

Supreme Court of Florida

No. SC01-1533

AMENDMENT TO FLORIDA RULE OF JUDICIAL ADMINISTRATION 2.130.

[September 19, 2002]

PER CURIAM.

We have for consideration a report of the Rules of Judicial Administration Committee (Rules Committee) proposing a number of out-of-cycle amendments to Florida Rule of Judicial Administration 2.130, Procedure for Amending Rules. We have jurisdiction. Art. V, § 2(a), Fla. Const.

The Rules Committee filed its report in response to a request from this Court asking the committee to consider a number of amendments to rule 2.130. See Fla.

R. Jud. Admin. 2.130(f). The proposed amendments were published for comment but no comments were received. After considering the Rules Committee's report and recommendations, we adopt the proposed amendments, with the modifications discussed below.

The most significant changes are to rule 2.130(c), Schedule for Rule Proposals. Subdivision (c)(2) is amended to require that, contemporaneously with the October 1 reporting of proposed changes to the Board of Governors of The Florida Bar, rules committees must publish the proposals on The Florida Bar website and in The Florida Bar Journal or The Florida Bar News. Under the amendment, interested persons are given until November 1 to submit comments to the appropriate committee chair, and each committee has until December 1 to consider the comments and report any revisions to its proposed changes to the Board of Governors. Requiring the publication of committee proposals before they are filed with the Court will allow the committees to consider the comments of interested persons and revise or abandon proposals before filing them with the Court.

As proposed by the Rules Committee, the last paragraph of subdivision (c)(4) is amended to require that committee reports and proposed rule changes be filed on paper and in an electronic format approved by this Court. Although not

proposed by the Rules Committee, we have made several other changes to subdivision (c)(4). We have added a requirement to subdivision (c)(4)(A) that the committee report include the name and address of the proponent of each change if other than the rules committee. This requirement will ensure that interested persons can be provided with the proponent's address for service of comments as required under new subdivision (c)(6), which is discussed below. We have added a new subdivision (c)(4)(C) which requires that the rules committee report the action taken on comments submitted in accordance with subdivision (c)(2). We have renumbered the other provisions in that subdivision accordingly. We also have added a provision to subdivision (c)(4)(E), which has been renumbered subdivision (c)(4)(F), which requires that the appendix to the committee's report contain all comments submitted to the committee.

Consistent with the Rules Committee recommendation that oral argument may not be necessary in all regular-cycle rule amendment cases, we have amended subdivision (c)(5) to provide that if the Court deems oral argument necessary, it shall establish a date during May or June of each reporting year for oral argument on the proposed amendments. We also have added language to subdivision (c)(5) that provides for post-filing publication of the proposals if the committee modifies its proposals after considering comments submitted in accordance with subdivision

(c)(2).

Consistent with the Rules Committee's proposal, new subdivision (c)(6) is added to require that all comments and other submissions concerning rule amendments be filed with the Clerk of the Supreme Court and served on the chair of the appropriate rules committee and on the proponent of the rule change if other than the committee. A similar amendment is made to subdivision (a), Emergency Amendments. Language is added to subdivisions (c)(6) and (f), Requests by Court, which clarifies that all requests or submissions by a rules committee also must be filed with the Clerk of Court. Subdivision (c)(6) is further amended to require the Clerk of Court to publish on the Internet websites of the Supreme Court and The Florida Bar all comments and submissions filed concerning a proposed rule change. Posting the comments on the websites will allow all interested persons to become aware of comments filed in response to a proposed rule change.

As proposed by the Rules Committee, rule 2.130(b) has been amended to eliminate the requirement that rules committee minutes be furnished to both the Court and the Clerk of Court. We agree with the Rules Committee that once provided with a copy of the minutes, the Clerk of Court can distribute copies to the Court.

Accordingly, we amend Florida Rule of Judicial Administration 2.130 as

reflected in the appendix to this opinion. New language is indicated by underscoring; deletions are indicated by struck-through type. The amendments shall become effective upon the release of this opinion.

It is so ordered.

ANSTEAD, C.J., SHAW, WELLS, PARIENTE, LEWIS, and QUINCE, JJ., and HARDING, Senior Justice, concur.

THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER THE EFFECTIVE DATE OF THESE AMENDMENTS.

Original Proceeding - Florida Rules of Judicial Administration

Honorable Nelly N. Khouzam, Chair, Florida Rules of Judicial Administration Committee, Clearwater, Florida; and John F. Harkness, Jr., Executive Director, The Florida Bar, Tallahassee, Florida,

for Petitioner

APPENDIX

RULE 2.130. PROCEDURE FOR AMENDING RULES

(a) **Emergency Amendments.** The supreme court, with or without notice, may change court rules at any time if an emergency exists that does not permit reference to the appropriate committee of The Florida Bar for recommendations. If a change is made without reference to the committee, the change may become effective immediately or at a future time. In either event, the court shall fix a date for further consideration of the change. Any person may file comments concerning the change, seeking its abrogation or a delay in the effective date, in accordance with the procedures set forth in subdivision (c)(6) of this rule. The court may allow oral argument in support of such comments by The Florida Bar, by its sections and committees, and by other bar associations. Notice of the hearing on the change and a copy of the change shall be furnished to the affected committee chair and vice chair, the executive director of The Florida Bar, all members of the Judicial Management Council, the clerk and chief judge of each district court of appeal, the clerk and chief judge of each judicial circuit, and any person who has asked in writing filed with the clerk of the supreme court for a copy of the notice. The change shall be published on the Internet websites of the supreme court and The Florida Bar, and in the Florida Bar Journal or Florida Bar News before the hearing. Notice of the hearing shall also be published on the Internet websites of the supreme court and The Florida Bar, and in the Florida Bar Journal or Florida Bar News.

(b) **Amendments Generally.** The following procedure shall be followed for consideration of rule amendments generally other than those adopted under subdivisions (a), (e), and (f):

(1) Proposals for court rules, amendments to them, or abrogation of them may be made by any person.

(2) Proposals shall be submitted to the clerk of the supreme court in writing and shall include a general description of the proposed rule change or a specified proposed change in content. The clerk of the supreme court shall refer proposals to the appropriate

committee under subdivision (b)(3).

(3) The Florida Bar shall appoint the following committees to consider rule proposals: Civil Procedure Rules Committee, Criminal Procedure Rules Committee, Small Claims Rules Committee, Traffic Court Rules Committee, Appellate Court Rules Committee, Juvenile Court Rules Committee, Code and Rules of Evidence Committee, Rules of Judicial Administration Committee, Probate Rules Committee, Workers' Compensation Rules Committee, and Family Law Rules Committee.

(4) Each committee shall be composed of attorneys and judges with extensive experience and training in the area of practice of the committee calling for regular, frequent use of the rules. The members of the committee shall serve for 3-year staggered terms. The president of The Florida Bar shall appoint the chair and vice chair of each committee.

(5) The Rules of Judicial Administration Committee shall also serve as a rules coordinating committee. Each rules committee shall have at least 1 of its members appointed to the Rules of Judicial Administration Committee to serve as liaison. All proposed rules changes shall be submitted to the Rules of Judicial Administration Committee, which shall then refer all proposed rules changes to those rules committees that might be affected by the proposed change. All proposed changes shall be submitted by June 30 of each year of the rules cycle.

(6) The committees shall consider and vote on each proposal. The committees may originate proposals and are charged with the duty of regular review and reevaluation of the rules to advance orderly and inexpensive procedures in the administration of justice. The committees may accept or reject proposed amendments or may amend proposals. The committees shall keep minutes of their activities, which minutes shall reflect the action taken on each proposal. Copies of the minutes shall be furnished to the clerk of the supreme court, to the board of governors of The Florida Bar, ~~to the Supreme Court of Florida,~~ and to the proponent of any proposal considered at the

meeting.

(c) Schedule for Rule Proposals.

(1) Each committee shall report all proposed rule changes on a biannual basis (with the first cycle starting in 2002). Reports shall be made in even-numbered years by the Appellate Court Rules Committee, the Criminal Procedure Rules Committee, the Code and Rules of Evidence Committee, the Juvenile Court Rules Committee, the Traffic Court Rules Committee, and the Workers' Compensation Rules Committee. Reports shall be made in odd-numbered years by the Civil Procedure Rules Committee, the Family Law Rules Committee, the Probate Rules Committee, the Rules of Judicial Administration Committee, and the Small Claims Rules Committee.

(2) No later than October 1 of the year prior to each reporting year or such other date as the board of governors of The Florida Bar may set, each reporting committee shall submit all proposed rule changes to the board of governors with the committee's final numerical voting record on each proposal. Contemporaneously with reporting proposed rule changes to the board of governors, each committee report shall be published on the Internet website of The Florida Bar, and in the Florida Bar Journal or Florida Bar News. Any person desiring to comment upon proposed rule changes shall submit written comments to the appropriate committee chair no later than November 1 of the year prior to each reporting year. Each committee shall consider any comments submitted and thereafter report to the board of governors, no later than December 1 of the year prior to each reporting year, any revisions to the proposed rule changes. Contemporaneously with reporting any revisions to the board of governors, each committee's revised proposed rule changes shall be published on the Internet website of The Florida Bar, and in the Florida Bar Journal or Florida Bar News.

(3) No later than January 1 of each reporting year, the board of governors shall consider the proposals and shall vote on each proposal to recommend acceptance, rejection, or amendment.

(4) No later than February 1 of each reporting year, each committee shall file a report of its proposed rule changes with the supreme court. Each committee may amend its recommendations to coincide with the recommendations of the board of governors or may decline to do so or may amend its recommendations in another manner. Any such amendments shall also be reported to the supreme court. The report shall include:

(A) a list of the proposed changes, together with a detailed explanation of each proposal and the name and address of the proponent of each change if other than the rules committee;

(B) the final numerical voting record of the proposals in the committee;

(C) a report of the action taken by the committee on comments submitted in accordance with subdivision (c)(2);

(D) a report of the action and voting record of the board of governors;

(E) any dissenting views of the committee and, if available, of the board; and

(F) an appendix containing all comments submitted to the committee and a two-column chart setting forth the proposed changes in legislative format in the first column and a brief explanation of each change in the second column.

~~A clearly labeled computer diskette, in a format approved by the supreme court, containing the proposed rule changes in legislative format shall be filed with the report.~~ The report and the proposed rule changes shall be filed with the supreme court, in legislative format, both on paper and in an electronic format approved by the supreme court.

(5) If oral argument is deemed necessary, ~~the~~ supreme court shall establish a date during the month of May or June of each reporting year for oral argument on the proposals. Notice of the hearing on the proposals and a copy of the proposals shall be furnished to the affected committee chair and vice chair, the executive director of The Florida Bar, all members of the Judicial Management Council, the clerk and chief judge of each district court of appeal, the clerk and chief judge of each judicial circuit, and any person who has asked in writing filed with the clerk of the supreme court for a copy of the notice. If the committee modifies its recommendations after considering comments submitted in accordance with subdivision (c)(2), ~~the~~ recommendations or a resume of them shall be published on the Internet websites of the supreme court and The Florida Bar and in the Florida Bar Journal or Florida Bar News before the hearing. Notice of the hearing shall also be published on the Internet websites of the supreme court and The Florida Bar and in the Florida Bar Journal or Florida Bar News.

(6) ~~Before the date of oral argument, any person may file comments concerning the proposals with the clerk of the supreme court. All comments and other submissions by interested persons shall be filed with the clerk of the supreme court and served on the chair of the appropriate rules committee, and on the proponent of the rule change if other than the rules committee. All comments and other submissions regarding the rule change proposals, in addition to being filed with the supreme court in paper format, shall also be filed in an electronic format approved by the supreme court. Prior to the date of oral argument and as soon as practicable after the date of filing, the clerk of the supreme court shall publish on the Internet websites of the supreme court and The Florida Bar, all comments that have been filed concerning the rule change proposals. All requests or submissions by a rules committee made in connection with a pending rule change proposal shall be filed with the clerk of the supreme court and thereafter published by the clerk of the supreme court on the Internet websites of the supreme court and The Florida Bar. The supreme court may hear oral argument from any person and shall hear oral argument on behalf of The Florida Bar, any bar association, and the affected committee.~~

(67) Orders of the supreme court on said proposals should be adopted in sufficient time to take effect on January 1 of the year following the reporting year. The supreme court may permit motions for rehearing to be filed on behalf of any person, The Florida Bar, any bar association, and the affected committee.

(d) **Rejected Proposals.** If a committee rejects a proposal, the proponent may submit the proposed rule to the board of governors and shall notify the chair and vice chair of the affected committee of the submission of the proposed rule to the board of governors. Minority reports of committees are allowed and may be submitted to both the board of governors and the supreme court.

(e) **Emergency Recommendation by Committee.** If, in the opinion of a committee, a proposal is of an emergency nature, and the board of governors concurs, proposals may be made at any time to the supreme court. If the court agrees that an emergency exists, the court may set a time for oral argument and consideration of the proposal. Notice of the hearing on the proposals and a copy of the proposals shall be furnished to the affected committee chair and vice chair, the executive director of The Florida Bar, all members of the Judicial Management Council, the clerk and chief judge of each district court of appeal, the clerk and chief judge of each judicial circuit, and any person who has asked in writing filed with the clerk of the supreme court for a copy of the notice. The recommendations or a resume of them shall be published on the Internet websites of the supreme court and The Florida Bar, and in the Florida Bar Journal or Florida Bar News before the hearing. Notice of the hearing shall also be published on the Internet websites of the supreme court and The Florida Bar, and in the Florida Bar Journal or Florida Bar News.

(f) **Request by Court.** The supreme court may direct special consideration of a proposal at times other than those specified in this rule and may require a committee to report its recommendation with the recommendations of the board of governors. All requests or submissions by a rules committee made in connection with a request under this subdivision shall be filed with the clerk of the supreme court. The supreme court may set oral argument on the report at any time. Notice of the hearing on the proposals and a copy of the proposals shall be furnished to the affected committee chair and vice chair, the executive director of The Florida Bar, all members of the Judicial Management Council, the clerk and chief judge of each district court of appeal, the clerk and chief judge of each judicial

circuit, and any person who has asked in writing filed with the clerk of the supreme court for a copy of the notice. The recommendations or a resume of them shall be published on the Internet websites of the supreme court and The Florida Bar, and in the Florida Bar Journal or Florida Bar News before the hearing. Notice of the hearing shall also be published on the Internet websites of the supreme court and The Florida Bar, and in the Florida Bar Journal or Florida Bar News.

(g) **Local Rules Proposed by Trial Courts.** The foregoing procedure shall not apply to local rules proposed by a majority of circuit and county judges in the circuit. The chief justice of the supreme court may appoint a Local Rule Advisory Committee to consider and make recommendations to the court concerning local rules and administrative orders submitted pursuant to rule 2.050(e).

Committee Notes

1980 Amendment. Rule 2.130 is entirely rewritten to codify the procedures for changes to all Florida rules of procedure as set forth by this court in *In re Rules of Court: Procedure for Consideration of Proposals Concerning Practice and Procedure*, 276 So. 2d 467 (Fla. 1972), and to update those procedures based on current practice. The Supreme Court Rules Advisory Committee has been abolished, and the Local Rules Advisory Committee has been established.