

IN THE SUPREME COURT OF FLORIDA

**IN RE: AMENDMENTS TO THE
FLORIDA RULES OF EVIDENCE—2019
REGULAR-CYCLE-REPORT**

CASE NO.: SC19–

**CODE AND RULES OF EVIDENCE COMMITTEE
REGULAR-CYCLE REPORT**

Patricia M. Dodson, Chair of the Code and Rules of Evidence Committee (“CREC”), and Joshua E. Doyle, Executive Director of The Florida Bar, file this regular-cycle report under Florida Rule of Judicial Administration 2.140(b). CREC has met on a regularly scheduled basis during the past three years to consider amendments to Florida Legislation that would potentially impact the Florida Code of Evidence. CREC considered an amendment to section 90.204(4), Florida Statutes.

CREC proposes that section 90.204(4), Florida Statutes, be adopted as a Rule of Evidence, to the extent it is procedural.

As required by Florida Rule of Judicial Administration 2.140(b), the Committee’s proposal regarding section 90.204(4), Florida Statutes, was published for comments in the July 1, 2018, edition of *The Florida Bar News*. See Appendix A. No comments were received.

Also, as required by Florida Rule of Judicial Administration 2.140(b), CREC’s proposal was submitted to The Florida Bar Board of Governors (Board). CREC’s proposal was discussed at the Board’s July 2018 meeting. The Board approved CREC’s proposal regarding section 90.204(4), Florida Statutes, by a vote of 36-0.

The Code and Rules of Evidence Committee respectfully submits the proposed recommendation for this Court’s consideration for the following reasons:

**SEC. 90.204 DETERMINATION OF PROPRIETY OF JUDICIAL
NOTICE AND NATURE OF MATTER NOTICED**

Chapter 2014-35, section 2, Laws of Florida, codified as section 90.204(4), Florida Statutes, authorizes judges in family cases to take judicial notice of certain

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court records without prior notice to the parties when imminent danger to persons or property has been alleged and it is impractical to give prior notice. This statute also provides for a deferred opportunity to present evidence and requires that a notice of taking such judicial notice be filed within a specific period of time. Lastly, this new law clarifies that “family cases” as used in that section of the statute is defined in the Florida Rules of Judicial Administration. *See* Appendix B. A memorandum regarding the amendment and relevant CREC minutes are provided in Appendix C.

Although Chapter 2014-35, section 2, Laws of Florida, eliminates the advanced notice requirement specified in section 90.202, Florida Statutes, the CREC supports Chapter 2014-35, section 2, Laws of Florida procedural adoption as it only eliminates the requirement of notice “when imminent danger to person or property” is involved. The CREC also notes that a new family law rule, Rule 12.4501, was adopted by the Court in response to the amendments to section 90.204, Florida Statutes, in *In Re Amendments to Florida Family Law Rules of Procedure—2017 Regular Cycle Report*, 27 So. 3d 115 (Fla. 2017).

Chapter 2014-35, section 2, Laws of Florida, codified at section 90.204(4), Florida Statutes, should be adopted to the extent it is procedural. This recommendation was approved by the CREC by a 31-1-1 vote. The Board of Governors concurred in this recommendation by a 36-0 vote.

Chapter 2014-35, section 2, Laws of Florida, specifically amends section 90.204(4), Florida Statutes, to read:

90.204 Determination of propriety of judicial notice and nature of matter noticed.—

(4) In family cases, the court may take judicial notice of any matter described in s. 90.202(6) when imminent danger to persons or property has been alleged and it is impractical to give prior notice to the parties of the intent to take judicial notice. Opportunity to present evidence relevant to the propriety of taking judicial notice under subsection (1) may be deferred until after judicial action has been taken. If judicial notice is taken under this subsection, the court shall, within 2 business days, file a notice in the pending case of the matters judicially noticed. For purposes of this subsection, the term “family cases” has the same meaning as provided in the Rules of Judicial Administration.

WHEREFORE, the undersigned respectfully requests that the Court adopt Chapter 2014-35, section 2, Laws of Florida, as a Rule of Evidence to the extent it is procedural.

Respectfully submitted on January 24, 2019.

/s/ Patricia M. Dodson
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CERTIFICATE OF COMPLIANCE

I certify that this report meets the font requirements of *Fla. R. App. P.* 9.120(a)(2).

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