notice.

Any subpoena served on the person to be examined must ~~state the method or methods for recording the testimony~~ include the information required for the notice in subdivision (b)(4)(A).

**(B) Stenographer.** ~~Videotaped~~ Audiovisually recorded depositions must also be recorded stenographically, unless all parties agree otherwise.

**(C) Procedure.** At the beginning of the deposition, the officer before whom it is taken must, on camera: (i) identify the style of the action, (ii) state the date, and (iii) ~~swear~~ put the witness under oath as provided in subdivision (c)(1).

**(D) Custody of Tape** Responsibility for Recordings and Copies. The attorney for the party or the pro se party requesting the videotaping audiovisual recording of the deposition ~~must take custody of and be~~ responsible for the safeguarding of the videotape recording, must permit the viewing of it by the opposing party, and, if requested, must provide access to a copy of the videotape recording at the expense of the party requesting the copy.

**(E) Cost of Videotaped** Audiovisually Recorded Depositions. The party requesting the videotaping audiovisual recording must bear the initial cost of videotaping the recording.

(5) The notice to a party deponent may be accompanied by a request made in compliance with rule 1.350 for the production of documents and tangible things at the taking of the deposition. The procedure of rule 1.350 applies to the request. Rule 1.351 provides the exclusive procedure for obtaining documents or things by subpoena from nonparties without deposing the custodian or other person in possession of the documents.

(6) In the notice a party may name as the deponent a public or private corporation, a partnership or association, or a governmental agency, and designate with reasonable particularity the matters on which examination is requested. The organization so named must designate one or more officers, directors, or managing agents, or other persons who consent to do so, to testify on its behalf and may state the matters on which each person designated will testify. The persons so designated must testify about matters known or reasonably available to the organization. This subdivision does not preclude taking a deposition by any other procedure authorized in these rules.

(7) A deposition may be taken by communication technology, as that term is defined in Florida Rule of General Practice and Judicial Administration 2.530, if stipulated by the parties or if ordered by the court on its own motion or ~~On~~ motion the court may order that the testimony at a deposition be taken by telephone of a party. The order may prescribe the manner in which the deposition will be taken. A party may also arrange for a stenographic transcription at that party's own initial expense. In addition to the requirements of subdivision (b)(1), a party intending to take a deposition by communication technology must:

(A) state that the deposition is to be taken using communication technology in the title of the notice; and

(B) identify the specific form of communication technology to be used and provide instructions for access to the communication technology in the body of the notice.

Any subpoena served on the person to be examined must include the information required for the notice in subdivision (b)(7).

(8) Any minor subpoenaed for testimony has the right to be accompanied by a parent or guardian at all times during the taking of testimony notwithstanding the invocation of the rule of sequestration of section 90.616, Florida Statutes, except on a showing that the presence of a parent or guardian is likely to have a material, negative impact on the credibility or accuracy of the

minor's testimony, or that the interests of the parent or guardian are in actual or potential conflict with the interests of the minor.

(9) No deposition of active or former sworn law enforcement personnel or of active or former civilian personnel employed by a law enforcement agency, including correctional and correctional probation officers may be audio visually recorded when appearing in their official capacity. Nor may any photograph be taken of said person as a result of his or her appearance at a deposition taken by communication technology in his or her official capacity.

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## **RULE 3.220. DISCOVERY**

### **(h) Discovery Depositions.**

**(1) Generally.** At any time after the filing of the charging document any party may take the deposition upon oral examination of any person authorized by this rule. A party taking a deposition shall give reasonable written notice to each other party and shall make a good faith effort to coordinate the date, time, and location of the deposition to accommodate the schedules of other parties and the witness to be deposed. The notice shall state the time and the location where the deposition is to be taken, the name of each person to be examined, and a certificate of counsel that a good faith effort was made to coordinate the deposition schedule. After notice to the parties the court may, for good cause shown, extend or shorten the time and may change the location of the deposition. Except as provided herein, the procedure for taking the deposition, including the scope of the examination, and the issuance of a subpoena for deposition by an attorney of record in the action, shall be the same as that provided in the Florida Rules of Civil Procedure and section 48.031, Florida Statutes. Any deposition taken pursuant to this rule may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness. The trial court or the clerk of the court may, upon application by a pro se litigant or the attorney for any party, issue subpoenas for the persons whose depositions are to be taken. In any case, including multiple defendants or consolidated cases, no person shall be deposed more than once except by consent of the

parties or by order of the court issued on good cause shown. A witness who refuses to obey a duly served subpoena may be adjudged in contempt of the court from which the subpoena issued.

(A) The defendant may, without leave of court, take the deposition of any witness listed by the prosecutor as a Category A witness or listed by a co-defendant as a witness to be called at a joint trial or hearing. After receipt by the defendant of the Discovery Exhibit, the defendant may, without leave of court, take the deposition of any unlisted witness who may have information relevant to the offense charged. The prosecutor may, without leave of court, take the deposition of any witness listed by the defendant to be called at a trial or hearing.

(B) No party may take the deposition of a witness listed by the prosecutor as a Category B witness except upon leave of court with good cause shown. In determining whether to allow a deposition, the court should consider the consequences to the defendant, the complexities of the issues involved, the complexity of the testimony of the witness (e.g., experts), and the other opportunities available to the defendant to discover the information sought by deposition.

(C) A witness listed by the prosecutor as a Category C witness shall not be subject to deposition unless the court determines that the witness should be listed in another category.

(D) No deposition shall be taken in a case in which the defendant is charged only with a misdemeanor or a criminal traffic offense when all other discovery provided by this rule has been complied with unless good cause can be shown to the trial court. In determining whether to allow a deposition, the court should consider the consequences to the defendant, the complexity of the issues involved, the complexity of the witness' testimony (e.g., experts), and the other opportunities available to the defendant to discover the information sought by deposition. However, this prohibition against the taking of depositions shall not be applicable if following the furnishing of discovery by the defendant the state then takes the statement of a listed defense witness pursuant to section 27.04, Florida Statutes.

**(2) Transcripts.** No transcript of a deposition for which the state may be obligated to expend funds shall be ordered by a party unless it is in compliance with general law.

**(3) Location of Deposition.** Depositions of witnesses residing in the county in which the trial is to take place shall be taken in the building in which the trial shall be held, such other location as is agreed on by the parties, or a location designated by the court. Depositions of witnesses residing outside the county in which the trial is to take place shall be taken in a court reporter's office in the county or state in which the witness resides, such other location as is agreed on by the parties, or a location designated by the court.

**(4) Depositions of Sensitive Witnesses.** Depositions of children under the age of 18 shall be videotaped unless otherwise ordered by the court. The court may order the videotaping of a deposition or the taking of a deposition of a witness with fragile emotional strength, or an intellectual disability as defined in section 393.063, Florida Statutes, to be in the presence of the trial judge or a special magistrate.

**(5) Depositions of Law Enforcement Officers.** Subject to the general provisions of subdivision (h)(1), law enforcement officers shall appear for deposition, without subpoena, upon written notice of taking deposition delivered at the physical address of the law enforcement agency or department, or an e-mail or other address designated by the law enforcement agency or department, 5 days prior to the date of the deposition. Law enforcement officers who fail to appear for deposition after being served notice as required by the rule may be adjudged in contempt of court.

**(6) Witness Coordinating Office/Notice of Taking Deposition.** If a witness coordinating office has been established in the jurisdiction pursuant to applicable Florida Statutes, the deposition of any witness should be coordinated through that office. The witness coordinating office should attempt to schedule the depositions of a witness at a time and location convenient for the witness and acceptable to the parties.

**(7) Defendant's Physical Presence.** A defendant ~~shall~~may not be physically present at a deposition except on stipulation of the parties or as provided by this rule. The court may order the physical presence of the defendant on a showing of good cause. The court may consider:

(A) the need for the physical presence of the defendant to obtain effective discovery;

(B) the intimidating effect of the defendant's presence on the witness, if any;

(C) any cost or inconvenience which may result; and

(D) any alternative ~~electronic~~or audio/visual means communication technology available.

**(8) Telephonic Statements.** On stipulation of the parties and the consent of the witness, the statement of any witness may be taken by telephone in lieu of the deposition of the witness. In such case, the witness need not be under oath. The statement, however, shall be recorded and may be used for impeachment at trial as a prior inconsistent statement pursuant to the Florida Evidence Code.

**(9) Videotaping of Depositions.** Although telecommunication technology may be used for depositions, no depositions in a criminal case may be videotaped except as provided in subdivision (h) (4). Depositions videotaped as authorized in subdivision (h) (4) shall be held under seal without further order and shall not be further disseminated without approval by the court. Additionally, no photograph may be taken of any person as a result of his or her appearance at a deposition in a criminal case.

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June 21, 2021

Tina White, J.D.  
Chief, Innovations and Outreach Unit  
Office of the State Courts Administrator  
Supreme Court Building  
500 South Duval Street  
Tallahassee, FL 32399  
Via e-mail: [whitet@flcourts.org](mailto:whitet@flcourts.org)

RE: Input pertaining to draft rules petition that addresses the proposed rule amendments by the Civil, Court Operations, and Criminal Subgroups for Workgroup meeting set Thursday, 6/24/21.

Dear Chief White,

I have reviewed the materials provided. Although I am not an attorney so may have an incomplete understanding of the Rules, the expanded use of audio-visual technology has raised questions and concerns for law enforcement. I shared these concerns in my previous letter dated March 29, 2021 a copy of which I have included again here.

My review of the most recent materials has focused on the Rules of Criminal Procedure particularly Rule 3.220 addressing Discovery; Rule of and Civil Procedure 1.310 addressing Depositions upon Oral Examination and Rule 2.530 addressing Communication Technology. I have focused on these areas given the law enforcement concern over videotaped depositions.

The proposals define the following:

- (1) "Audio communication technology" means electronic devices, systems, applications, or platforms that permit all participants to hear and speak to all other participants in real time.
- (2) "Audio-video communication technology" means electronic devices, systems, applications, or platforms that permit all participants to hear, see, and speak to all other participants in real time.
- (3) "Communication technology" means audio communication technology or audio-video communication technology.

It appears that the only difference between "Audio communication technology" and "Audio-video communication technology" is that the later also allows the parties to see each other.

Florida Rule of Criminal Procedure 3.116(b) says that *Use of communication technology in proceedings subject to the Florida Rules of Criminal Procedure is governed by this rule, except that rules 3.130(a), 3.160(a), 3.180(b), 3.220(h), and 3.851(f) govern the use of audio-video communication technology in the manner authorized by those rules.*

Rule of Criminal Procedure 3.220 is unchanged for the most part. In reviewing Florida Rule of Criminal Procedure 3.220(h) which addresses Discovery Depositions it continues to refer to the Rules of Civil Procedure to address discovery depositions.

Proposed amendments to Florida Rule of Civil Procedure 1.310 addressing Depositions upon Oral Examination would delete the reference to videotaping a deposition and instead refer to audiovisually recording a deposition.

Proposed Rule 1.310 (b) (4) provides that *any deposition may be audiovisually recorded without leave of the court or stipulation of the parties, provided the deposition is taken in accordance with this subdivision.*

Proposed Rule 1.310 (b) (7) then later states that *a deposition may be taken by communication technology, as that term is defined in Florida Rule of General Practice and Judicial Administration 2.530, if stipulated by the parties or if ordered by the court on its own motion or on motion of a party. The order may prescribe the manner in which the deposition will be taken. In addition to the requirements of subdivision (b)(1), a party intending to take a deposition by communication technology must: (A) state that the deposition is to be taken using communication technology in the title of the notice; and (B) identify the specific form of communication technology to be used and provide instructions for access to the communication technology in the body of the notice. Any subpoena served on the person to be examined must include the information required for the notice in subdivision (b)(7).*

Paragraphs (4) and paragraphs (7) appear to contradict each other and at best are confusing. We also continue to have concerns for any rule that allows for the deposition of law enforcement officers, in both civil and criminal cases to be videotaped, particularly without leave of the court and allowing a party to have control and possession of said videotape without any controls on the ability to disseminate the tape into the public domain. I raise this because of the related problem we face with depositions being conducted on ZOOM, GOTOMEETING or other platforms. It has also come to my attention that some attorneys believe that use of these platforms authorizes their own videotape of the deposition, even of law enforcement witnesses.

In the current, as well as proposed amendments to Rule 2.530, the issue of whether a party can maintain their own separate video recording of the proceeding is not addressed. Nor does the Rule address any confidentiality concerns for the witnesses.

For example, Florida Statutes Section 119.071(4)(d)2.a. provides in relevant part: *The home addresses, telephone numbers, dates of birth, and photographs of active or former sworn law enforcement personnel ... are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.*

The purpose of the law enforcement exemption in Chapter 119 is the protection of law enforcement personnel from harassment. This is a concern for any law enforcement officer. A videotape, whether it be of a court proceeding or a deposition, is more likely to make its way out into the public domain compared to a written copy of a deposition transcript or audio recording. Additionally, a videotaped proceeding contains the officer's face making him or her clearly identifiable and places at risk future assignments particularly in any undercover capacity. It also allows the law enforcement officer to be visually identified within the community on a large scale and would defeat the purpose of the exemption in Chapter 119. Video tapes are also more likely to be altered or edited creating additional problems.

The current and proposed Rules do not address these concerns. Given the expansion into video technology and the expected widespread continued use of video technology to conduct depositions, I think it is best to address these concerns. Videotaping of any portion of any hearing or any deposition of a law enforcement officer leaves open the possibility that a participant could screen shot the law enforcement officer's image and/ or create their own copy of the videotaped proceeding.

As the representative Sheriff on behalf of the Florida Sheriff's Association, I request that the Rules of Judicial Administration and hopefully the Rules of Criminal and Civil Procedure going forward, for depositions prohibit the facial video recording of any law enforcement officer without the officer's consent except when necessary to confirm the officer's identity for the purpose of placing the officer under oath. No party or participant should be permitted to maintain a separate videotape of the officer's testimony or to screen shot the officer's face.

For court hearings, no party should be permitted to maintain their own copy of a video hearing of a law enforcement officer. Any copy requested from the official court record should not be provided without the facial image being redacted or at a minimum, restricted to prevent further disclosure.

With the widespread use of social media platforms, and the availability of audio-video recordings being available to enter these forums, undermines the sanctity of the actual court proceedings. It also allows these preliminary proceedings to be used to "try the case" in the public thus compromising the fair and impartial determination of cases on the merits.

Sincerely,



DENNIS M. LEMMA  
Sheriff, Seminole County

Sheriff Dennis M. Lemma



March 30, 2021

Tina White, J.D.  
Chief, Innovations and Outreach Unit  
Office of the State Courts Administrator  
Supreme Court Building  
500 South Duval Street  
Tallahassee, FL 32399  
Via e-mail: [whitet@flcourts.org](mailto:whitet@flcourts.org)

RE: Input pertaining to Materials for Joint Meeting of Court Operations and Civil Subgroups on  
Wednesday, 3/31 from 3:00 to 4:30

Dear Chief White,

Although I will not be able to attend the meeting on Wednesday, I wanted to bring up a few questions and concerns regarding the general topic of audio- video communication equipment. Albeit, I am not an attorney so may not have complete understanding of the Rules of Judicial Administration, the expanded use of audio-visual technology will raise questions as the use of such equipment becomes more prevalent in lieu of live courtroom testimony.

In the current, as well as proposed amendments to Rule 2.530, the issue of whether a party can maintain their own separate video recording of the proceeding is not addressed. Nor does the Rule address any confidentiality concerns for the witnesses. I raise this because of the related problem we face with depositions being conducted on ZOOM, GOTOMEETING or other platforms. Since COVID, this has become more and more prevalent. It has also come to my attention that some attorneys believe that use of these platforms authorizes their own videotape of the deposition, even of law enforcement witnesses.

For example, Florida Statutes Section 119.071(4)(d)2.a. provides in relevant part: *The home addresses, telephone numbers, dates of birth, and photographs of active or former sworn law enforcement personnel ... are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.*

Currently, the Florida Rules of Criminal Procedure only address video depositions of sensitive witnesses and provides in Rule 3.220(h)4: *Depositions of Sensitive Witnesses. Depositions of children under the age of 18 shall be videotaped unless otherwise ordered by the court. The court may order the videotaping of a deposition or the taking of a deposition of a witness with fragile emotional strength, or an intellectual*

*disability as defined in section 393.063, Florida Statutes, to be in the presence of the trial judge or a special magistrate.*

The general rule regarding discovery depositions in criminal cases is in Florida Rule of Criminal Procedure 3.220(h)(1). This Rule provides in part: *Except as provided herein, the procedure for taking the deposition, including the scope of the examination, and the issuance of a subpoena for deposition by an attorney of record in the action, shall be the same as that provided in the Florida Rules of Civil Procedure and section 48.031, Florida Statutes.*

Florida Rule of Civil Procedure 1.310(b) does address depositions and even makes reference to videotaped depositions and provides: *(4) Any deposition may be recorded by videotape without leave of the court or stipulation of the parties, provided the deposition is taken in accordance with this subdivision.*

The purpose of the law enforcement exemption in Chapter 119 is the protection of law enforcement personnel from harassment. This is a concern for any law enforcement officer. A videotape, whether it be of a court proceeding or a deposition, is more likely to make its way out into the public domain compared to a written copy of a deposition transcript or audio recording. Additionally, a videotaped proceeding contains the officer's face making him or her clearly identifiable and places at risk future assignments particularly in any undercover capacity. It also allows the law enforcement officer to be visually identified within the community on a large scale and would defeat the purpose of the exemption in Chapter 119. Video tapes are also more likely to be altered or edited creating additional problems.

Administrative Order AOSC20-106 Electronic Court Proceeding Standards adopted the Standards and Best Practices for Electronic Court Proceedings proposed by the Florida Courts Technology Commission.

The current and proposed Rules do not address these concerns. Given the expansion into video technology and the expected widespread continued use of videoconferencing and video hearings as a means to conduct court, I think it is best to address these concerns.

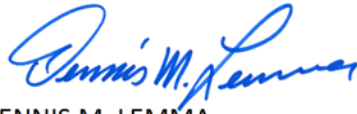
Videotaping of any portion of any hearing or any deposition of a law enforcement officer leaves open the possibility that a participant could screen shot the law enforcement officer's image and/ or create their own copy of the videotaped proceeding.

As the representative Sheriff on behalf of the Florida Sheriff's Association, I request that the Rules of Judicial Administration and hopefully the Rules of Criminal and Civil Procedure going forward, for depositions prohibit the facial video recording of any law enforcement officer without the officer's consent except when necessary to confirm the officer's identity for the purpose of placing the officer under oath. No party or participant should be permitted to maintain a separate videotape of the officer's testimony or to screen shot the officer's face.

For court hearings, no party should be permitted to maintain their own copy of a video hearing of a law enforcement officer. Any copy requested from the official court record should not be provided without the facial image being redacted or at a minimum, restricted to prevent further disclosure.

With the widespread use of social media platforms, and the availability of audio-video recordings being available to enter these forums, undermines the sanctity of the actual court proceedings. It also allows these preliminary proceedings to be used to “try the case” in the public thus compromising the fair and impartial determination of cases on the merits by persons not influenced by pre-trial exposure.

Sincerely,

A handwritten signature in blue ink that reads "Dennis M. Lemma". The signature is written in a cursive style with a large initial 'D' and 'L'.

DENNIS M. LEMMA  
Sheriff, Seminole County

## MINUTES

### WORKGROUP ON THE CONTINUITY OF COURT OPERATIONS AND PROCEEDINGS DURING AND AFTER COVID-19

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June 24, 2021

#### I. Welcome/Opening Remarks

***Members present:***

State Attorney Philip Archer  
Chief Judge Kimberly Bonner  
Judge Hope Bristol  
Clerk Stacy Butterfield  
Attorney Jay Cohen  
Marshal Daniel DiGiacomo  
Public Defender Howard (“Rex”) Dimmig  
Chief Judge Kevin Emas  
Court Technology Officer Gary Hagan  
Trial Court Administrator Charles Hydovitz  
Judge Christopher Kelly  
Judge Don Lester  
Judge Janeice Martin  
Chief Judge Michael McHugh  
Judge Lisa Munyon, Chair  
Clerk John Tomasino

***Others present:***

John Couch, OSCA  
Paul Flemming, OSCA  
Debbie Howells, OSCA  
State Courts Administrator Elisabeth Kiel  
Eric Maclure, OSCA  
Dustin Metz, OSCA  
Tina White, OSCA

Judge Munyon welcomed the members and staff. The Workgroup’s term is scheduled to expire on July 2, which coincides with completion of the rule amendments project. She said this meeting is an opportunity to identify any concerns with or proposed edits to the proposed petition and rule amendments, including the matters discussed in Sheriff Lemma’s letters. Judge Munyon also noted that rules petition procedures require documentation of votes and any dissents; therefore, roll call votes will be taken on those items.

Chief Judge McHugh moved, Judge Bristol seconded, and the minutes of the May 27, 2021, meeting were approved without objection.

#### II. Rules Petition and Proposed Rule Amendments

Judge Munyon provided an overview of Sheriff Lemma’s written input and proposed rule amendments; observed that a motion for protective order is the current way to address the situation described in letters; and opened the floor for comments.

Judge Lester moved, because the matters raised in Sheriff Lemma’s correspondence require more in-depth consideration and may exceed the Workgroup’s scope of authority, that the Workgroup recommend that the Chief Justice or Supreme Court consider referring those issues to the Court’s Criminal Court Steering Committee or The Florida Bar’s Criminal Procedure Rules Committee for

consideration. Chief Judge McHugh seconded the motion. A roll call vote was taken with all members present voting in favor of the motion, with the exception of the chair who abstained.

Judge Munyon then directed the members' attention to the rules petition package provided in the meeting materials. She opened the floor to discussion of the revisions that had been made to the petition. The addition of background information was one of the changes, and Judge Bristol observed that was very helpful. Additionally, the language on page eight had been edited to incorporate suggestions from Mr. Cohen. There were no questions or suggested further edits to the petition.

Next, the Workgroup addressed each proposed rule individually. Tina White provided a brief explanation of the rule, which was followed by an opportunity for questions, comments, and edits, if any.

On proposed rule 1.310, Chief Judge Emas asked about the different language in (b)(4)(A) and (b)(7). Ms. White explained that one rule relates to recording a deposition and one relates to the use of communication technology to conduct a deposition.

There were no questions or suggested edits to rules 1.320, 1.430, 1.440, 1.451, 1.700, 1.720, 1.730, 1.750, 2.256, 2.451, 2.515, and 2.516.

On rule 2.530, Chief Judge Bonner inquired whether conforming language had been used regarding the term "judge." Ms. White noted that a definition of "court official" is provided.

Proposed rule 3.116 is a new rule. A brief discussion ensued, for clarification purposes, regarding the difference in the language between (e)(1) and (e)(2) ("taken" and "present").

There were no questions or suggested edits to proposed rules 3.130, 3.160, and 3.180.

Chief Judge Emas proposed editing the language in rule 3.180(a)(2), for clarity, so that it reads "when a plea is made, unless a written plea of not guilty has been made in writing under the provisions of rule 3.170(a)." There were no objections to this change.

Public Defender Dimmig initiated the Workgroup's discussion and thoughtful consideration of the proposed change to Rule of Criminal Procedure 3.191(I), Speedy Trial, Exceptional Circumstances. Rule of General Practice and Judicial Administration 2.205 currently vests in the Chief Justice the power, in the event of a natural disaster or other emergency situation requiring the closure of the courts, to suspend, toll, or otherwise grant relief from deadlines imposed by rules of procedure, including the speedy trial rule. The proposed rule amendment would allow every trial judge to make an individual decision, he said. Public Defender Dimmig said the existing rule has worked well through hurricanes and a variety of other emergency situations, and he does not believe this change is necessary. Chief Judge Emas noted that each of the six current "exceptional circumstances" enumerated in rule 3.191(I) are case-specific, but this proposed exceptional circumstance is not, and is instead based upon a circumstance applicable to the entire courthouse (or perhaps the entire county or circuit). Chief Judge Emas was wary of granting individual judges the authority to extend speedy trial in individual cases under such circumstances, although he would not object to a proposal granting a chief judge such authority. State Attorney Archer noted there could be an emergency that would affect only one courtroom. Judge Martin added that various issues were considered and discussed by the subgroup. Workgroup members discussed the idea of moving the proposed rule from the Criminal Rules to the

Rules of Judicial Administration and placing the discretion with the chief judge rather than individual judges. Judge Martin suggested limiting the amount of time for the chief judge's authority before requiring that the matter be elevated to the Chief Justice. Chief Judge Bonner said the purpose of the proposal was to address new issues, which had not been contemplated prior to the pandemic; however, she understands the need for some uniformity within a circuit and is open to options. Judge Kelly added that the subgroup had spent a lot of time discussing this proposal, the purpose of which was to clarify how exceptions might apply to newly identified issues. He went on to observe that the chief judge is usually involved in such decisions, anyway, but said he is not necessarily opposed to removing this proposal.

Public Defender Dimmig moved that the proposed amendment to 3.191(*l*) be removed from the petition, and Chief Judge Emas seconded the motion. A roll call vote was taken, and the motion passed with the following members voting in favor: State Attorney Archer, Chief Judge Bonner, Judge Bristol, Clerk Butterfield, Mr. Cohen, Marshal DiGiacomo, Public Defender Dimmig, Chief Judge Emas, Mr. Hagan, Mr. Hydovitz, Judge Kelly, Judge Lester, Judge Martin, Chief Judge McHugh, and Clerk Tomasino. Judge Munyon abstained, and no members voted in opposition.

There were no questions or suggested edits to rules 3.220, 3.851, 5.080, 6.140, 6.340, 7.090, 7.100, 7.140, and 7.150.

When the Workgroup reached the proposed amendments to the Rules of Appellate Procedure (9.320, 9.700, 9.720, and 9.740), Chief Judge Emas thanked Clerk Tomasino and Marshal DiGiacomo for obtaining input from all the appellate courts on these proposals.

The Workgroup talked about remote oral argument procedures and discussed potential scenarios. Clerk Tomasino suggested using the term "opposing party" rather than "opposing counsel" in proposed rule 9.320(e)(2) to articulate that it includes self-represented litigants. There were no objections to this change.

Judge Munyon asked whether any members wished to make a motion to propose an amendment to Rule of General Practice and Judicial Administration 2.215(b) to address the exceptional circumstances language that was removed (see above motion for removal of proposed amendments to Rule of Criminal Procedure 3.191(*l*)). No motion was offered.

Judge Kelly made a motion to approve the entire petition and rule proposal packet, as revised during the meeting and reflected in these minutes. Chief Judge Emas seconded the motion. The motion passed with the following members voting in favor: State Attorney Archer, Chief Judge Bonner, Judge Bristol, Clerk Butterfield, Mr. Cohen, Marshal DiGiacomo, Public Defender Dimmig, Chief Judge Emas, Mr. Hagan, Mr. Hydovitz, Judge Kelly, Judge Lester, Judge Martin, Chief Judge McHugh, and Clerk Tomasino. Judge Munyon abstained, and no members voted in opposition.

Judge Munyon thanked the members and staff for their attention to detail and hard work on the proposed rule amendments. She anticipates the petition will be filed this week or next, and she spoke briefly about potential next steps with the petition and court case.

### **III. Wrap Up/Adjourn**

Judge Munyon announced the Workgroup will not meet next week, as their assignments have been completed.

Chief Judge Emas expressed appreciation to Judge Munyon, Ms. Kiel, and the OSCA staff. He said he was grateful for and appreciative of the tremendous job they had done throughout the Workgroup's tenure.

There being no further business, Clerk Tomasino moved, Chief Judge Bonner seconded, and the meeting was adjourned without objection.