



STATE OF FLORIDA
ELEVENTH JUDICIAL CIRCUIT
COUNTY COURT OF DADE COUNTY

MARK KING LEBAN
COUNTY JUDGE

February 3, 2004

2004 FEB 10 P 1:42
COURTHOUSE CENTER
175 N.W. FIRST AVENUE
MIAMI, FLORIDA 33128

The Honorable Tom D. Hall
Clerk of the Supreme Court of Florida
500 S. Duval Street
Tallahassee, FL 32399-1927

RE: Rule 2.071(a), Use of Communication Equipment

Dear Mr. Hall:

Pursuant to your July 15, 2003 letter, I write you in my capacity as Chair of the Appellate Court Rules Committee regarding proposed rule 2.071(d), Fla. R.J.A. You submitted this request to the various Chairs of the Rules Committees. I have been in communication with some of the other Chairs and am aware of their conclusion not to recommend adoption of the proposed rule. My own Committee has studied the issue and, as is reflected in the attached letter from my Family Law Rules Subcommittee, we have concluded that inasmuch as appellate courts generally do not take testimony, a rule purporting to authorize electronic means of taking of testimony would have no real relevance. We therefore conclude that the Appellate Court Rules Committee will take no position on the proposed amendment.

Should you have any questions or require any additional clarification, do not hesitate to contact me.

Respectfully submitted,

A handwritten signature in cursive script that reads "Mark King Leban".

MARK KING LEBAN

Chair, Florida Bar Appellate Court Rules Committee

MKL:slt

Enc: letter

cc: Stanford Solomon, Chair, Rules of Judicial Administration
Justice Raoul G. Cantero, III, Liaison to Appellate Court Rules Committee
Justice Kenneth Bell, Liaison to the Rules of Judicial Administration Committee
Deborah J. Meyer, Central Staff Director
Honorable Jennifer Drechsel Bailey, Chair, Civil Procedure Rules Committee
Honorable Olin Wilson Shinholser, Chair, Criminal Procedure Rules Committee
Mr. Jeffrey Wasserman, Chair, Family Law Rules Committee
Ms. Jennifer Parker, Chair Juvenile Court Rules Committee
Ms. Tani F. Conetta, Chair, Probate Rules Committee
Ms. Julee Lynn Milham, Chair, Small Claims Rules Committee
Mr. Brian L. Tannebaum, Chair, Traffic Court Rules Committee
Joanna Mauer, Liaison, Appellate Court Rules Committee

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APPELLATE COURT

January 30, 2004

Hon. Mark King Leban
County Judge
175 NW 1st Ave., Ste. 2322
Miami, FL 33128-1846

Re: Rule 2.071(d), Fla. R. Jud. Admin. – Use of communications equipment


Dear Judge Leban:

At the September 5, 2003, meeting of the Appellate Court Rules Committee, you asked the Family Law Rules Subcommittee to consider a proposed amendment to Rule 2.071(d) that would allow courts to take testimony by means of communication equipment, such as by telephone, even over the objection of a party.

Because appellate courts rarely, if ever, take testimony, it appears that this rule would have no real impact on appellate procedure. When there is an evidentiary matter that arises on appeal (e.g., related to a motion), the appellate courts usually remand it to the trial court for a hearing. The First District does have a system for hearing oral argument by video teleconference, but this is a purely voluntary system. Because Rule 2.071(d) only relates to taking testimony, it would not appear to have any application to oral argument.

For these reasons, after careful consideration, the Family Law Rules Subcommittee recommends that the full committee take no position on the proposed amendment.

Very truly yours,



John S. Mills

jmillis@appellate-firm.com

cc: Joanna Maurer