

IN THE SUPREME COURT OF FLORIDA

**IN RE: AMENDMENTS TO THE FLORIDA
RULES OF JUDICIAL ADMINISTRATION**

CASE NO.: SC03-105

COMMENTS OF THE FLORIDA TRIAL COURT STAFF ATTORNEYS ASSOCIATION ON PROPOSED AMENDMENTS TO FLORIDA RULE OF JUDICIAL ADMINISTRATION 2.060(b)

Beth M. F. Terry, President, Florida Trial Court Staff Attorneys Association, files these comments on behalf of the Association:

The Florida Trial Court Staff Attorneys Association (hereinafter “Association”) is commenting only on the proposed amendments to Rule 2.060(b) as these proposals directly affect our positions. The Association addresses the amendments in the same order as addressed in the report of the Florida Rules of Judicial Administration Committee.

First, the Association is strongly in favor of the proposal to update the titles of the court employees to “staff attorney, law clerk, or judicial assistant.” As stated in the report of the Florida Rules of Judicial Administration Committee (hereinafter “Committee”), this proposal updates the titles for the current positions of judicial staff.

Second, the Association is in favor of deleting the prior language that was unduly restrictive on the private practice of former staff attorneys or law clerks, i.e., “nor participate in any manner in any proceeding that was docketed in the court during the term of service or prior thereto.” The Association agrees with the Committee that this provision was a severe limit without consideration to the knowledge of, or participation by, the former staff attorney or law clerk with the specific matter. The Association is in favor of the language prohibiting representation of “anyone in connection with a matter in which the attorney participated personally and substantially as a judicial staff attorney, law clerk, or judicial assistant.”

However, the Association is concerned about the broad, prefatory language in the sentence “[a]n attorney shall not represent anyone in connection with a matter in which the

attorney participated personally and substantially as a judicial staff attorney, law clerk, or judicial assistant.” Fla. R. Jud. Admin. 2.060(b) (proposed Jan. 23, 2003) (emphasis added). The Association asserts that the broad usage of “[a]n attorney” can reasonably be interpreted to mean a current staff attorney or law clerk. Thus, this language would prohibit a current staff attorney or law clerk, designated by the court, from representing the court or judge with a matter that the staff attorney or law clerk participated personally and substantially, and in essence, defeat the purpose of the third proposed amendment to Florida Rule of Judicial Administration 2.060(b). For example, a current staff attorney who researched and drafted a contract or administrative order for the court would be prevented from representing the court in a matter regarding such contract or order although that staff attorney would be in the best position to effectively and efficiently handle the matter for the court. Therefore, the Association suggests that this broad, prefatory language be revisited and amended by the Committee to clearly state that the prohibition on representation is on an attorney formerly employed by the court, rather than *all* staff attorneys.

Third, the Association is in favor of the Committee’s clarification that it is permissible for staff attorneys to represent the court or judges in their official capacity. The Association is aware that this clarification was requested due to the widely followed practice in trial and appellate courts that have court counsel positions, i.e., attorney positions which solely handle administrative matters for the court and chief judges. The Association is also aware that the wording “any attorney designated by the court” was used rather than court counsel due to the impending and unknown changes resulting from revision under Article V.

However, the Association is vexed about the broad language used in this amendment, i.e., “[a]ny attorney designated by the court may represent the court . . .,” in light of the first line of Rule 2.060(b), “[n]o one serving as a staff attorney, law clerk, or judicial assistant to a justice or judge of any court shall practice as an attorney in any court or before any agency of government while continuing in that position.” Fla. R. Jud. Admin. 2.060(b) (proposed Jan. 23, 2003) (emphasis added). The Association contends that the term “[a]ny attorney” in this amendment

does not clearly lift the prohibition against the practice of law by staff attorneys in matters which the court or judge is an interested party. Thus, the Association recommends that this language be clarified by the Committee to unmistakably state that any staff attorney or law clerk designated by the court may practice as an attorney in any court or before any governmental agency when representing the court or a judge in the judge's official capacity.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy hereof has been furnished to the Honorable Peter D. Webster, Chair, Florida Rules of Judicial Administration Committee, First District Court of Appeal, 301 Martin Luther King Blvd., Tallahassee, FL 32399-1850, and John F. Harkness, Jr., Executive Director, The Florida Bar, 650 Apalachee Parkway, Tallahassee, FL 32399-2300, by U.S. Mail on March 14, 2003.

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