

**IN THE SUPREME COURT OF FLORIDA**

**IN RE: IMPLEMENTATION OF RECOMMENDATIONS  
OF COMMISSION ON TRIAL COURT PERFORMANCE  
AND ACCOUNTABILITY**

**CASE NO.:**

**REPORT OF THE RULES OF JUDICIAL  
ADMINISTRATION COMMITTEE**

Scott M. Dimond, Chair, Rules of Judicial Administration Committee (“RJA Committee”), and John F. Harkness, Jr., Executive Director, The Florida Bar, pursuant to Florida Rule of Judicial Administration 2.140(f), file this report of the RJA Committee in response to the Court’s referral of recommendations by the Commission on Trial Court Performance and Accountability (“Commission”). On February 28, 2008, Chief Justice R. Fred Lewis asked the RJA Committee “to consider recommendations for amendments to the Florida Rules of Judicial Administration made by the Commission.” The Court directed that the RJA Committee’s recommendations be filed by August 28, 2008. (*See* Appendix A.) Relevant portions of the Commission’s proposals containing amendments to Rules of Judicial Administration 2.420 and 2.535 are set forth in Appendix B.

The RJA Committee has studied the proposals and recommends the following amendments for the reasons stated below. The RJA Committee’s proposals have not been published in *The Florida Bar News* or posted on the Bar’s website. The text of proposed rule 2.535 in legislative format is found in Appendix C and the rule in two-column format is found in Appendix D.<sup>1</sup>

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<sup>1</sup>Because the RJA Committee agrees with all of the Commission’s recommendations regarding rule 2.420, that rule is not reproduced in Appendices C and D. In its review of the Commission’s proposal regarding Rule 2.535, the RJA Committee noted that the language of the current rule was not uniformly reflected in the Commission’s amended version of that rule. The Committee has reinserted the original language in the version of the rule contained in Appendix C. In that appendix, the Commission’s proposed changes are shown in standard legislative format, and the RJA Committee’s proposed amendments to the Commission’s proposals are shown in italics. In Appendix D, in an effort to isolate the RJA Committee’s changes to the Commission’s proposal, the Commission’s proposal is shown in the left column without underlines or struck-through language (as if it were the current version), and the RJA Committee’s proposed amendments to the Commission’s version of the rule are shown in the right column, with an accompanying explanation of each change.

As required by Rule 2.140(b)(3), the proposals have been reviewed by The Florida Bar Board of Governors' Executive Committee. The voting record of the RJA Committee and the Board of Governors is set forth following the discussion of each rule proposal.

The proposed amendments and reasons for change are as follows:

**Rule 2.420:** The draft rule contained in the Commission's recommendations (*see* Appendix B) proposed that the phrase "and electronic records, videotapes, or stenographic tapes of court proceedings" be deleted from the end of subdivision (b)(1)(A), and that the phrase "except electronic records of court proceedings that are governed by rule 2.535" be added at the end of subdivision (b)(1)(B). The RJA Committee, by a vote of 16 to 9, recommends that the Commission's proposals as to Rule 2.420 be adopted without further amendment.<sup>2</sup> The Florida Bar Board of Governors' Executive Committee approved the Committee's recommendations by a vote of 9 to 0.

**Rule 2.535:** The draft rule contained in the Commission's recommendations (*see* Appendix B) proposed extensive changes to most of the subdivisions contained in the rule and the addition of new subdivision (d). Each subdivision of the Commission's proposed amended rule is discussed separately in the following paragraphs.

**Subdivision (a):** The Commission proposed the addition of several defined terms. Other than a minor editorial change in subdivision (a)(6), the RJA Committee approves of all of the Commission's proposed additions except for the definition of "Approved transcriptionist" in (a)(2). The RJA Committee recommends that the definition be expanded to include the following underlined text: "*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. The Committee recommends this change because the practice of audiotaping court proceedings for later transcription occurs almost exclusively in criminal and juvenile proceedings as a cost-saving measure in matters that are recorded,

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<sup>2</sup>The vote by the RJA Committee was taken on both 2.420 and 2.535 concurrently. The 16-9 vote reflects concerns with the philosophy behind the Commission's approach to Rule 2.535, as explained on page 6 *infra*. The Committee voiced no concerns about the text of 2.420.

reported, and/or transcribed at public expense, and such practice is rarely (if ever) employed in civil cases, probate cases, and other matters in which the litigants themselves bear the expense of the reporting and transcription of court proceedings. Thus, the Committee’s change clarifies the narrow scope to which the term “approved transcriptionist” applies — to wit, only those court proceedings required to be reported at public expense, rather than all court proceedings.

Subdivision (b): The Commission recommended no change to this subdivision.

Subdivision (c): The Commission recommended no change to this subdivision.

Subdivision (d): The Commission recommended creation of this new subdivision to address ownership of the record of court proceedings that are required to be reported at public expense or that are reported for the court’s own use and to clarify that the court, rather than the court reporter, is the owner of such court records. The RJA Committee recommends the following changes to the Commission’s proposal: ***(d) Ownership of the Records.*** *The court chief judge of the court in which a proceeding is pending, in his or her official capacity, is the owner of the all 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.* The RJA Committee feels that the term “court” should be clarified to identify the chief judge of each circuit as the “owner” or custodian of all court records of that circuit, as distinguished from the circuit court as an entity or the individual circuit or county judge presiding over a particular matter. Because the amended Rule 2.535 now makes a distinction between “electronic records” and “official records,” the Committee also felt it appropriate to specify that the ownership provisions of subdivision (d) apply to *all* records (electronic and non-electronic) made by an official court reporter or quasi-judicial officer in a proceeding required to be reported at public expense.

Subdivision (e) (formerly (d)): The Commission recommends deletion of the phrase “*not covered in the plan adopted pursuant to subdivision (g).*” The RJA Committee concurs with this recommendation.

Subdivision (f) (formerly (e)): The Commission recommended no change to this subdivision other than its redesignation as subdivision (f). The RJA Committee concurs with this recommendation.

Subdivision (g) (formerly (f)): The Commission expanded coverage of this subdivision to include civil court reporters and approved transcriptionists, and redesignated it as subdivision (g). The RJA Committee concurs with this recommendation with one minor editorial change.

Subdivision (h) (formerly (g)): The Commission recommended a number of changes to this subdivision:

- The RJA Committee concurs with the Commission’s recommended creation of new (h)(1) and (h)(2) with minor editorial changes.
- In (h)(3), the Commission recommended no changes. However, the RJA Committee recommends that the second sentence of the subdivision be amended as follows: *The plan shall ensure that all court reporting services are provided by ~~qualified persons~~ approved court reporters or approved transcriptionists*. The Committee recommends this change to make the rule internally consistent in light of the defined terms “approved court reporter” and “approved transcriptionist” contained in subdivisions (a)(1) and (a)(2), respectively.
- The RJA Committee concurs with the Commission’s recommended changes in (h)(4).
- The Commission created a new subdivision (h)(5) to address disclosure and transcription of the record. The RJA Committee concurs with this recommendation except for minor editorial changes and a suggested rewrite of subdivision (h)(5)(A)(ii). In that subdivision, the Committee recommends that the order of sentences be reversed because it makes more sense to place the provisions governing disclosure of the transcript or “official record” before the provisions governing disclosure of the electronic or “unofficial” record. The Committee also recommends substitution of the term “record” for “transcript” so that the subdivision is consistent with subdivision (a)(6).

- The Commission created a new subdivision (h)(6) to address the safeguarding of confidential communications. Other than suggesting minor editorial changes, the RJA Committee concurs with this recommendation.

- The RJA Committee concurs with the Commission's recommended changes in (h)(7).

Subdivision (i) (formerly (h)): The Commission recommended deletion of an obsolete reference to January 1, 2001, and added the modifier "approved" before "court reporter." The RJA Committee concurs with these recommendations.

In addition, the RJA Committee is of the opinion that a Committee Note should be appended at the end of the amended rule, to read as follows:

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).

The Committee has suggested this Note to ensure that judges, attorneys, and litigants remain cognizant that the definitions of "electronic record" and "official record" contemplated by the amendments to Rule 2.535 do not in any way alter the definition of the term "record" for appellate purposes set forth in Florida Rule of Appellate Procedure 9.200(a).

The RJA Committee, by a vote of 16 to 9, recommends that the Commission's proposals as to Rule 2.535 be adopted with the incorporation

of the Committee's amendments as outlined above. The Florida Bar Board of Governors' Executive Committee approved the RJA Committee's recommendations by a vote of 9 to 0. The minority vote of the RJA Committee reflects the fact that several members of the Committee have expressed misgivings about the scope of the Commission's recommendations. It is the understanding of the RJA Committee that court reporters generally support the promulgation of statewide competency standards for court reporters; however, the Commission's recommended changes to the rules are much narrower and do not address transcript quality and statewide court reporter competency issues. The majority of the RJA Committee members believe that the Committee should make recommendations that are responsive to, but limited to the scope of, the Commission's proposals.

The RJA Committee respectfully requests that the Court consider the Committee's comments and amend the Florida Rules of Judicial Administration as outlined in this report.

Respectfully submitted on August 18, 2008.

/s/ Scott M. Dimond  
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## **CERTIFICATIONS**

### **CERTIFICATION OF FONT COMPLIANCE**

I certify that this report was prepared in 14-point Times New Roman font.

### **CERTIFICATION THAT RULES HAVE BEEN READ AGAINST WEST'S RULES OF COURT**

I certify that these rules were read against *West's Florida Rules of Court — State* (2008).

### **CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing was furnished by United States mail to The Honorable Alice Blackwell White, Chair, Commission on Trial Court Performance and Accountability, 425 North Orange Avenue, Suite 2030, Orlando, FL 32801-1515, and Barbara French, OSCA Lead Staff, Commission on Trial Court Performance and Accountability, Supreme Court Building, 500 South Duval Street, Tallahassee, FL 32399-1900, on August 18, 2008.

/s/ J. Craig Shaw

J. Craig Shaw

Staff Liaison to Rules of Judicial Administration Committee

The Florida Bar

Florida Bar No. 253235