

IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO THE FLORIDA RULES OF JUDICIAL ADMINISTRATION AND THE FLORIDA RULES OF APPELLATE PROCEDURE - IMPLEMENTATION OF RECOMMENDATIONS OF COMMISSION ON TRIAL COURT PERFORMANCE AND ACCOUNTABILITY

CASE NO.: SC08-1658

COMMENTARY FROM THE FLORIDA COURT REPORTERS ASSOCIATION (FCRA)

AND THE FLORIDA COALITION ON COURT REPORTER CERTIFICATION (FCCRC)

The FCRA and FCCRC file the following commentary on the proposed amendments to the Florida Rules of Judicial Administration and the Florida Rules of Appellate Procedure.

1. Proposed amendment to Rule 2.420:

Rule 2.420, Public Access to Judicial Branch Records, Fla. Rules of Judicial Administration

- (a) [No change]
(b) Definitions.

(1) "Records of the judicial branch" are all records, regardless of physical form, characteristics, or means of transmission, made or received in connection with the transaction of official business by any judicial branch entity and consist of:

(A) "court records," which are the contents of the court file, including the progress docket and other similar records generated to document activity in a case, transcripts filed with the clerk, documentary exhibits in the custody of the clerk, and electronic records, videotapes, or stenographic tapes of depositions or other proceedings filed with the clerk, ~~and electronic records, videotapes, or stenographic tapes of court proceedings;~~ and

(B) "administrative records," which are all other records made or received pursuant to court rule, law, or ordinance, or in connection with the transaction of official business by any judicial branch entity, except electronic records of court proceedings that are governed by Rule 2.535.

As to the above proposed change, the position of the FCRA and FCCRC is that the proposed rules changes protect the public's interest by ensuring the proper handling of sensitive, confidential information that often is introduced during a court proceeding. Information such as a litigant's credit card and Social Security numbers, bank accounts, and children's names, among other information, should be properly redacted to protect litigants' rights.

In addition, FCRA and FCCRC support clarifying the definition of the official record as being the written transcript prepared by an officer of the court who is authorized and qualified to do the job. A written transcript expedites review of the record in all but the shortest of proceedings, eliminating the litigant's having to cull through a day's, week's or possibly a month's worth of audio or video testimony. Having a certified written record eliminates the possibility of multiple, possibly incompatible, versions of proceedings being made available to the public.

2. Proposed amendment to Rule 2.535:

RULE 2.535 COURT REPORTING

(a) Definitions.

(1) "Approved court reporter" means a court employee or contractor who performs court reporting services, including transcription, at public expense and who meets the court's certification, training, and other qualifications for court reporting.

(2) "Approved transcriptionist" means a court employee, contractor, or other individual who performs transcription services at public expense and who meets the court's certification, training, and other qualifications for transcribing proceedings.

(3) "Civil court reporter" means a court reporter who performs court reporting services in civil proceedings not required to be reported at public expense, and who meets the court's certification, training, and other qualifications for court reporting.

We feel the use of the word "approved" is an interesting adjective for the court to use but falls short of our desired "certified court reporter" language. That being the case, FCRA and FCCRC would urge the Court to consider the Florida Professional Reporter voluntary certification program, the FPR, as a means for court reporters, transcriptionists and civil court reporters to obtain their "approved" status. The FPR program provides a voluntary certification to those who go through a training session geared toward capturing and producing the court's records and then pass the accompanying written examination. It also mandates continuing education criteria. Please refer to the attached July 19, 2007, letter to the Honorable Alice Blackwell White for further commentary on the FPR.

The FPR program is a voluntary first step toward a desired end, funding of *Florida Statute 25.383, Standards for court reporters; procedures; rules of professional conduct, discipline, and training*. We believe certification would raise the level of professionalism and competence in the court reporting profession, thus further protecting the court and citizens' rights. A certification outline has been created with a mind toward a mandatory certification program one day being instituted. Please see the attached Certification Standards for Florida Court Reporters and Transcribers for details.

3. Proposed amendment to Rule 2.535:

RULE 2.535 COURT REPORTING

(a) Definitions.

(4) "Court reporting" means the act of making a verbatim record of the spoken word, whether by the use of written symbols, stenomask equipment, or electronic devices, in any proceedings pending in any of the courts of this state, including all discovery proceedings conducted in connection therewith, any proceedings reported for the court's own use, and all proceedings required by statute to be reported by ~~a certified or official~~ an approved court reporter or civil court reporter. It does not mean ~~either the act of taking witness statements not intended for use in court as substantive evidence, or the act of electronic recording and transcription of proceedings as provided for in subdivision (g)(3).~~

We suggest the following: (4) "Court reporting" means the act of making a verbatim record of the spoken word, whether by the use of written symbols, stenomask equipment, stenographic equipment, or electronic devices, in any proceedings pending in any of the courts of this state, including all discovery proceedings conducted in connection therewith, any proceedings reported for the court's own use, and all proceedings required by statute to be reported by an approved court reporter or civil court reporter. It does not mean the act of taking witness statements not intended for use in court as substantive evidence.

This addition more fully encompasses the many court reporting methodologies.

4. Proposed amendment to Rule 2.535:

RULE 2.535 COURT REPORTING

(a) Definitions.

(5) "Electronic record" means the audio, analog, digital, or video record of a court proceeding.

We suggest the following: (5) "Electronic record" means the audio, analog, digital, or video record of a court proceeding. "Electronic device" means the analog, digital, or video equipment used for recording the spoken word.

This addition defines electronic device as used in Rule 2.535(a)(4).

5. Proposed amendment to Rule 2.535:

RULE 2.535 COURT REPORTING

(c) Record. When trial proceedings are being reported, no part of the proceedings shall be omitted unless all of the parties agree to do so and the court approves the agreement. When a deposition is being reported, no part of the proceedings shall be omitted unless all of the parties and the witness so agree. When a party or a witness seeks to terminate or suspend the taking of a deposition for the time necessary to seek a court order, the court reporter shall discontinue reporting the testimony of the witness.

We suggest the following: (c) Record. When ~~trial~~ court proceedings are being reported, no part of the proceedings shall be omitted unless all of the parties agree to do so and the court approves the agreement. When a deposition is being reported, no part of the proceedings shall be omitted unless all of the parties and the witness so agree. When a party or a witness seeks to terminate or suspend the taking of a deposition for the time necessary to seek a court order, the court reporter shall discontinue reporting the testimony of the witness.

This suggestion broadens "proceedings" to include hearings.

6. Proposed amendment to Rule 2.535:

RULE 2.535 COURT REPORTING

(d) Ownership of the Records. The chief judge of the circuit in which a proceeding is pending, in his or her official capacity, is the owner of all the records and electronic records made by an official court reporter or quasi-judicial officer in proceedings required to be reported at public expense and proceedings reported for the court's own use.

We suggest the following: (d) Ownership of the Records. The chief judge of the circuit in which a proceeding is pending, in his or her official capacity, is the owner of all the records and electronic records made by an ~~official~~ approved court reporter or quasi-judicial officer in proceedings required to be reported at public expense and proceedings reported for the court's own use.

This suggestion keeps the language consistent with definitions outlined in Rule 2.535(a).

7. Proposed amendment to Rule 2.535:

RULE 2.535 COURT REPORTING

(d)(e) Fees. The chief judge shall have the discretion to adopt an administrative order establishing maximum fees for court reporting services ~~not covered in the plan adopted pursuant to subdivision (g).~~ Any such order must make a specific factual finding that the setting of such maximum fees is necessary to ensure access to the courts. Such finding shall include consideration of the number of court reporters in the county or circuit, any past history of fee schedules, and any other relevant factors.

We suggest the following: ~~(d)~~(e) Fees. The chief judge shall have the discretion to adopt an administrative order establishing maximum fees for court reporting services ~~not covered in the plan adopted pursuant to subdivision (g)~~ at public expense. Any such order must make a specific factual finding that the setting of such maximum fees is necessary to ensure access to the courts. Such finding shall include consideration of the number of court reporters in the county or circuit, any past history of fee schedules, and any other relevant factors.

This addition clarifies the extent to which an administrative order applies to fees for court reporting services.

8. Proposed amendment to Rule 2.535:

RULE 2.535 COURT REPORTING

~~(f)~~**(g) Reporter as Officers of the Court.** A Approved court reporters, civil court reporters, and approved transcriptionists ~~are~~ is an officers of the court for all purposes while acting as a reporters in a judicial proceedings or discovery proceedings or as transcriptionists. ~~The Approved court reporters, civil court reporters, and approved transcriptionists shall comply with all rules and statutes governing the proceeding that are applicable to court reporters and approved transcriptionists.~~

We suggest the following: (g) Officers of the Court. Approved court reporters, civil court reporters, and approved transcriptionists are officers of the court for all purposes while acting as court reporters in judicial proceedings or discovery proceedings or as transcriptionists. Approved court reporters, civil court reporters, and approved transcriptionists shall comply with all rules and statutes governing the proceeding that are applicable to court reporters and approved transcriptionists.

This addition is a promotion towards consistency with other proposed language.

9. Proposed amendment to Rule 2.535:

RULE 2.535 COURT REPORTING

~~(g)~~**(h) Court Reporting Services Provided in Mental Health Proceedings or at Public Expense.**

~~(3)~~ **(4) Electronic Recording and Transcription of Proceedings Without Court Reporters.**

(B) provide a means to have the recording transcribed by approved transcriptionists, either in whole or in part, when necessary for an appeal or for further use in the trial court; and

We suggest the following: (4) Electronic Recording and Transcription of Proceedings Without Court Reporters. (B) provide a means to have the recording transcribed by approved court reporters or approved transcriptionists, either in whole or in part, when necessary for an appeal or for further use in the trial court; and

This addition adds approved court reporters since they are also capable of producing the official record from electronic recording.

10. Proposed amendment to Rule 2.535:

RULE 2.535 COURT REPORTING

~~(g)(h) Court Reporting Services Provided in Mental Health Proceedings or at Public Expense.~~

(5) Electronic Record.

(A) The electronic record is not the official record of a proceeding and is not subject to disclosure except as follows:

(iii) Backup recordings of primary electronic recordings of court proceedings are not the official record and are not subject to disclosure except in the discretion of the court.

We suggest the following: (5) Electronic Record. (A) The electronic record is not the official record of a proceeding and is not subject to disclosure except as follows: (iii) Backup recordings of primary electronic recordings of court proceedings are not the official record and are not subject to disclosure except in the discretion of the court. The court may make copies of the backup recordings or primary electronic recordings available to the public, including self-represented litigants, after review to ensure that matters protected from disclosure by law are kept confidential.

This suggestion keeps the language consistent with the proposed Rule 2.535(h)(5)(A)(ii).

11. Proposed amendment to Rule 2.535:

RULE 2.535 COURT REPORTING

~~(g)(h) Court Reporting Services Provided in Mental Health Proceedings or at Public Expense.~~

(4) (7) Grand Jury Proceedings. Testimony in grand jury proceedings shall be reported by an approved court reporter, but shall not be transcribed unless required by order of court. Other parts of grand jury proceedings, including deliberations and voting, shall not be reported. The approved court reporter's work product, including stenographic notes, electronic recordings, and transcripts, shall be filed with the clerk of the court under seal.

We suggest the following: (7) Grand Jury Proceedings. Testimony in grand jury proceedings shall be reported by an approved court reporter, but shall not be transcribed unless required by order of the court. Other parts of grand jury proceedings, including deliberations and voting, shall not be reported. The approved court reporter's work product, including stenographic notes, electronic recordings, and transcripts, shall be filed with the clerk of the court under seal.

This suggestion corrects a typographical error.

12. Proposed amendment to Rule 2.535:

RULE 2.535 COURT REPORTING

Committee Note

The definitions of "electronic record" in subdivision (a)(5) and of "official record" in subdivision (a)(6) are intended to clarify that when a court proceeding is electronically recorded by means of audio, analog, digital, or video equipment, and is also recorded via a written transcript prepared by a court reporter, the written transcript shall be the "official record" of the proceeding to the exclusion of all electronic records. While the term "record" is used within Rule 2.535 and within Fla. R. App. P. 9.200, it has a different meaning within the unique context of each rule. Accordingly, the meaning of the term "record" as defined for purposes of this rule does not in any way alter, amend, change, or conflict with the meaning of the term "record" as defined for appellate purposes in Fla. R. App. P. 9.200(a).

We suggest the following: Committee Note. The definitions of "electronic record" in subdivision (a)(5) and of "official record" in subdivision (a)(6) are intended to clarify that when a court proceeding or deposition is electronically recorded by means of audio, analog, digital, or video equipment, and is also recorded via a written transcript prepared by an approved court reporter, approved

transcriptionist or civil court reporter, the written transcript shall be the “official record” of the proceeding to the exclusion of all electronic records. While the term “record” is used within Rule 2.535 and within Fla. R. App. P. 9.200, it has a different meaning within the unique context of each rule. Accordingly, the meaning of the term “record” as defined for purposes of this rule does not in any way alter, amend, change, or conflict with the meaning of the term “record” as defined for appellate purposes in Fla. R. App. P. 9.200(a).

These suggestions propose to keep the language consistent with the definitions in Rule 2.535(a).

The FCRA and FCCRC respectfully request that the Court consider our comments and suggestions to the proposed amendments, as well as our attachments.

Respectfully submitted on November 3, 2008.

Jennifer Gaul, CMRS, FPR
2008-2009 FCRA President

Susan D. Wasilewski, RPR, CRR, CCP, CMRS, FPR
2008-2009 FCRA President-Elect
FCCRC Chairman

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was furnished to Scott M. Dimond, Chair, Rules of Judicial Administration Committee, 2665 South Bayshore Drive, Penthouse 2, Miami, Florida 33133; John S. Mills, Chair, Appellate Court Rules Committee, 865 May Street, Jacksonville, Florida 32204-3310; and Robert B. Bennett, Jr., Chair, Commission on Trial Court Performance and Accountability, 2002 Ringling Boulevard, Floor 8, Sarasota, Florida 34237-7002 via United States mail on November 3, 2008. I further certify that the original of the foregoing was delivered to the Florida Supreme Court on November 3, 2008, and that an electronic copy was submitted via e-mail to e-file@flcourts.org on November 3, 2008.