

IN THE SUPREME COURT OF FLORIDA

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

CASE NO. SC11-52

RESPONSE TO COMMENT OF THE FAMILY LAW SECTION

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 response to comments filed by the Family Law Section of The Florida Bar. This response has been approved by the Committee by a vote of 29-0.

The Committee’s proposed rule amendment and the Family Law Section proposal are as follows:

Committee:

“A county or circuit court 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.”

Family Law Section:

“A ~~county or circuit judge~~ Judicial Officer may, ~~if all parties consent~~, allow testimony to be taken through communication equipment if all parties consent or if such testimony is explicitly authorized by another applicable rule of procedure.”

The Family Law Section proposes essentially two changes to the Committee’s proposal, which were discussed separately.

First, with respect to the substitution of “Judicial Officer” for “county or circuit judge,” the Committee agrees that it makes sense to include other officers who may be conducting evidentiary hearings within the rule. However, the Committee does not agree with the use of “Judicial Officer,” which is a term that does not seem to be used (or defined) elsewhere within the rules. The consensus was that it is appropriate to broaden the scope of the rule beyond “county and circuit judge[s]”, but that the hearing officers, general magistrates and others to whom the rule also applies should be listed in the rule or a definition included as to what is a “Judicial Officer.”

The second change proposed by the Family Law Section is replacing the language “if all parties consent or if permitted by another applicable rule of procedure” with “if all parties consent or if such testimony is specifically authorized by another rule of procedure.” The Committee does not agree with the Family Law Section that this change in language is necessary, for the following reasons. The Family Law Section’s suggestion of the change in language seems to be based upon what they perceive is an ambiguity in Fla. R. Civ. P. 1.310(b)(7). The Committee believes that if there is ambiguity within another section of the rules, such ambiguity ought to be addressed by amendment of the ambiguous rule rather than by creating a rule of judicial administration demanding specificity in other rules.

Respectfully submitted on _____, 2011.

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CERTIFICATE OF SERVICE

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

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