IN THE SUPREME COURT OF FLORIDA

IN RE: BIENNIAL AMENDMENTS TO THE FLORIDA RULES OF JUDICIAL ADMINISTRATION CASE NO.:

BIENNIAL REPORT OF THE FLORIDA RULES OF JUDICIAL ADMINISTRATION COMMITTEE

Claudia Rickert Isom, Chair, Florida Rules of Judicial Administration Committee, and John F. Harkness, Jr., Executive Director, The Florida Bar, file this biennial report with the Court in compliance with Florida Rule of Judicial Administration 2.130(c)(1).

The committee proposes amendments to the rules as shown on the attached Table of Contents (Appendix A). The voting record for the committee on each amendment is shown on the Table of Contents, as is the voting record of The Florida Bar Board of Governors. Appendix B contains a copy of the proposed changes in full-page legislative format. Appendix C contains a two-column chart setting forth the proposed changes in legislative format in the first column and a brief explanation of each change in the second column. Appendix D includes background documents that explain the rationale for the amendments proposed in this Report.

Notice of the amendments was published in the November 15, 2004 edition of the Florida Bar *News* and the Bar's web site. A copy of the publication notice appears in Appendix E together with letters of comment received by the committee following publication.

The amendments are proposed for the following reasons:

Rule 2.050 Trial Court Administration

The committee proposes that the requirement in subdivision (e)(3) that circuit court clerks send copies of administrative orders to the executive director of The Florida Bar be deleted. This requirement was added to the rule as part of the quadrennial amendments passed by the Court in *Amendments to the Florida Rules of Judicial Administration*, 682 So. 2d 89 (Fla. 1996). However, the passage of time has revealed that this requirement is both burdensome and unnecessary. Since its passage, virtually all Florida

judicial circuits have instituted systems that allow Internet access to all of the circuits' administrative orders, which are updated regularly. Experience has shown that the paper copies of orders maintained by the Bar are incomplete and outdated, owing primarily to the fact that not all of the circuits regularly forward all administrative orders to the Bar. Furthermore, Bar employees who maintain these records report that the records are neither accessed by Bar members nor used by Bar staff. See the letter from J. Craig Shaw to Stanford Solomon, former committee chair, in Appendix D (1) of this report.

Rule 2.051 Public Access to Judicial Branch Records

This amendment adds a sentence to subdivision (d)(1) Review of Denial of Access Request and (e)(2) Procedure, and is proposed as a response to the court's opinion in *Media General Convergence, Inc. v. Chief Judge of Thirteenth Judicial Circuit*, 840 So. 2d 1008 (Fla. 2003). The rule is amended to clarify the responsibilities of the records custodian in preparing a record on appeal for review of administrative denial of access to judicial records by members of the judiciary. When ordered to do so by the reviewing court, the amendment requires a copy of the records to which access has been denied to be forwarded in a sealed envelope to the reviewing court for in camera inspection. The amendment also requires that the records' custodian specify in writing the basis for denial of access to records. The committee does not recommend amending the rules to include a process for the appointment of a discovery master or the creation of a separate set of discovery rules. Reviewing courts already have procedures in place to assist them when there is a need to gather additional information to assist in ruling on a petition for an extraordinary writ. See the *Media General Convergence* opinion, April 9, 2003 Gregg Thomas letter to then-chair Hon. Peter D. Webster, the subcommittee report, and committee note to 2004 amendments to rule 2.051(d)(1) and (e)(2) which are attached in Appendix D (2) of this report. Also see comments received after publication in Appendix E.

Rule 2.060. Attorneys

This amendment deals with subdivision (b) Staff Attorneys, Law Clerks, and Judicial Assistants and was referred to the committee by means of a July 15, 2003, letter from The Honorable Thomas D. Hall. [See letter in Appendix D (3).] Following the study by the subcommittee assigned to this matter, a report and recommendations were presented to the full committee regarding

(1) prohibition of court employees from practicing law while working for the court; (2) legal representation of court employees; (3) designation of attorney to be made by the chief judge or chief justice as applicable; and (4) prohibition on post-employment representation on matters on which an attorney employee worked during employment with the court. The rule has been amended to delete existing language and add new language to provide clear guidance regarding the inability of full-time court employees who are attorneys to engage in the practice of law during their employment. It authorizes, but does not mandate, exclusive representation of the court, judges, or court employees by court legal staff on matters relating to court employment. It specifies that it is the chief judge of a trial court or chief justice of an appellate court who has the authority to designate legal representation be provided to the court, a judge, or a court employee by a court-employed attorney. Lastly, it provides clear guidance as to the prohibition of handling legal matters post-employment with the court(s) that were previously handled personally and substantially by the former employee while employed by the court(s) unless all parties consent after disclosure. This last provision is consistent with the restrictions on successive government and private employment provisions of Florida Rule of Professional Conduct 4-1.11. The title of the subdivision was also amended to "persons employed by the court" rather than the current applicability which is limited to employees serving as staff attorneys, law clerks, and judicial assistants, to avoid the need for further amendment to accommodate future changes in the types of court employment held by attorneys. See Appendix D (3) for the letter from Deputy Clerk Debbie Causseaux on behalf of the Honorable Thomas D. Hall and subcommittee report with attachments. [The attachments include the following: a form letter sent from David Rowland to all chief judges as of January 12, 2004; Chief Judge David Demers' March 17, 2003 comments; historical summary of recent amendments to Florida Rules of Judicial Administration 2.060(b); summary of chief judges' comments on proposed amendment; Chief Judge Kim Skievaski's January 16, 2004, comments; Chief Judge Hugh Hayes' January 20, 2004, comments; Chief Judge Edward Fine's January 21, 2004, comments; Chief Judge Bob Bennett's January 26, 2004, comments; Chief Judge David Demers' February 25, 2004, comments; and Chief Judge Manuel Menendez's February 26, 2004 comments.] Also see Appendix E for comments received after publication.

Rule 2.085. Time Standards for Trial and Appellate Courts

This amendment creates a new subdivision (d) Related Cases in the rule and reletters subsequent subdivisions accordingly. It also amends the title of the rule to include "Case Management" in the subjects covered to reflect the various case management matters already covered in the existing rule as well as the expansion of these subjects to now include what is referred to as the "Notice of Related Cases." In 2000, the Family Court Steering Committee filed a petition with the Court that listed recommendations for implementing unified family courts in Florida. Recommendation #2(b) recommends the adoption of a rule of judicial administration to require judges who are assigned to different cases involving the same family to confer, and to coordinate pending litigation to maximize judicial efforts, avoid inconsistent court orders, and avoid multiple court appearances by the parties on the same issues. Because a specific rule was not submitted, the Court referred the issue back to the steering committee to develop appropriate standards to be followed when there are multiple court appearances in different cases by the parties on the same issue. The requirement of the filing of a notice of related cases form by the petitioner was identified by the steering committee as a critical first step toward ensuring the coordination of related cases so that these cases can be identified. Accordingly, the steering committee proposed the rule amendment to this committee which studied the proposal, and, with minor changes, adopted it as its proposed amendment. The committee declined to include a companion form to implement the amendment primarily because the rules of judicial administration do not currently contain any usage forms. The proposed amendment gives the plaintiff in a family case (which term is defined as a term of art within the amendment) the responsibility of identifying with specificity the case numbers, captions, and subject matter of all related cases with the court. The notice of related cases is to be served on all parties, including parties in the related cases, the presiding judges, and the chief judge or family law administrative judge. See subcommittee report with attachments attached to this report in Appendix D (4).

Rule 2.130. Procedure for Amending Rules

This amendment amends subdivisions (a), (c) (2), (c) (5), (e), and (f) to add the Speaker of the Florida House of Representatives, the President of the Senate, and the chairs of the House and Senate committees as designated by the Speaker and the President as individuals required to receive notices of hearings, copies of rules changes, committee reports, revised proposed rules changes, and notices of oral argument on proposed rule changes. It also

deletes former subdivision (c)(1) and creates a new (c)(1) to create a new schedule for rules committees' reporting cycles; deletes certain dates and adds others to subdivision (c)(2) as well as adding new language regarding provision of comments after the new date to be done in accordance with the procedure already set forth in (c)(6); and deletes January 1 and adds December 15 to subdivision (c)(3). This rule had been previously amended in September 2002 as requested by the Court to provide for a two-year cycle for rules changes instead of a four-year cycle. The two-year cycle has proved impractical; for example, by October 1 of the year before the reporting year, the committee must submit all proposed rule changes with votes to the Board of Governors and must publish. Comments on the proposed changes from the public must be made by November 1. The chair must submit all comments to the full committee and determine whether any changes need to be made by December 1 and send changes to the Board of Governors and publish again. The Board of Governors has 30 days to consider changes and all must be filed with the Supreme Court by February 1. At the time the committee considered amending the two-year cycle, it was still getting comments to proposed changes in January, a contingency not contemplated by the current rule. The process has been compacted to such an extent that volunteer committees are overwhelmed. Many of the time limits required activity in November and December when the courts and many law offices have holidays and which also make the compression of the time limits problematic. The amendment would change to a staggered three-year cycle commencing in 2006 with the various rules committees divided into three separate groups for reporting purposes. (The committee also considered a staggered four-year cycle as a reasonable alternative, dividing the court rules committees into two reporting groups. That alternative is contained in the Appendix D materials for the Court's consideration, should the Court not choose to adopt the proposed three-year cycle.) See Appendix D (5) for the committee report and attachments regarding this proposal.

The proposed amendment does not address the court's opinion found at Amendments to the Florida Rules of Workers' Compensation Procedure, 29 FLW S738 (Fla. SC04-110, Dec. 2, 2004), which would eliminate the need for the Rules of Workers' Compensation Committee reports

The language regarding notification of various legislative leaders and committee heads was suggested by then-President of The Florida Bar, Miles A. McGrane, III. As part of the Bar's response to the Article V, Revision 7 change in funding of the judiciary, he had joined in a dialogue with the

Honorable Gustavo A. Barreiro, State Representative, regarding the need to include the legislature in the rule-making process. The addition of the language regarding the Speaker of the Florida House of Representatives, the President of the Senate, and the chairs of the House and Senate committees as designated by the Speaker and the President, ensures that the legislative stakeholders are included in the process of the formulation of court rule proposals and changes before such changes becoming final. See Appendix D (5) for copies of Mr. McGrane's February 19, 2004 and March 18, 2004, letters to Rep. Barreiro.

Rule 2.170. Standards of Conduct and Technology Governing Electronic Media and Still Photography Coverage of Judicial Proceedings

This amendment creates new language placed in subdivision (a)(iii) that addresses privacy concerns and concerns regarding the disclosure of privileged or confidential information, while renumbering the existing subdivision (a)(iii) to become subdivision (a)(iv). It also creates new subdivision (b) Photographing Jurors' Faces with the resultant renumbering of subsequent subdivisions; and creates a new subdivision (c)(5) regarding the use of court security cameras being limited to security purposes. A change is also made in relettered (e)(3) to correct an erroneous internal cross-reference.

The portion of the amendment dealing with photographing jurors' faces is being considered for the second time. It has its genesis in 1998 following the 4th District Court of Appeal opinion in *WFTV, Inc. d/b/a Palm Beach Newspapers, Inc. v. State*, 704 So. 2d 188 (Fla. 4th DCA 1997). The amendment was approved unanimously by the committee on January 18, 2001, was noticed for publication, and was subsequently returned to the committee for further study after it drew opposition from attorneys representing the news media. The amendment was resubmitted to the full committee in its original form following committee debate regarding a different proposal that outlined a procedure for the court to follow prior to entering an order prohibiting the broadcasting or publishing of jurors' faces. This procedure would have provided notice and an opportunity to be heard to the news media in conformity with the existing language of Rule of Judicial Administration 2.170(a) as interpreted in *In re Post-Newsweek Stations of Florida, Inc.*, 370 So.2d 764, 779 (Fla. 1979):

> In exercising the discretion accorded under the rule, [t]he presiding judge may exclude electronic media coverage of a particular participant only upon a finding that such coverage will have a substantial effect upon the particular individual which would be qualitatively different from the effect on members of the public in general and such effect will be qualitatively different from coverage by other types of media.

However, imposition of this procedure would infringe on what some members feel is an inherent power of the court to control trial proceedings. Subsequent to the first submission of the proposed amendment, the Jury Innovations Committee issued its report. The Jury Innovations Committee's recommendation 11 (Anonymous Juries) and recommendation 48 (Juror Privacy) support a public policy favoring the protection of jurors' privacy interests. This proposal would serve that purpose during times when the news media has cameras in the courtroom. On October 12, 2004, the committee voted unanimously to resubmit the amendment as originally proposed. See recommendations 11 and 48 in Appendix D (6). See also comments received after publication in Appendix E.

The portion of the amendment dealing with privacy and confidentiality concerns and the use of courtroom security cameras is in response to the March 26, 2004, letter from the Honorable Thomas D. Hall to then-chair Stanford R. Solomon concerning the Internet broadcast of court proceedings captured on security cameras. The matter was referred to a subcommittee for research and review. The subcommittee's proposal, adopted by the full committee, incorporates a streamlined yet practical approach to the use of closed circuit video monitors used for purpose of courthouse security. The amendment preserves access to the courts by the media while the privacy of litigants and witnesses as well as the confidential nature of attorney-client communications are not compromised. The committee feels this amendment is consistent with the expressed policy and recommendations of the Jury Innovations Committee regarding Juror Privacy recommendation 48. The subcommittee collected extensive input regarding this proposal. Some examples of cases about which a trial judge would have privacy concerns regarding using court security cameras to broadcast trial proceedings would be cases involving sexual battery or sexual abuse of child; domestic violence cases; dissolution of marriage cases; and cases involving dependency and termination of parental rights due to abuse, abandonment, or neglect of children. Further examples of situations that may occur in the context of

other types of cases that impact on privacy concerns would be as follows: during voir dire when jurors respond to sensitive personal or medical questions; during the questioning of witnesses about intimate medical conditions or mental health records; during the questioning of undercover informants or witnesses under government protection; during the testimony of physicians testifying about confidential medical records; during conferences at counsel table where privileged communications occur between attorney and client in the courtroom; during other discussions that the parties request be conducted off the record; during bench conferences regarding the admissibility of potentially privileged matters; and when receiving testimony revealing sensitive proprietary information such as trade secrets. See Appendix D (6) for a letter from the Honorable Thomas D. Hall, letter from Justice Anstead, letter from Hon. Belvin Perry, committee notes, and other attachments regarding this issue.

Copies of the letters of comment that were received by this committee following publication were given to the committee members and discussed at the committee's January 20, 2005 meeting. The committee determined the proper course would be to submit these to the court in Appendix E for the court's consideration. However, no further revision of the proposals was made as a result of the committee's review.

Thank you for your consideration of this biennial report of the Rules of Judicial Administration Committee.

Respectfully submitted this 28th day of January 2005.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by United States mail to: Gregg D. Thomas, P.O. Box 1288, Tampa, FL 33601-1288; Carol Jean LoCicero, P.O. Box 1288, Tampa, FL 33601-1288; and Steven P Combs, Duval County Courthouse, 330 East Bay Street, Room 222, Jacksonville, FL 32202, this 28th day of January, 2005.

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