

IN THE SUPREME COURT OF FLORIDA

**IN RE: AMENDMENTS TO THE FLORIDA
RULES OF JUDICIAL ADMINISTRATION
(TWO YEAR CYCLE)**

**CASE NO.:
SC05-173**

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

Claudia Rickert Isom, as chair of the Florida Rules of Judicial Administration Committee, files this response to comments received on proposed amendments to the Florida Rules of Judicial Administration in the 2005 biennial cycle.

The Court received three comments to rule proposals included in the committee's biennial report. Copies of the comments were provided to the committee and considered by the committee at its April 27, 2005 meeting. The biennial report contains a number of attachments which are relevant to these proposed amendments which are not resubmitted as part of this response. The comments and the committee's response are summarized below.

Carol LoCicero filed comments on behalf of various media providers regarding proposed changes to rule 2.170. The impact of this rule is to permit judges to exercise their discretion as to whether the media should be allowed to broadcast or publish the facial images of venire members or jurors. The rule proposed does not close judicial proceedings in any other regard and the faces of venire members and jurors could still be rendered by media artists. The protection of rights of privacy and to prevent the disclosure of privileged and confidential matters is consistent with a common law tradition deeply ensconced in our American system of justice and codified in Chapter 90 of the Florida Statutes. The committee has had the benefit of these comments, or the substance thereof, for over two years. The Court had returned this proposed amendment to the committee for further study and review after the media objected to this rule when it was previously submitted. The rule was returned to subcommittee for further study at a time when the May, 2001, Final Report of the Judicial

Management Council's Jury Innovations Committee (JIC) also was being considered by the committee for possible rule amendment proposals. The privacy issues and concerns about protecting the integrity of the trial process included in the JIC report reinforced this committee's decision to resubmit the rule without further revision. In proposal 11 of the report, the JIC recognized that "[T]rial judges should be given discretion to empanel anonymous juries only when there is a strong reason to believe the jurors need protection." In the discussion following this proposal the JIC recognizes that after the completion of the trial the reasons for such anonymity will be reduced and at that time the name of the jurors should be made public. The rule proposed by the committee would not go as far, protecting only the visages of the venire and jury members. In JIC proposal 36, the primary concern of the JIC in its proposed bill of rights for Florida jurors reads, "Jurors shall be treated with courtesy and respect with appropriate regard for their privacy." The committee's proposal does exactly that. Lastly, in its discussion of JIC proposal 48, which deals primarily with juror questionnaire information, the JIC states that "[F]ear of reprisal from defendants or invasion of their privacy by the media are two primary reasons cited by jurors to keep questionnaire information private." The proposal recognizes that, "[P]rotecting a juror's privacy must be balanced against the rights of plaintiffs and defendants to a fair trial." If the court adopts the committee's proposed amendment, trial court judges would have discretion to prevent the publication or broadcasting of venire and trial members' faces. But, in no regard does the committee seek to give trial judges unbridled discretion. There is no reason to believe that trial court judges would engage in the wholesale prohibition of publishing or broadcasting the faces of all jury and venire members. In the event members of the media felt the rule was being overused, the abuse of discretion would be subject to appellate review. The comments received from Ms. LoCicero after the amendments proposals were published were previously considered by the committee and no change in the proposal is recommended.

Gregg Thomas on behalf of various media providers has commented on the proposal made by this committee to amend 2.051 (d)(1). While they generally support the proposal, they feel it does not go far enough. They would have the discovery provisions of the Rules of Civil Procedure apply whenever access to judicial records has been denied. The committee had the benefit of Mr. Thomas' proposed amendment when it met in June, 2004 and discussed the necessity of adding this provision. The committee decided that it was within the court's authority to permit such discovery already and

to amend the rule as suggested by Mr. Thomas was unnecessary and superfluous. Therefore, as to this comment, no further change is recommended by the committee. The other addition proposed by Mr. Thomas would be to require a chief judge to forward to the Judicial Qualifications Commission (JQC) all judicial records relating to the misconduct of a judge. The committee feels that the existing rule is adequate and does not create “an enormous loophole” permitting the secreting of records from the public. The Code of Judicial Conduct Canon 3 (D) covers a judge’s responsibility to take appropriate action whenever a judge receives information or has actual knowledge that another judge has committed a violation of the Code. “Appropriate action” is defined by example in the commentary to this canon. The rule proposed by Mr. Thomas would require a chief judge to forward all records of any misconduct to the JQC and is in conflict with the Code provisions. Therefore, the committee does not agree with the change suggested by Mr. Thomas and requests that the Court adopt the rule as proposed by the committee.

Jonathan Kaney on behalf of the First Amendment Foundation has filed opposition to the proposed changes in rule 2.170. Mr. Kaney’s concerns about the authority of a trial court judge to restrict the publication or broadcasting of the faces of members of the venire or jury are similar to those of Ms. LoCicero and the committee’s response, again, would be that no change in the proposal is needed. Mr. Kaney has an additional concern about the proposed new rule 2.170 (c)(5) which states that the court’s security cameras shall be used for security purposes only. Mr. Kaney feels security cameras should be accessible to the public. The committee discussed this position in formulating the proposed rule. Prior to proposing this amendment, the committee had been provided with correspondence which discussed the possibility of maintaining a live media feed directly from courtrooms, holding cells, hallways, bathrooms or anywhere else a courthouse may operate security cameras. The committee felt that this was an inappropriate use of security cameras and hopes to clarify the purpose for security cameras. The committee rejects as improvident any proposal which would result in security camera film footage assuming the character of a judicial branch record or which would place a court administrator in the unpalatable position of protecting an individual’s privacy at the expense of safeguarding their security. The media has ample opportunity to provide coverage of newsworthy judicial events without imposing the requirement

on the courts to provide access to security cameras. After review of Mr. Kaney's comments, no change is recommended by the committee.

Respectfully submitted this 29th day of April, 2005.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this motion has been furnished by United States mail on the 29th day of April, 2005, to: John F. Harkness, Jr., The Florida Bar, 651 East Jefferson Street, Tallahassee, FL 32399-2300; J. Craig Shaw, Bar Staff Liaison, Rules of Judicial Administration, The Florida Bar, 651 East Jefferson Street, Tallahassee, FL 32399-2300; Gregg D. Thomas, Carol Jean LoCicero and James J. McGuire, Holland & Knight LLP, 100 North Tampa Street, Suite 4100, P.O. Box 1288 Tampa, FL 33601-1288; Jonathan D. Kaney, Jr., Cobb & Cole, P.O. Box 2491, Daytona Beach, FL 32115-2491; and the Honorable Scott Bernstein, Steering Committee on Families and Children in the Court, Eleventh Judicial Circuit, 1351 N.W. 12th Street, Suite 711, Miami, FL 33125.