

**IN THE SUPREME COURT OF FLORIDA**

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

**CASE NO. SC12-**

**OUT OF CYCLE REPORT OF  
THE FLORIDA RULES OF  
JUDICIAL ADMINISTRATION COMMITTEE  
REGARDING PROPOSED RULE 2.451**

Keith H. Park, Chair, Florida Rules of Judicial Administration Committee (the Committee), and John F. Harkness, Jr., Executive Director of The Florida Bar, file this out of cycle report of the Committee, under Fla. R. Jud. Admin. 2.140(e).

The Committee proposes new Rule 2.451, which is attached in full-page format (see Appendix A) and two-column format (see Appendix B).

The Committee voted 25-8 in favor of the initial draft of this new rule and 25-3 in favor of submitting it out-of-cycle. As required by Fla. R. Jud. Admin. 2.140(b)(2), notice was published in *The Florida Bar News* on January 1, 2011, and also posted on The Florida Bar's website (see Appendix C). Over 250 comments were received (see Appendix E) and considered by a subcommittee, which then revised the proposal. The Committee considered the revised proposal at its June 2011 meeting and voted 23-0 in favor of the revised new rule. In August 2011 an interim comment was received. See Appendix F.

The revised new rule was published again in *The Florida Bar News* on September 1, 2011, and also posted on The Florida Bar's website (see Appendix C). Two comments were received in response to the revised new rule, which were considered by a subcommittee (see Appendix G). The subcommittee proposed no further amendments to the rule and the Committee agreed.

As required by Fla. R. Jud. Admin. 2.140(b)(2), the Executive Committee of the Board of Governors of The Florida Bar reviewed the proposed amendments and voted in favor of the proposed new rule 11-0.

**ATTACHMENTS:**

Appendix A: Rule 2.451 in Legislative Format ADA

Appendix B:	Rule 2.451 2 column ADA
Appendix C:	Rule 2.451 Notices of Publication
Appendix D:	Committee Referrals
Appendix E:	Comments on Rule 2.451 1-11 Publication
Appendix F:	Interim Comment
Appendix G:	Comments on Rule 2.451 9-11 Publication

**BASIS FOR PROPOSED AMENDMENTS:**

The issue of the use of electronic devices in the courtroom was initially considered by the Committee in response to an October 30, 2009, email from Lester Garringer, who forwarded the concerns of Craig Burger, the Public Information Officer for the 17th Judicial Circuit. See Appendix D, pages 1-2. Mr. Burger questioned the use, by individuals, of cell phones and other devices that take photographs and record sounds in the courtroom. As pointed out in the email, the existing rule on use of electronic devices, Fla.R.Jud.Admin. 2.450, applies only to members of the media. A subcommittee was formed in January 2010 to begin studying this issue.

On April 14, 2010, the Court sent the Committee a referral to review Rule 2.450, in light of proposed amendments to the civil jury instructions concerning juror use of electronic devices, “addressing whether the rules of judicial administration should be amended to address the use of electronic devices in the courtroom by persons that are not part of the media.” See Appendix D, pages 3-4. In August 2010, the Committee received a letter from John E. Tuthill, through Judge Jacqueline Scola, regarding the proposed rule. See Appendix D, pages 5-7. On August 20, 2010, the Court sent the Committee an additional request to draft a proposed rule requiring the removal of cell phones and other electronic devices from jurors during trial court proceedings. See Appendix D, pages 8-46. (A status report was sent to Tom Hall on August 31, 2010, as requested in the original letter of referral of April 14, 2010, by the Committee Chair. See Appendix D, pages 47-48).

The reasons for the proposed new rule are as follows.

**ISSUE 1: USE OF ELECTRONIC DEVICES IN THE COURTROOM**

As to the general issues regarding the use of electronic devices in the courtroom by individuals, including jurors, the Committee concluded that Rule 2.450 was initially designed to apply only to the media and does not contemplate or address private citizens’, parties’, or jurors’ use of cell phones and other

equipment capable of transmitting sound, still pictures, or moving pictures from a courtroom. The Committee initially considered whether the scope of Rule 2.450 should be expanded to address these issues, but decided a new rule would better address the issues.

A number of specific problems regarding this matter were identified and considered by the Committee, including: a case in which Al Roker was on the jury and took photos for use on The Today Show; judges are currently dealing with such issues on a case by case basis and a rule providing some guidance on such issues might be helpful; issues with gang members and witnesses texting each other during trials; and concern that any rule might be perceived as limiting trial judges' ability to control their courtrooms as they see fit.

## ISSUE 2: REMOVAL OF ELECTRONIC DEVICES FROM JURORS

The committee identified the following issues regarding the removal of electronic devices from jurors: (1) when the devices should be removed; (2) when the devices should be returned to jurors (for instance, whether they should be returned during breaks); (3) who is to collect and store the electronic devices; and (4) whether to include this in Rule 2.451 or make a separate rule on removal of electronic devices from jurors. Some of the issues discussed include concern that the trial judge should have flexibility, except that devices should be removed during jury deliberations; that being too restrictive on the use of cell phone and electronic devices by jurors would discourage jury service; that jurors may have legitimate needs to communicate with family or others during their jury service on matters unrelated to the trial; and that a rule was not the appropriate place to include specifics on storage of such devices.

## COMMENTS ON THE PROPOSED RULE AND RESULTING REVISIONS

### January 2011 publication (see Appendix E):

Over 250 comments were received in response to publication of the initial draft of the rule. Most of the comments urged that the distinction in the proposed rule between professional journalists and "citizen journalists" be eliminated. Provisions in the rule regarding deletion of electronic records or confiscation of electronic devices were criticized. Still others noted that the court already has the inherent authority to restrict the use of electronic devices and that a rule is not needed. A number of other comments were made ranging from a recommendation that the proposed rule be amended to entirely eliminate electronic devices in the courthouse, to drafting suggestions.

In response to the comments, the Committee (1) eliminated the distinction between professional journalists and others in the courtroom; (2) deleted specific references to confiscating devices; (3) deleted specific references to the court removing materials that were improperly recorded; and (4) made a number of other technical modifications to the proposed rule.

By eliminating the distinction in proposed rule 2.451 between professional journalists and others, the existing standard in Rule 2.450 will apply to the media's use of any electronic device (not just the cameras and devices mentioned in Rule 2.450). That same standard will apply to the use of electronic devices by anyone in the courtroom; *i.e.*, the use of electronic devices in the courtroom is always subject to the court's authority to (a) control the conduct of proceedings before the court; (b) ensure decorum and prevent distractions; and (c) ensure the fair administration of justice in the pending cause.

The Committee believes the court retains the authority to confiscate devices and to delete materials that were improperly recorded but that such specificity is not needed in the rule. The other changes were either clarifying or technical in nature. The Committee believes that the court has the inherent authority to take the actions specified in proposed Rule 2.451, but recommends the rule be adopted because it will reinforce that authority for trial judges.

An interim comment was received in August 2011 from Mr. Van Wie, a courtroom deputy in a criminal courtroom, who suggests barring all members of the general public from bringing electronic devices into any state courthouse. (Mr. Van Wie also commented in January 2011). The Chair emailed Mr. Van Wie on August 26, 2011, and pointed out that the Committee considered many counterbalancing factors in connection with this matter and that, under the proposed rule, the presiding judge has the discretion to remove any electronic device that is being misused in the courtroom. See Appendix F.

The revised proposal was published for comment in September 2011.

September 2011 publication (see Appendix G):

The committee received two comments in response to the second publication.

The first comment, from Mr. Blaise Trettis, expresses concern that the potential seizure of jurors' electronic devices will create juror animosity and contempt toward judges and the judicial system. The second comment is from Ms.

Rosemary Palmer, who argues against any restrictions on electronic devices based on First Amendment and open government concerns, and argues that the rule would allow judges to “hide” what occurs in their courtrooms.

The Committee decided that no further changes should be made to the proposed rule in response to these comments.

### **SUMMARY OF PROPOSED RULE**

Subdivision (a) of the proposed rule defines electronic devices; subdivision (b)(1) provides for the removal of electronic devices from jurors; subdivision (b)(2) provides for return of electronic devices to jurors during recesses and sequestration; subdivision (b)(3) lists prohibited uses of electronic devices by jurors; subdivision (b)(4) states that judges have authority to permit jurors to retain their electronic devices during trial proceedings; subdivision (c)(1) states the general authority of presiding judges or quasi-judicial officers to control the use of electronic devices in courtrooms; and subdivision (c)(2) states the general authority of the chief judge to control the use of electronic devices in a courthouse or court facility.

The Committee concluded that this rule is controversial; it involves many variables and competing interests, and there will be some level of opposition to the rule regardless of its final form. The only other viable option would be to adopt the federal model and ban all electronic devices, which would likely draw much criticism from practicing attorneys. The Committee believes that the proposed rule in its current form is the best compromise among the many constituencies and concerns the rule is designed to serve.

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 \_\_\_\_\_

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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)*.

### CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was furnished by email, with the option to request a printed copy, to the following on \_\_\_\_\_, 2012, to:

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