

IN THE SUPREME COURT OF FLORIDA

**IN RE: AMENDMENTS TO THE FLORIDA
RULES OF JUDICIAL ADMINISTRATION – CASE NO.: SC05-1588
REORGANIZATION OF THE RULES**

**RULES COMMITTEE RESPONSE TO
COMMENTS ON THE PROPOSED REORGANIZATION
OF THE RULES OF JUDICIAL ADMINISTRATION**

The Honorable Winifred J. Sharp, Chair of the Florida Rules of Judicial Administration Committee, and John F. Harkness, Jr., Executive Director of The Florida Bar, jointly file this response on behalf of the Rules of Judicial Administration Committee (the “Rules Committee”) to comments submitted to the Court regarding the proposed reorganization of the Rules of Judicial Administration. The Rules Committee approved this response by a vote of 39 to 1 on March 31, 2006.

The Court received comments from two individuals on the proposed plan of reorganization. The comments were made by two members of the Bar, both of whom were members of the Rules Committee from the inception of the project through submission of the proposal to the Court.

ROWLAND COMMENTS

The first set of comments was submitted by David Rowland, General Counsel for the Thirteenth Judicial Circuit and a member of the subcommittee that drafted the proposed plan of reorganization for consideration by the full Rules Committee. Mr. Rowland suggests changes to various rule and subdivision titles, primarily to eliminate what he perceives as unnecessary words. Because of Mr. Rowland’s status as a former member of the drafting subcommittee, the Rules Committee, when formulating a response to these comments, invited him to participate in the discussion, and, after review of his proposals, he concurred with the current Rules Committee members that all of his suggested proposals could be disregarded except for a suggested change to subdivision (b) of renumbered Rule 2.505 (currently Rule 2.060(b)). The Rules Committee, with Mr. Rowland’s concurrence, agrees that the title of subdivision (b) as proposed

“Persons Employed by the Court Not to Practice”) is poorly worded and potentially confusing, and recommends that the title of subdivision (b) be changed to read “Persons Employed by the Court.”

The only other matter raised by Mr. Rowland (to wit: the typographical error in renumbered Rule 2.265 (current Rule 2.110), wherein subdivision (d) is repeated in place of subdivision (e)) has been corrected in the text of the rules filed as a supplemental appendix in this matter by the Rules Committee on February 22, 2006.

KROSSCHELL COMMENTS

The second set of comments was submitted by Steven Krosschell. The Rules Committee’s response below tracks the Mr. Krosschell’s comments paragraph by paragraph.

1. The Rules Committee has been working on the proposed reorganization of the Rules of Judicial Administration for the past three years. After considerable discussion and debate, the proposed reorganization plan was approved by the Rules Committee by a vote of 28-1, with only Mr. Krosschell dissenting. The concept was to rearrange and group the Rules of Judicial Administration under general topics, so that a person unfamiliar with them could readily locate the rule relevant to a particular issue or area of practice. As presently constituted, the Rules have no such organization, and have grown and developed over time with no apparent attention to order. Recognizing that renumbering and reorganizing the Rules may cause some discomfort for persons familiar with the Rules, the Rules Committee tried to avoid as much as possible the temptation to change titles and break up existing rules. In addition, the Rules Committee plans to prepare a comparative citation table to be included as an unofficial appendix in the print and electronic versions of the rules published annually by The Florida Bar, so that a person can quickly locate any rule that has been moved. Further, the committee notes or comments will be edited to show the new rule reference immediately following the original old rule citation. No difficulty in doing legal research regarding the rules should be encountered as a result of the proposed reorganization plan.

2. and 4. The renumbering system for the Rules proposed by the Rules Committee should be sufficient to handle new rules for an indefinite period of time. The Rules Committee elected to begin with number 2.110 in order

to allow room for any new rules that may precede it. Some of the Parts that have more rules begin with “05” rather than with “10” because there were too many rules to fit in only a range of ten. However, in all cases, there is adequate room to add newly numbered rules, as needed.

3. Part I was designated “General Provisions” because that was the best description for a group of rules that apply to all the others. “Court Rules,” as suggested by Mr. Krosschell, is not sufficiently descriptive.

5. New rule 2.140(g)(1) was adopted by the Court with the intent to remove from the Rules Committee’s responsibility areas of the Rules that the Court deemed outside the Rules Committee’s scope of responsibility. As the Rules Committee noted in its proposal, there are many rules, largely encompassed in these exclusions, that do not fit logically in the Rules; however, there appears to be no other place for them. Thus, the Court’s solution appears to be a good one.

The Rules Committee disagrees with Mr. Krosschell that the new rule means that the Rules Committee could not ever propose changes to the rules in Part II and rules 2.310 and 2.320, should there be a good reason to do so. The Rules Committee assumes that it will be permitted to comment on a new rule excluded from its jurisdiction, should there be reason to do so. However, the Rules Committee suggests that it be consulted on the numbering and placement of the new rules, in order to maintain a uniform numbering system throughout and preserve the integrity of the organization of the rules as a whole.

6. The Rules Committee rejects Mr. Krosschell’s suggestion that new subdivisions 2.215(f) and (g) cover the same subject as new rule 2.545. If there is duplication, it existed in the old rules. The Rules Committee’s proposal does not recommend any deletion or addition. Part II was intended to include rules relating to judicial administration (new subdivisions 2.215(f) and (g) relate to duties that a judge has to rule in a reasonable time and to expedite priority cases). Part V was intended to include rules relating to the practice of law by an attorney or *pro se* party. Although new 2.545(c) speaks of priority cases, the rule deals with filing a notice of priority by a party in an appropriate case.

The Rules Committee decided to split rule 2.085 into new rules 2.250 and 2.545. The first five subdivisions of Rule 2.085 relate to the practice of

law, in general; and the last two — time standards and reporting cases — relate to court administration. Thus, the disparate subdivisions of rule 2.085 were separated under different topic headings — in Part II and in Part V.

7. Mr. Krosschell's suggestion that new rules 2.220, 2.225, 2.230, and 2.235 be dropped is probably not practical. These rules establish certain conferences, commissions, and committees and have no other established place to go. By removing Part II from the Rules Committee's primary jurisdiction, the Court has addressed appropriately this incongruity.

Mr. Krosschell is correct that it makes no sense to have the Conference of County Court Judges included in the rules when there are no corresponding rules for the DCA Conference or the Conference of Circuit Judges. The Rules Committee's proposed plan of reorganization cannot repair the historical fact that the Circuit Judges Conference was created by statute and that the DCA Conference was created by the Supreme Court as an informal association that has since become incorporated as a professional association. Although the rule addressing the Conference of County Court Judges probably does not belong in the Rules, it should not be dropped until a new home is found.

In the past few years, the Court has created numerous Councils, Commissions, Steering Committees, etc. If the Court wants to place all of these entities into Section II, it may do so. The Rules Committee agrees it is the prerogative of the Court to determine which of these entities should be created by a charter in the Rules or which are better served by other means.

8. Regarding the heading for new rule 2.240(a), Mr. Krosschell has subsequently dropped his objection to the title. *See* Appendix A attached.

9. Mr. Krosschell suggests re-labeling Part IV "Judicial Records" rather than "Judicial Proceedings and Records." The Rules Committee rejects this proposal because this part deals with proceedings and records. New rule 2.450 could probably be placed either in Part IV or Part V. However, the Rules Committee suggests it fits best in Part IV, where problems of public access to judicial records and proceedings are addressed.

10. The Rules Committee adopted subsections A and B for Part V to clarify that subsection A pertains to licensed attorneys practicing in the state courts, and subsection B relates to all parties, including those proceeding

without an attorney. There is some redundancy in the titles, but the Rules Committee prefers its proposal.

11. Part V was intended to group together rules that should be readily accessible to a person who litigates, files pleadings, appears in court, etc. To label these “General Provisions” or “Other Provisions” is not helpful. New rule 2.535, dealing with court reporting, relates to litigation because the making of a record is an integral litigation-related function and these provisions describe when and how a record is to be made.

12. The Rules Committee disagrees with Mr. Krosschell that more room is needed in the numbering system of the revision between new rule 2.510 and 2.515. There is room for four more new rules, if needed. From past experience, new rules are seldom added. A new rule 2.600, under the current system, would be placed into a new Part VI., to be consistent.

13. The Rules Committee agrees that new rule 2.555, “Initiation of Criminal Proceedings,” should probably be moved to the Rules of Criminal Procedure. The Rules Committee suggested that in its initial filing in this matter. If directed by the Court, the Rules Committee would refer this to the consideration of the Criminal Rules Committee. However, until a place has been found for this rule, it should remain where it is.

The Rules Committee would also like to take this opportunity to address the recent promulgation of new rule 2.036 by the Court in its opinion dated February 16, 2006. That rule addresses the determination of the need to increase, decrease, or redefine appellate districts. On February 22, 2006, the Rules Committee submitted a supplemental appendix in this matter, containing the full text of the rules as they will read if the Rules Committee’s proposed reorganization of the rules is adopted by the Court, but that appendix did not include the text of new Rule 2.036. The Rules Committee has now reviewed the new rule and concludes that it should be assigned rule number 2.241 in the plan of reorganization, to follow renumbered rule 2.240, titled “Determination of Need for Additional Judges.” Furthermore, after the supplemental appendix was filed, the Court on March 2, 2006, amended current rule 2.050 to add the phrase “by the chief judge” to subdivision (h) of the rule. Should the Court direct, the Rules Committee stands ready to submit an amended supplemental appendix incorporating these changes.

Respectfully submitted on April 10, 2006.

/s/Winifred J. Sharp

WINIFRED J. SHARP

Chair

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by United States mail to: David A. Rowland, General Counsel, Thirteenth Judicial Circuit, 800 E. Twiggs St., Suite 603, Tampa, FL 33602; and Steven Krosschell, Goodman & Nekvasil, P.A., P.O. Box 17709, Clearwater, FL 33672, this 10th day of April, 2006.

/s/J. Craig Shaw

J. CRAIG SHAW

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APPENDIX A

In my comment about new rule 2.2440(a), I was relying on the Florida Bar News article on January 15, which reproduced the amendment as follows:

~~2.035~~ 2.240 Determination of Need For Additional Judges

- (a) ~~Statement of Purpose~~
- (b) Criteria
- (c) Additional Workload Factors
- (d) Certification Process

I don't know if the link below will work after being e-mailed, but if it doesn't, you can see the January 15 article by going to the Florida Bar website.

<http://www.floridabar.org/DIVCOM/JN/JNNNews01.nsf/cb53c80c8fabd49d85256b5900678f6c/6196e8b35aca96ba852570f4006a3899?OpenDocument>

After reviewing the Committee's draft comments and looking at the actual proposed rule on the court's website, I see now that only the words "Statement of" were supposed to be stricken. I have no problem with that change; I wouldn't mind if the Committee added a footnote to the draft report, stating that I withdraw my comment about that rule, because the comment was based on the Florida Bar News article which was incorrect.

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