

IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO THE FLORIDA RULES OF WORKERS= COMPENSATION PROCEDURE	CASE NO: SC04-110
---	-------------------

COMMENT OF
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS,
DIVISION OF ADMINISTRATIVE HEARINGS
AND
PROPOSAL FOR RULE ABROGATION AND AMENDMENT

The Division of Administrative Hearings (DOAH), Office of the Judges of Compensation Claims (OJCC), files this comment in the captioned action, and proposes under Florida Rule of Judicial Administration 2.130(b)(1) that the Court declare the entire set of the Florida Rules of Workers=Compensation Procedure previously adopted by the Court to be abrogated by operation of law and repeal the same, and amend the Florida Rules of Judicial Administration to delete references to any Workers=Compensation Rules Committee.

TABLE OF CONTENTS

I. LEGAL AND HISTORICAL BACKGROUND..... 4

A. WORKERS=COMPENSATION RULEMAKING BY THE COURT..... 4

B. THE 1994 CHANGE IN DIRECTION..... 6

C. THE 2001 AMENDMENTS TO CHAPTER 440..... 8

D. THE OJCC ADMINISTRATIVE RULES PROCESS..... 10

E. THE WORKERS' COMPENSATION RULES COMMITTEE..... 13

F. THE BOARD OF GOVERNORS..... 15

II. THE STATUTORY BASIS FOR OJCC-S RULEMAKING AUTHORITY..... 16

III. THE COMMITTEE-S ERRORS IN ASSERTING JURISDICTION..... 17

A. SECTION 440.29(3) BECAME SUPERSEDED BY OPERATION OF SECTION 440.45(4) WHEN THE NEW RULES TOOK EFFECT..... 18

B. THE OJCC RULES ARE AUTHORIZED BY CHAPTER 440; CHAPTER 120 ONLY SUPPLIED THE RULEMAKING PROCEDURE 20

C. ADMINISTRATIVE PROMULGATION OF A COMPLETE SET OF PROCEDURAL RULES IS ONE OF THE PURPOSES OF SECTION 440.45. 21

D. THE RELATIVE AQUALIFICATIONS@ OF THE COMMITTEE AND THE OJCC HAVE NO BEARING ON THE LEGAL QUESTION AT ISSUE. 22

E. THE COURT-S ARTICLE V, SECTION 2(A) AUTHORITY DOES NOT APPLY BECAUSE THE OJCC IS NOT A COURT. 23

IV. CONCLUSION AND PROPOSALS 25

A. PROPOSED AMENDMENT TO THE FLORIDA RULES OF WORKERS=
COMPENSATION PROCEDURE..... 25

B. PROPOSED AMENDMENT TO THE FLORIDA RULES OF JUDICIAL
ADMINISTRATION..... 26

I. LEGAL AND HISTORICAL BACKGROUND

A. WORKERS=COMPENSATION RULEMAKING BY THE COURT

In 1974, the workers=compensation law required the Supreme Court of Florida to adopt procedural rules for the executive branch adjudications by the Judges of Compensation Claims. Ch. 74-197, ' 16, Laws of Fla.; ' 440.29(3), Fla. Stat. (1974). On several occasions since then, the Court has adopted rules proposed by a committee of The Florida Bar, in a process identical to that employed for rules governing judicial branch adjudications. During the period when workers=compensation hearings and appeals were conducted wholly within administrative tribunals,¹ the Court cited a statutory basis for its exercise of rulemaking authority.² In a dissent to the opinion adopting statutorily authorized rules in 1977,³ Justice England questioned the constitutionality of the statute directing judicial branch officials to make rules for executive branch proceedings. There being no alternative provision for making procedural rules in place, the Court continued to employ the rules procedure applicable to the judicial branch.

After 1979, the First District Court of Appeal obtained jurisdiction over workers=compensation appeals. Thereafter, the appellate part of the litigation governed by the rules proceeded before Acourts,@implicating the

¹ Until 1979, appeals from workers=compensation judges were heard by the Industrial Relations Commission, itself an administrative body exercising essentially judicial functions. *Scholastic Systems v. LeLoup*, 307 So. 2d 166 (Fla. 1974).

² *In Re Workmen= Compensation Rules of Procedure*, 343 So. 2d 1273 (Fla. 1977); *In Re Florida Workers=Compensation Rules of Procedure*, 374 So. 2d 981 (Fla. 1979).

³ 343 So. 2d at 1274.

Supreme Court's exclusive authority to make court rules. Art.V, ' 2(a), Fla. Const. Over the next three rulemaking proceedings, the Court made no reference to the source of its authority⁴ although in 1988 it did cite the procedures prescribed by Florida Rule of Judicial Administration 2.130. In 1992, the Court first explicitly cited Article V, Section 2(a) as the source of its rulemaking authority. *In Re: Amendments to Florida Rules of Workers= Compensation Procedure*, 603 So. 2d 425 (Fla. 1992). The Court continued to cite a constitutional basis for rulemaking, even though appellate rules were severed from the remainder of the rules in 1996.

After the 1996 *Amendments to the Florida Rules of Appellate Procedure*, 685 So. 2d 773, 776 (Fla. 1996), appeals from orders of the Judges of Compensation Claims WC were governed by the general appellate rules, subject to the specialized provisions of Florida Rule of Appellate Procedure 9.180. The Court deleted the appellate provisions from the workers=compensation rules shortly thereafter. *In re Amendments to the Florida Rules of Workers' Compensation Procedure*, 686 So. 2d 1357 (Fla. 1997). In the rulemaking instances since then, the Court has adverted to Article V, Section 2(a) as the source of its jurisdiction.⁵ In 2000 and again in 2002, the Court did adopt Bar-proposed amendments, citing the constitutional rulemaking authority using the same language that is employed in all of the Court's other rulemaking proceedings.⁶ From the Court's

⁴ *In re Florida Workers' Compensation Rules*, 390 So.2d 698 (Fla. 1980). *In re Florida Workers' Compensation Rules of Procedure*, 460 So. 2d 898 (Fla. 1984); *In re Florida Workers' Compensation Rules of Procedure*, 535 So. 2d 243 (Fla. 1988).

⁵ *In re Florida Workers' Compensation Rules of Procedure*, 795 So. 2d 863 (Fla. 2000); *In re Florida Workers' Compensation Rules of Procedure*, 829 So. 2d 791 (Fla. 2002).

⁶ E.g., AWe have for consideration the biennial report of proposed

opinions in those cases, there is no indication any of the comments raised the question of the Court's jurisdiction to make rules for an executive branch agency.

B. THE 1994 CHANGE IN DIRECTION

In 1994, the controversy over the constitutional status of workers=compensation adjudication came to a head. The Court decided a landmark separation-of-powers case, *Jones v. Chiles*, 638 So. 2d 48 (Fla. 1994), and the legislature, in the spirit of Justice England's 1977 dissent, re-allocated workers=compensation rulemaking authority to an executive branch agency, the OJCC. Ch. 93-415, ' 40, Laws of Fla.

In *Jones*, a Judge of Compensation Claims (JCC) contended that the legal principles applicable to executive branch officials generally did not apply to the JCCs because they were "more judicial than quasi-judicial," citing *Scholastic Systems v. LeLoup*, 307 So. 2d 166 (Fla. 1970). The Court emphatically rejected that contention, unequivocally holding that the OJCC is not a "court" and that the JCCs are executive branch officials. Accordingly, *Jones* implies the Court's Article V, Section 2(A) rulemaking authority for courts could not apply to executive-branch workers=compensation cases.

While *Jones* was pending, the legislature amended the workers=compensation law to allocate rulemaking responsibility to an executive branch agency:

The Office of the Judges of Compensation Claims shall promulgate rules to effect the purposes of this section. Such rules shall include procedural rules applicable to workers' compensation claim

amendments filed by The Florida Bar's Appellate Court Rules Committee (Committee). We have jurisdiction. See art. V, ' 2(a), Fla. Const.; Fla. R. Jud. Admin. 2.130(c).*In Re: Amendments to the Florida Rules of Appellate Procedure*, 827 So. 2d 888 (Fla. 2002).

resolution. The workers' compensation rules of procedure approved by the Supreme Court shall apply until the rules promulgated by the Office of the Judges of Compensation Claims pursuant to this section become effective.

Ch. 93-415, ' 40, Laws of Fla.; ' 440.45(5), Fla. Stat.

A few years later, the OJCC set out some Uniform Practices and Procedures (UPPs) that by their terms complemented and did not displace the rules the Court had adopted. Practitioners and unrepresented litigants thus had to consult four bodies of law to determine procedure: the statute's procedural provisions, the case law, the rules adopted by the Court, and the UPPs . As of 2001, Section 440.45's directive to promulgate a set of executive branch rules sufficiently comprehensive to replace the rules promulgated under the authority of the judicial branch had still not been implemented.

C. THE 2001 AMENDMENTS TO CHAPTER 440

The 2001 amendments to Chapter 440 made the OJCC a unit of DOAH and created the office of the Deputy Chief Judge of Compensation Claims as head of the OJCC. Ch. 2001-91, Laws of Fla. In early 2002, the Director of DOAH and the Deputy Chief Judge of Compensation Claims determined to implement the statutory directive. In particular, the two officials together concluded that the UPPs were insufficient in light of the provision in Section 440.45(4) that manifested a specific intent to replace the process by which the Court adopted rules under Section 440.29(3): The workers' compensation rules of procedure approved by the Supreme Court apply until the rules adopted by the Office of the Judges of Compensation

Claims pursuant to this section become effective.⁶ That language was taken as an express directive to OJCC to prescribe rules of procedure for workers= compensation cases. It led to the conclusion that the new rules would need to be of plenary scope because they would stand in place of, not in addition to, the rules that had been adopted by the Court.

This conclusion was reinforced by other rulemaking directives in various locations in the statute that require executive branch rulemaking. For example, Section 440.192 affords the Deputy Chief Judge authority to specify the method of filing petitions for benefits and of responding to them, and Section 440.25 grants the Deputy Chief Judge rulemaking authority over motion practice and expedited hearing practice.⁷ These provisions are consistent with the concept of executive branch rulemaking for an executive branch agency and inconsistent with the notion that the Court has exclusive jurisdiction to make rules governing workers= compensation cases.

D. THE OJCC ADMINISTRATIVE RULES PROCESS

At the outset, it was determined that the rulemaking process provided by Chapter 120 should be followed, even if (as some argued) the Chapter 120 rulemaking process does not apply by virtue of Section 440.021. DOAH was of the opinion that the law required application of Chapter 120, Section 440.021 notwithstanding. Even if the law does not require use of the Chapter 120 rulemaking process, some procedure for enacting rules would still be

⁷ In order to obviate any question about whether a given rule was within the general grant of rulemaking authority under ' 440.45(4) or the subject matter specific grants contained elsewhere, then-Director Smith and Deputy Chief Judge Stephens determined to sign all rulemaking documents jointly. This determination was also intended to obviate any question about which official was responsible for the general rulemaking under ' 440.45(4), before that issue was addressed by the 2002 amendments to Chapter 440.

needed, and the Chapter 120 process would have been chosen.

There is no question that the rulemaking procedure under Chapter 120 affords due process; it requires multiple meaningful public notices and multiple opportunities for any person, lawyer and non-lawyer, to be heard. Moreover, the Chapter 120 process contains safeguards designed to ascertain that there is legislative authority for every rule being promulgated, providing for an independent review of the agency's statutory authority by the Joint Administrative Procedures Committee (JAPC). ' 120.545, Fla. Stat. (2001).

A Notice of Rulemaking Activity was published August 16, 2002. Administrative Law Judges Linda M. Rigot and T. Kent Wetherell, II, performed the bulk of the intellectual work in creating the preliminary draft of the rules, using the then-current workers=compensation rules of procedure approved by this Court as the base document. The preliminary draft was provided to workers=compensation practitioners, insurance carriers, judges of compensation claims, and advocacy groups for employees. It was also posted on the OJCC website. Three workshops in different parts of the state were scheduled and publicized with advertisements in several major newspapers in addition to the Florida Administrative Weekly.

While the rulemaking process was underway, the Workers Compensation Section of The Florida Bar filed a ASuggestion for Writ of Prohibition@ with the Court, Case No. SC02- 2209, seeking to halt the executive branch rule promulgation. The Section took the position that the Florida Constitution required the Court to exercise exclusive rulemaking authority over the workers=compensation cases. DOAH responded to the Suggestion (a copy of the response is appended as exhibit 1 and

incorporated by reference), observing that the status of the workers= compensation judges had been resolved in *Jones v. Chiles*. Since a writ of prohibition in the Supreme Court can only be directed to a court, Art. V, ' 3(b)(7) and (8), Fla. Const., Fla. R. App. P. 9.030(a)(3), the Court treated the Suggestion as a Petition for Writ of Mandamus which can be issued to a Astate officer or agency@. *Id.* The Court did not stay the administrative process,⁸ and the workshops took place on schedule.

A substantial amount of informed commentary was received at each of the workshops. The first took place in Ft. Lauderdale on September 29, 2002, with Judges Stephens, Rigot, and Wetherell on the dais. Workers= Compensation Rules Committee Chair Jeffrey Jacobs, Esq., spoke at length on ways the preliminary draft could be improved and adapted to the realities of workers= compensation practice. Many other practitioners and members of the Rules Committee attended and/or spoke at this workshop and also at the workshops conducted subsequently in Orlando and in Tallahassee.

After the workshops, the rules were extensively re-drafted to reflect the concerns expressed at the workshops and in written comments filed by members of the Rules Committee and other practitioners. A new draft was circulated among the Judges of Compensation Claims and other interested persons, and the Deputy Chief Judge of Compensation Claims traveled the state to meet with many of the judges and solicit ideas for shaping the final draft in a way that would improve the claim resolution process. These additional comments were then used by Judges Rigot and Wetherell to create the final draft of the rules, which was published on January 3, 2003, in the Florida Administrative Weekly and on the OJCC website. The Executive

⁸ The court dismissed the action without prejudice on January 9, 2003.

Committee of the Conference of Judges of Compensation Claims sent a letter expressing the judges' endorsement of the proposed rules.

After the proposed rules were published, a public hearing on them was held in Tallahassee and members of the Rules Committee again attended and/or spoke. The rules were filed for adoption on February 3, 2003; both the DOAH Director and the Deputy Chief Judge signed the operative documents. The rules became effective on February 23, 2003.

E. THE WORKERS' COMPENSATION RULES COMMITTEE

The Workers' Compensation Rules Committee of The Florida Bar is recognized in the Florida Rules of Judicial Administration, and required by those rules to file a report on a biannual cycle, again in keeping with the process that applies to Article V courts. Fla. R. Jud. Admin. 2.130(c)(1). Apparently refusing to recognize the responsibility of the OJCC to make procedural rules that take the place of the rules that have historically been adopted by the Court, the Committee simply proposed amendments to the rules that the Court had previously adopted, rules that had been expressly superseded by Florida Administrative Code Rule 60Q-6.101.

During the period for making comments on the proposed amendments, DOAH⁹ filed a comment with the Rules Committee. A true copy of that comment (which differs slightly from the Committee's Appendix 2) is appended as exhibit 2 and incorporated by reference.

⁹ The comment was signed by the Interim Director of DOAH. The Committee Report characterizes the comment as being submitted by the Deputy Chief Judge of Compensation Claims, as does Appendix 1 to the Committee Report. The Committee's confusion likely arises from the fact that the Deputy Chief Judge of Compensation Claims was temporarily serving as Interim Director of DOAH at the time the comment was submitted.

The DOAH comment noted the amendments to Section 440.45(4), in particular the one sentence that makes clear the legislative intent to abolish court rulemaking and replace it with executive branch rulemaking: **A**The workers' compensation rules of procedure approved by the Supreme Court apply until the rules adopted by the Office of the Judges of Compensation Claims pursuant to this section become effective.**@** As the administratively promulgated rules had become effective, the comment continued, the Supreme Court rules had become superseded by operation of law and no further amendments to those ineffective rules would be proper. The judges had endorsed the new rules, and the sources to which practitioners and litigants look for procedures reflected the new rules. The comment concluded that the only action the committee could take consistent with law would be to report to the Court that the statute had nullified the function for which the committee existed, and that the old rules should be formally repealed. The Committee Report indicates the Committee did not consider the comment because it had already considered **A**the issue**@** and decided to ignore the statute.

F. THE BOARD OF GOVERNORS

The Committee submitted its report to the Board of Governors, which took the unusual¹⁰ step of forwarding it to the Court without first approving the rules. Notably, the Board considered several other Rules Committee reports at the same meeting, and affirmatively approved them. *E.g., In Re:*

¹⁰ Under the Rules of Judicial Administration, **A**the board of governors shall consider the proposals and *shall vote* on each proposal to recommend acceptance, rejection, or amendment.**@** Fla. R. Jud. Admin. 2.130(c)(3) (emphasis added). According to the Committee, the Board simply did not follow that directive in this case.

Amendments to the Florida Rules of Traffic Court, No. SC04-101; *In Re: Amendments to the Florida Rules of Evidence*, No. SC04-103. Thus, the Committee's proposal appears before the Court without the backing of the Board of Governors.

The question, of course, is not whether the Committee has the backing of the Bar in general, but whether the rulemaking authority has been legislatively re-allocated to the OJCC, and if so, whether that action is constitutionally valid. As the following section demonstrates, the legislative intent to require the OJCC to promulgate procedural rules is unmistakable, and more consistent with separation-of-powers provisions of the Florida Constitution than the scheme it replaces.

II. THE STATUTORY BASIS FOR OJCC'S RULEMAKING AUTHORITY

The statutory language is explicit:
The Office of the Judges of Compensation Claims *shall adopt rules to effect the purposes of this section*. Such rules shall include procedural rules applicable to workers' compensation claim resolution and uniform criteria for measuring the performance of the office, including, but not limited to, the number of cases assigned and disposed, the age of pending and disposed cases, timeliness of decisionmaking, extraordinary fee awards, and other data necessary for the judicial nominating commission to review the performance of judges as required in paragraph (2)(c). *The workers' compensation rules of procedure approved by the Supreme Court apply until the rules adopted by the Office of the Judges of Compensation Claims pursuant to this section become effective.*

' 440.45(4), Fla. Stat. (2003) (emphasis added). In addition, there are some scattered provisions affording subject-specific rulemaking responsibility directly to the Deputy Chief Judge, whether specifically cast as rulemaking, e.g. Section 440.25(4)(g) and (h), or as **Approving** a method for

accomplishing a procedural requisite such as filing a claim, *e.g.* Section 440.192(1). Any arguable conflict between the specific subject areas allocated to the Deputy Chief Judge and the general rulemaking power the DOAH Director holds under Section 440.45(4) is resolved by having both officials act jointly in all rule promulgation matters, as was done in the promulgation of DOAH's Rules of Procedure for Workers=Compensation Adjudications, Chapter 60Q-6, Florida Administrative Code.

III. THE COMMITTEE'S ERRORS IN ASSERTING JURISDICTION

The Committee contends: ¶The Supreme Court of Florida has the sole authority under ' 440.29(3), Florida Statutes (2003) and Article V, ' 2(a), Florida Constitution, to promulgate rules of workers=compensation procedure.¶ That claim was asserted in the administrative rulemaking proceedings as well, but DOAH concluded it was lacking in legal basis. All of the Committee's arguments are trumped by one simple observation: the legislature specifically made reference to the replacement of the judicially adopted rules at the same time it directed an executive branch agency to make rules for these executive branch adjudications.

The Committee makes five arguments:

- (A) Section 440.29(3), providing that rules of procedure would be made by the Court, has not been repealed;
- (B) The OJCC is exempt from Chapter 120, hence, rules developed using the Chapter 120 process are not valid;
- (C) The grant of rulemaking authority to OJCC in Section 440.45(4) is restricted to rules concerning the internal organization of the OJCC;
- (D) The Committee is more qualified to prescribe the rules, and
- (E) The Constitution requires the rules for workers=compensation cases to

be made by the Supreme Court, not by an executive branch agency. Each argument is easily rejected by application of basic legal principles.

A. SECTION 440.29(3) BECAME SUPERSEDED BY OPERATION OF SECTION 440.45(4) WHEN THE NEW RULES TOOK EFFECT.

The statute vesting rulemaking authority with OJCC specifically provides that the administrative rules would replace the rules promulgated under Section 440.29(3). Only by ignoring the last sentence of that subsection could one overlook the statutory intent to have the new, administrative rules supersede and displace the older, judicially adopted rules. It is a cardinal rule of statutory interpretation that courts should avoid readings that would render part of a statute meaningless. *Forsythe v. Longboat Key Beach Erosion Control Dist.*, 604 So. 2d 452, 456 (Fla. 1992).

Section 440.29(3) became law in 1974; Section 440.45(4) was part of the 1993 amendments to Chapter 440 (although the language was in Section 440.45(5) at the time). The last sentence of Section 440.45(4) makes explicit reference to the rules adopted under the authority of Section 440.29(3) (the workers' compensation rules of procedure approved by the Supreme Court) and provides they continue to apply until the rules adopted by the Office of the Judges of Compensation Claims pursuant to this section become effective. Accordingly, once the administrative rules became effective on February 23, 2003, the condition precedent for the abrogation of the old rules was met, and the Court-approved rules ceased to apply by operation of law.

While it is true that an explicit repeal of an inoperative statutory provision is desirable, the realities of administrative rule promulgation required that the statute granting the rulemaking authority to the Court not be

repealed until after the administrative rules were actually in place. Accordingly, when the legislature re-allocated the rulemaking authority, it left the Court-adopted rules in place until such time as a body of rules sufficient to completely replace them could be developed and adopted. In retrospect, it is fortunate that the legislature took that approach, because it was nearly ten years before the comprehensive administrative rules were finally promulgated. Even though deleting inoperative sections would be a good practice, it is not uncommon for a statute to contain provisions that have become obsolete due to the passage of time or the occurrence of a specified event. *E.g.*, ' 440.45(1)(b), Fla. Stat. (2003). Further, a later change in a statute prevails over an earlier text, especially if the later one expresses an intent to supersede the earlier. *Tribune Co. v. Hillsborough County School Board*, 367 So. 2d 627, 629 (Fla. 1979).

B. THE OJCC RULES ARE AUTHORIZED BY CHAPTER 440; CHAPTER 120 ONLY SUPPLIED THE RULEMAKING PROCEDURE .

The OJCC followed the Chapter 120 rulemaking procedure. The Committee argues that OJCC is exempt from Chapter 120, so any OJCC rules made in conformance with its requisites are invalid. Fundamentally, the Committee's argument confuses procedure with substantive authority. The source of OJCC's authority to promulgate rules is Section 440.45(4), not Chapter 120.

Complaints about the use of the Chapter 120 process are necessarily directed to the procedure employed in promulgating the rules, not to the substantive authority to promulgate them. The Committee's contention can therefore be rejected without deciding whether the OJCC was indeed required to follow Chapter 120, because that issue is immaterial to the question of jurisdiction.

The decision to follow Chapter 120 was legally and practically sound in any event. Failure to have followed the process would result in summary invalidation of the rules if a court later determined that Section 440.021 does not exempt OJCC rulemaking from Chapter 120. And if it were determined that OJCC rulemaking is exempt from Chapter 120, it is hard to see how that would amount to a prohibition of the use of the many salutary components of the Administrative Procedure Act. Determining that a procedural scheme is not mandated would not imply that its use was prohibited, unless there was an alternate scheme specified. Since there is no statutory provision requiring an alternate scheme, adherence to Chapter 120's procedural blueprint is neither legally nor practically objectionable. It is hard to identify what the Committee's objection to the Chapter 120 process is Cthe openness, the opportunities for comment, the explicit method for rule challenges, or the review by the JAPC. There being no substantive basis for complaint about the procedure that was employed, the Committee's Chapter 120 argument fails.

C. ADMINISTRATIVE PROMULGATION OF A COMPLETE SET OF PROCEDURAL RULES IS ONE OF THE PURPOSES OF SECTION 440.45.

The Committee's most sophisticated argument focuses on Section 440.45(4)'s first sentence, providing the OJCC Ashall adopt rules to effect the purposes of this *section*.@Committee Report at 7 (emphasis original). The Committee contends that use of the word Asection@instead of Achapter@ shows that the legislature intended to limit the rules made under Section 440.45(4) to rules affecting the internal organization and operation of the OJCC, because Section 440.45 is an internal organization section. *Id.* But that overlooks that Section 440.45 *was* an organizational section; after the 1994 amendments it now *is* a procedural rulemaking section, as well.

Once the language explicitly directing OJCC to make procedural rules was added to Section 440.45(4), the purposes of this section were no longer limited to the internal structure and organization of the OJCC. Two new purposes of the section had been introduced by the amendment--the first and second sentences of subsection (4) require OJCC to adopt rules which shall include procedural rules applicable to workers' compensation claim resolution and the last sentence provides for an orderly transition from the rules judicially adopted under Section 440.29(3). Because the rules adopted by OJCC are in furtherance of those explicit purposes contained in Section 440.45, they are within the scope of the rulemaking power conferred.

D. THE RELATIVE QUALIFICATIONS OF THE COMMITTEE AND THE OJCC HAVE NO BEARING ON THE LEGAL QUESTION AT ISSUE.

Whether the committee is better qualified than the administrative law judges and judges of compensation claims is a policy question that belongs to the legislature; at present the legislature has lodged the responsibility for rulemaking with OJCC, reflecting a judgment that it is sufficiently qualified.

E. THE COURT'S ARTICLE V, SECTION 2(A) AUTHORITY DOES NOT APPLY BECAUSE THE OJCC IS NOT A COURT.

By focusing almost exclusively on statutory construction arguments, the Committee seems to tacitly admit that the constitutional basis for its assertion of jurisdiction is not viable. Yet the Committee Report makes reference to the *more* judicial than quasi-judicial nature of the Judges of Compensation Claims, and to the Court's citation of constitutional grounds for adopting rules in years as recent as 2002. In previous iterations of this controversy, it has been argued that the *judicial* nature of workers' compensation adjudication implicates the Supreme Court's Article V rulemaking power.

Without question, the Florida Supreme Court has exclusive power to make rules of procedure for *courts*. Art. V, § 2(a), Fla. Const. But the OJCC is not a *court*. *Id.* at § 1; *Jones v. Chiles*, 638 So. 2d 48 at 51-52 (Fla. 1994). While there have been a number of pre-*Jones* cases in which the Court characterized the *function* of the JCCs as *judicial*, the *Jones* decision emphatically refused to extend to the OJCC constitutional status as a *court*, especially in light of the express prohibition of that result in Article V, Section 1. Unfortunately, the Committee seems to be unaware of the *Jones* decision, since it was neither cited nor addressed.

None of the cases cited by the Committee remotely support the claim that the OJCC is a *court* under Article V, Section 2(a). The Court has consistently distinguished between bodies that can be called *judicial* and bodies that are actually courts. For example: *The term "judicial tribunal" is found in the Florida Constitution only in Section 8(e) of Article II, although the terms "courts" and "administrative agencies" are used elsewhere frequently. We presume that the language differentiation was intentional.* *Myers v.*

Hawkins, 362 So. 2d 926, 929 (Fla. 1978). Workers=compensation judges occupy a Astatus somewhat akin to circuit judges,@*Pierce v. Piper Aircraft Corp.*, 279 So. 2d 281, 284 (Fla. 1973). AIn recognizing the IRC as a judicial tribunal performing the functions of a court for purposes of the due process provision of the constitution, we do not intend to imply that the IRC is literally a courtY@*Scholastic Systems v. LeLoup*, 307 So. 2d 166, 170 (Fla. 1974).

DOAH's position on the constitutionality of the legislature allocating it rulemaking authority was ably described by the Assistant Attorney General in response to the Bar's Suggestion for Writ of Prohibition in Case No. SC02-2209, which is appended and incorporated by reference.

IV. CONCLUSION AND PROPOSALS

The statutory condition for the abrogation of the Florida Supreme Court Rules for workers=compensation procedure has been realized. The Workers=Compensation Rules Committee has been relieved of all responsibility and authority by executive branch action pursuant to a duly enacted statute. The rules that the committee asks the Court to amend are no longer in force. Accordingly, the only proper amendment to those rules would be to repeal them in their entirety.

The Committee's persistence in seeking an amendment to the superseded rules injects uncertainty into a system that is in need of stability, and it is unsupported by law or policy considerations. It is respectfully suggested that the Court should decline to adopt the amendments submitted by the committee, and instead should adopt the following amendments to avoid further confusion and terminate the controversy.

A. PROPOSED AMENDMENT TO THE FLORIDA RULES OF WORKERS=COMPENSATION PROCEDURE

The Florida Rules of Workers=Compensation Procedure, cited as Rules 4.010 through 4.900, and all forms referenced therein, should be deleted and abolished.

B. PROPOSED AMENDMENT TO THE FLORIDA RULES OF JUDICIAL ADMINISTRATION

Florida Rule of Judicial Administration 2.130 (b)(3) should be amended as follows:

- (3) The Florida Bar shall appoint the following committees to consider rule proposals: Civil Procedure Rules Committee, Criminal Procedure Rules Committee, Small Claims Rules Committee, Traffic Court Rules Committee, Appellate Court Rules Committee, Juvenile Court Rules Committee, Code and Rules of Evidence Committee, Rules of Judicial Administration Committee, Probate Rules Committee, ~~Workers=Compensation Rules Committee,~~ and Family Law Rules Committee.

Florida Rule of Judicial Administration 2.130(c)(1) should be amended as follows:

- (1) Each committee shall report all proposed rule changes on a biennial basis (with the first cycle starting in 2002). Reports shall be made in even-numbered years by the Appellate Court Rules Committee, the Criminal Procedure Rules Committee, the Code and Rules of Evidence Committee, the Juvenile Court Rules Committee, and the Traffic Court Rules Committee, ~~and the Workers=Compensation Rules Committee.~~ Reports shall be made in odd-numbered years by the Civil Procedure Rules Committee, the Family

Law Rules Committee, the Probate Rules
Committee, the Rules of Judicial Administration Committee, and
the Small Claims Rules Committee.

Respectfully submitted

ROBERT S. COHEN, Director
and Chief Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us
Florida Bar No. 347353

S. SCOTT STEPHENS, Deputy Chief Judge
of Compensation Claims
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us
Florida Bar No. 779441

CERTIFICATE OF SERVICE

We hereby certify that a true copy of this Comment of the Office of the Judges of Compensation Claims, Division of Administrative Hearings, and Proposal for Rule Abrogation and Amendment has been mailed this 12th day of March, 2004, to Jeffrey I. Jacobs, Esquire, 5975 Sunset Drive, Suite 801, South Miami, FL 33143; to John F. Harkness, Jr., Esquire, 651 East Jefferson Street, Tallahassee, FL 32399-2300; and to Mary Ann Stiles, Esquire, P. O. Box 460, Tampa, FL 33601-0460.

CERTIFICATE OF COMPLIANCE

We hereby certify that this Comment complies with the Court's font requirement.

Robert S. Cohen

S. Scott Stephens

APPENDIX

Exhibit 1YYYYYYYResponse to Suggestion for Writ of Prohibition
Exhibit 2YYYYYYYOctober 30, 2003, letter to Jeffrey Jacobs, Chair