

IN THE SUPREME COURT OF FLORIDA

**IN RE: AMENDMENTS TO
FLORIDA RULE OF JUDICIAL
ADMINISTRATION 2.430**

CASE NO. SC06-2040

**COMMENTS OF RULES OF JUDICIAL
ADMINISTRATION COMMITTEE**

Gary D. Fox, Chair, Florida Rules of Judicial Administration Committee (RJA Committee), and John F. Harkness, Jr., Executive Director, The Florida Bar, in response to an invitation to comment issued by this Court, file these comments to the Report and Recommendations of the Judicial Branch Records Management Workgroup (Workgroup) filed on October 13, 2006, proposing amendments to Florida Rule of Judicial Administration 2.430 and making other recommendations relating to retention of court records.

The primary thrust of the Workgroup's proposed amendments to Rule 2.430 is to remove from the Rule the retention schedule set forth in subdivision (d), and in its stead refer the reader to a "Judicial Branch Records Retention Schedule for Court Records," which is to be included at the end of the Rules of Judicial Administration, just as the "Judicial Branch Records Retention Schedule for Administrative Records" currently appears as an unofficial appendix to the Rules. It is the understanding of the RJA Committee that the Workgroup contemplates that a proposed Judicial Branch Records Management Committee will be created by administrative order of the Supreme Court, not by a Rule of Judicial Administration. Therefore, the Workgroup's proposed amendment does not contemplate including the provisions regarding the creation and composition of the Judicial Branch Records Management Committee with the Judicial Branch Records Retention Schedule for Court Records in the proposed unofficial appendix at the end of the Rules of Judicial Administration.

The Workgroup's stated rationale for deleting the retention schedule from Rule 2.430 is "to facilitate ease of amendment to the schedule." Workgroup Report at p. 4. The Workgroup further states in its report that "[a]mendments or additions to these requirements [retention schedule for court records] require formal amendment to the rule. This process is cumbersome and time-consuming." Workgroup Report at p.8. The Judicial

Retention Schedule for Court Records in the Workgroup's proposal tracks the timelines currently embodied in Rule 2.430(d).

Rule 2.430 currently refers to the Division of Library and Information Services of the Department of State [Division] in subdivisions (a)(3), (b), (c), and (h). Due to statutory amendments, the Division is no longer authorized to address destruction records for the judicial branch; rather, its responsibility is limited only to the destruction of records for the executive branch. This led to the Workgroup's recommendation to create the "Judicial Branch Records Management Committee."

There is a distinction between administrative records of courts, and court records. Court records are an integral part of the administration of justice, and rules pertaining to the destruction of those records are properly included within the Rules of Judicial Administration. It is the consensus of the RJA Committee that the distinction between court records and administrative records should be preserved, in part because of concern that there would be inadequate oversight by practicing attorneys and members of the clerks' offices as to the court records retention schedule if the review process was removed from the Rules of Judicial Administration. Rule 2.430 has functioned well since 1981. Other than editorial changes, there has been only one instance of substantive amendments to the schedule in the past 25 years, in *Report of the Supreme Court Workgroup on Public Records*, 825 So. 2d 889 (Fla. 2002), which added a retention schedule for district courts of appeal, but otherwise did not amend the existing trial court records retention schedule.

The RJA Committee is also concerned because no problem has been identified that justifies removal of the judicial records retention schedule from subdivision (d) of the Rule. To the extent that unidentified problems exist with the location of the records retention schedule, it is unclear to the RJA Committee how removing the schedule from the Rules will address those problems.

At a telephonic meeting held on December 6, 2006, the RJA Committee addressed two issues. First, the RJA Committee voted 25-1 to recommend that the court records retention schedule remain embodied in Rule 2.430.

The RJA Committee also voted 25-1 to concur with the Workgroup's proposal that reference to the Division of Library and Information Services of the Department of State be removed because that entity is no longer responsible for the destruction of court records. Subdivision (b) should be amended to delete the reference to the Division, to be replaced by a reference to the (proposed) Judicial Branch Records Management Committee.

It is contemplated that if the Court adopts the RJA Committee's proposed amendments, the Workgroup's proposed Judicial Branch Records Management Committee would be created by a contemporaneous administrative order. Subdivision (b) would thus read:

(b) Required Consent. Disposal of court records under this rule is subject to obtaining any consent required ~~by law from the Division of Library and Information Services of the Department of State~~ from the Judicial Branch Records Management Committee.

The other amendments proposed by the Workgroup, except for the amendments to eliminate references to the Division in current (a)(3), (c), and (h), are not endorsed by the RJA Committee.

These comments were approved by The Florida Bar Board of Governors, acting through its Executive Committee, by a vote of 9 to 0 on December 14, 2006.

Respectfully submitted on December 15, 2006.

/s/Gary D. Fox

GARY D. FOX

Chair

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by United States mail to: The Honorable Robert K. Rouse, c/o Laura Rush, General Counsel, Office of the State Courts Administrator, 500 S. Duval Street, Tallahassee, FL 32399-1925, on December 15, 2006.

/s/J. Craig Shaw

J. CRAIG SHAW

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