

**IN THE SUPREME COURT OF FLORIDA**

**IN RE: AMENDMENTS TO THE FLORIDA  
RULES OF JUDICIAL ADMINISTRATION**

**CASE NO. SC11-**

**REGULAR-CYCLE REPORT OF  
THE FLORIDA RULES OF  
JUDICIAL ADMINISTRATION COMMITTEE**

Katherine Eastmoore Giddings, Chair of the Florida Rules of Judicial Administration Committee, and John F. Harkness, Jr., Executive Director of The Florida Bar, file this regular-cycle report of the Committee, under *Fla. R. Jud. Admin.* 2.140(c).

The RJA Committee proposes amendments to the rules as shown on the attached table of contents. The voting record for the Committee for each amendment is shown in the table of contents (*see* Appendix A). As required by *Fla. R. Jud. Admin.* 2.140(b)(2), the Board of Governors of The Florida Bar has reviewed the proposed amendments. The Board's vote on each amendment is also shown in the table of contents.

As required by *Fla. R. Jud. Admin.* 2.140(b)(2), notice of the amendments was published in *The Florida Bar News* on July 1, 2010, and also posted on The Florida Bar's website (*see* Appendix D). One comment was received in response to that notice, which the committee declined to act upon (*see* Appendix F).

The following attachments are included with this report:

- Appendix A: Table of contents.
- Appendix B: Rules in legislative format.
- Appendix C: Rules in two-column format.
- Appendix D: Copies of publication notices in *Florida Bar News* and on Florida Bar website.
- Appendix E: Letters requesting consideration of rule changes.
- Appendix F: Comment and committee response to comment.

A discussion of each rule change and the reasons for it follow.

## **RULE 2.505      ATTORNEYS**

The Committee proposes to amend subdivision (f)(1) of the rule as follows:

**(f) Termination of Appearance of Attorney.** The appearance of an attorney for a party in a proceeding shall terminate only in one of the following ways:

**(1) Withdrawal of Attorney.** By order of court, where the proceeding is continuing, upon motion and hearing, on notice to all parties and the client, such motion setting forth the reason for withdrawal and the client's last known address and telephone number, including area code.

This amendment was prompted by the Committee's receipt of a letter from Judge Renee Goldenberg (*see* Appendix E, page 1). The issue is that, when attorneys move to withdraw, they are not required to supply the telephone numbers of their clients. Judge Goldenberg recommended that Rule 2.505 require that they provide the court with the client's telephone number to facilitate contact with the party. Judge Goldenberg also recommended that Rule 2.515 be amended to require the attorney's email address. (Although a proposed amendment to Rule 2.515 in response to this recommendation was noticed as part of this cycle report, a proposed amendment to Rule 2.515 requiring that attorneys include both their primary email address and secondary email addresses, if any, was submitted out-of-cycle and is pending in case number SC10-2101.) The Committee unanimously concurs with the suggestion regarding Rule 2.505, which will make it easier for the court to maintain contact with a party who may have to proceed pro se after withdrawal of the attorney.

## **RULE 2.510      FOREIGN ATTORNEYS**

The Committee proposes to amend subdivisions (a) and (b) (2) of the rule as follows:

**(a) Eligibility.** Upon filing a verified motion with the court, an attorney who is an active member in good standing of the bar of another state and currently eligible to practice law in a state other than Florida may be permitted to appear in particular cases in a Florida court upon such conditions as the court may deem appropriate,

provided that a member of The Florida Bar in good standing is associated as an attorney of record. The foreign attorney must make application in each court in which a case is filed even if a lower tribunal granted a motion to appear in the same case. In determining whether to permit a foreign attorney to appear pursuant to this rule, the court may consider, among other things, information provided under subdivision (b)(3) concerning discipline in other jurisdictions. No attorney is authorized to appear pursuant to this rule if the attorney (1) is a Florida resident, unless the attorney has an application pending for admission to The Florida Bar and has not previously been denied admission to The Florida Bar; (2) is a member of The Florida Bar but is ineligible to practice law; (3) has previously been disciplined or held in contempt by reason of misconduct committed while engaged in representation permitted pursuant to this rule provided, however, the contempt is final and has not been reversed or abated; (4) has failed to provide notice to The Florida Bar or pay the filing fee as required in subdivision (b)(7); or (5) is engaged in a “general practice” before Florida courts. For purposes of this rule, more than 3 appearances within a 365-day period in separate ~~representations~~cases shall be presumed to be a “general practice.” Appearances at different levels of the court system in the same case shall be deemed 1 appearance for the purposes of determining whether a foreign attorney has made more than 3 appearances within a 365-day period. In cases involving indigent clients, the court may waive the filing fee for good cause shown.

**(b) Contents of Verified Motion.** A form verified motion accompanies this rule and shall be utilized by the foreign attorney. The verified motion required by subdivision (a) shall include:

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(2) a statement identifying by date, case name, and case number all other matters in Florida state courts in which pro hac vice admission has been sought in the preceding 5 years, including any lower tribunals for the case in which the motion is filed, and whether such admission was granted or denied;

These amendments were prompted by the Committee’s receipt of a letter

from Judge William D. Palmer (*see* Appendix E, pages 2-4). Judge Palmer asked that the Committee clarify an ambiguity in the rule regarding “whether the filing of an additional motion and a fee is required [of a foreign attorney admitted pro hac vice at the trial level] in the appellate court, since it is a separate court, even if the case involved is the same.” In a footnote to his letter, Judge Palmer suggests that the rule be reworded “to avoid the argument that the fee does not have to be paid at each court.”

Judge Palmer noted in his letter that it is his understanding that this Court and all of the district courts of appeal “require the filing of a motion and the payment of fees at the appellate level, even where the attorney has already appeared below.” The Committee also received confirmation from the Bar’s Unlicensed Practice of Law Department that separate fees are in fact charged at each level of court in which the foreign attorney seeks permission to appear. The Committee therefore concludes that the rule should be amended to reflect current practice, and proposes the addition of the following new second sentence in subdivision (a) of the rule: “The foreign attorney must make application in each court in which a case is filed even if a lower tribunal granted a motion to appear in the same case.”

The Committee also concludes that it should clarify that appearances by the foreign attorney at different levels of court in the same case constitute only one appearance for purposes of the rule that limits foreign attorneys to three appearances pro hac vice within a 365-day period. The Committee therefore proposes the addition of the following sentence to subdivision (a): “Appearances at different levels of the court system in the same case shall be deemed 1 appearance for the purposes of determining whether a foreign attorney has made more than 3 appearances within a 365-day period.” An additional editorial change is suggested in subdivision (a) (replacing the word “representations” with “cases”), and subdivision (b)(2) is amended to reflect the proposed amendment to subdivision (a).

## **RULE 2.525      ELECTRONIC FILING**

The Committee proposes new subdivision (g) be added to this rule to provide:

**(g) Accessibility.** All documents referred to in subdivision (c) that are transmitted to a court in any electronic form must be formatted in a

manner that complies with all state and federal laws requiring that electronic judicial records be accessible to persons with disabilities, including without limitation the Americans with Disabilities Act and Section 508 of the federal Rehabilitation Act of 1973 as incorporated into Florida law by section 282.603(1), Florida Statutes (2009), and any related federal or state regulations or administrative rules.

This proposal will mandate that filed documents comply with the Americans with Disabilities Act. This amendment was prompted by the letter of October 8, 2008, from Thomas D. Hall (*see* Appendix E, pages 7-9), which explains that a rule addressing this issue is required “because both federal and state laws, along with interpretations by the appropriate regulatory bodies, now clearly are requiring that electronic documents be made accessible to persons with disabilities. This includes not only electronic documents posted on websites but also any electronic documents distributed through other means, including those sent by email, given out on media such as DVDs, or shared with employees who have disabilities.” Although Mr. Hall suggested that this requirement be included in a new rule 2.526, the committee decided to add it as a new subdivision instead.

## **RULE 2.530            COMMUNICATION EQUIPMENT**

The Committee proposes to amend subdivision (d)(1) of the rule as follows: “A county or circuit judge may, ~~if all the parties consent~~, allow testimony to be taken through communication equipment if all parties consent or if permitted by another applicable rule of procedure.”

This proposed change has been the subject of significant debate for an extended period of time. The matter has been before this Court previously. In *Amendments to the Florida Rules of Judicial Administration*, 851 So. 2d 698 (Fla. 2003), this Committee proposed that subdivision (d)(1) of the rule (then numbered 2.071) be amended to give the court discretion to use communication equipment to take testimony, even if a party objected. This Court rejected that proposal and referred the issue to the various Florida Bar rules committees for consideration. To date, no subsequent proposals have been put forward by any of these committees. On February 1, 2008, Judge Walter Logan sent a letter to Elaine New, a member of the Rules of Judicial Administration Committee (*see* Appendix E, pages 5-6), in which he pointed out that Rule 2.530(d)(1) conflicts with Florida Small Claims Rule 7.140(f), which allows the presentation of testimony over the telephone “[a]t the discretion of the court,” and with Florida Rules of Civil Procedure 1.310(b)(7),

which allows the court to “order that the testimony at a deposition be taken by telephone.”

The Rules of Judicial Administration Committee now proposes to amend the rule as stated above. It believes that the proposed change will resolve the conflict referred to above and will reduce the cost of judicial proceedings. At the same time, the Committee recognizes that there are valid concerns about confrontational issues, particularly in criminal and juvenile matters, and therefore proposes to add the qualifying language in (d)(1) that unless all parties consent, testimony can be taken through communication equipment only “if permitted by another rule of procedure.”

The Committee received a comment on this proposal suggesting that (1) Rule 2.530(d)(1) be amended to allow, in the judges’ discretion, communication equipment to be used without the consent of all parties, and (2) Rule 2.520(d)(3) be amended to allow, in the judge’s discretion, “an alternative means of verifying a remotely testifying witnesses’ identity and affirmation of the oath,” (*see* Appendix F.) After considering these suggestions at its September 23, 2010, meeting, the Committee declined to act on them. The Committee’s response to the comment is also in Appendix F.

WHEREFORE, the Florida Rules of Judicial Administration Committee requests that the Court amend the Rules of Judicial Administration as outlined in this report.

Respectfully submitted on January \_\_\_\_\_, 2011.

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**CERTIFICATIONS**

**CERTIFICATION OF FONT COMPLIANCE**

I certify that this report was prepared in compliance with the font requirements of *Fla. R. App. P. 9.210(a)(2)*.

**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* (2010 revised edition).

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing was furnished by United States mail to:

Judge Renee Goldenberg  
Broward County Courthouse  
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Fort Lauderdale, FL 33301

Judge Walter Logan  
St. Petersburg Judicial Building  
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St. Petersburg, FL 33701

Judge William D. Palmer  
District Court of Appeal, Fifth  
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