

IN THE SUPREME COURT OF FLORIDA

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

CASE NO. SC08-

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

The Honorable Robert T. Benton, II, 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 June 15, 2007, and also posted on The Florida Bar's website (*see* Appendix D). No comments were received in response to that notice.

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: Copies of relevant e-mails and letters from proponents of rules amendments.

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

RULE 2.130 PRIORITY OF CONFLICTING APPELLATE RULES

The body of this rule reads as follows:

The Florida Rules of Appellate Procedure shall control all proceedings in the supreme court and the district courts, and all proceedings in which the circuit courts exercise their appellate jurisdiction, notwithstanding any conflicting rules of procedure.

The title of the rule is proposed to be amended to read ~~Priority of Conflicting Appellate Rules~~ Florida Rules of Appellate Procedure. This scrivener's change is suggested (without a formal vote, but reflecting the unanimous consensus of the Committee) in order to avoid any implication that there are internal conflicts within the Rules of Appellate Procedure.

RULE 2.140 AMENDING RULES OF COURT

Subdivision (a)(5) of rule 2.140 places responsibility on the RJA Committee to “refer all proposed changes [from any rules committee] to those rules committees that might be affected by the proposed change.” That subdivision is proposed to be amended to require that all rules committees provide copies of final proposed rules changes to the RJA Committee within 30 days of passage of the proposal, rather than by June 15th of the rules cycle. In most instances, this change would allow the RJA Committee to analyze the proposals earlier in the rules cycle than would be the case under the current rule, and to alleviate the situation in which there may be insufficient opportunity for other rules committees to react to proposals and respond on a timely basis.

RULE 2.215 TRIAL COURT ADMINISTRATION

The last sentence of subdivision 2.215(g) (“Duty to Expedite Priority Cases”) is proposed to be amended to read as follows:

Particular attention shall be given to all juvenile dependency and termination of parental rights cases, ~~and to~~ cases involving families and children in need of services, and challenges involving elections and proposed constitutional amendments.

The RJA Committee recognizes that rule 2.215 is contained in Part II of the Rules of Judicial Administration, and that amendments within that part “generally will be considered and adopted by the supreme court without reference to or proposal from the Rules of Judicial Administration Committee.” *Fla. R. Jud. Admin.* 2.140(g)(1). However, the Committee brings this matter to the attention of the Court inasmuch as the issue regularly arises and often does so in cases of great public importance.¹

Effective January 1, 2006, this Court approved a proposal put forth by the Civil Procedure Rules Committee to adopt a change to the Civil Cover Sheet, *Fla. R. Civ. P. Form* 1.997, to provide for the identification of challenges to proposed constitutional amendments, which are often time-sensitive cases.² Subsequently, Judge Kevin Carey, a representative member of the Rules of Judicial Administration Committee from the Civil Procedure Rules Committee, advised the Rules of Judicial Administration Committee that the Court specifically requested that the issue be addressed by rule, that such a task was deemed to be beyond the authority of the Civil Procedure Rules Committee, and that the committee “contemplated that the RJA Committee could adopt a rule” addressing the Court’s concerns. (See Appendix E, page 1.) The RJA Committee subsequently voted unanimously to propose the amendment set forth above, which is designed to encourage prompt judicial determination of matters pertaining to elections, including cases concerning ballot language summarizing proposed constitutional amendments. The Committee also suggests that Committee Notes be added to both this rule and Rule 2.545 (discussed below) to explain the relationship of the rules to one another and to educate attorneys bringing such cases to the court’s attention.

RULE 2.330 DISQUALIFICATION OF TRIAL JUDGES

Subdivision (c) of this rule sets forth the required contents of a motion to disqualify a trial judge. The RJA Committee proposes to add the following requirement to this subdivision: that the motion must “include the dates of all previously granted motions to disqualify filed under this rule in the case and the dates of the orders granting those motions.”

¹A separate proposal to amend subdivision (b)(10) of this rule is currently pending before the Court. *See* Case No. SC07-596.

²*See In Re Amendments to the Florida Rules of Civil Procedure (Two Year Cycle)*, 917 So. 2d 176 (Fla. 2005).

The Committee received a proposal from (now former) Judge James C. Hauser requesting this change. (*See* Appendix E, pages 2–3.) Judge Hauser stated that, because the rule contains a different standard for a judge to apply if a motion to disqualify is addressed to a successor judge, the moving party should disclose the fact that a prior judge had been subject to the same motion. The Committee agrees with the concept behind this proposal; judges would want to know whether or not a litigant has previously been successful in seeking disqualification of a prior judge (as to which a virtual “free recusal” standard applies) because a successor judge could then more closely scrutinize the merits of a second disqualification motion. Inasmuch as litigants sometimes withhold this information, the proposed amendment calls for a second (or third, fourth, etc.) disqualification motion to list the dates of all prior successful disqualification motions and the dates of the orders granting those motions.

Name and address of proponent:

James C. Hauser
9012 Summit Center, Apt. 102
Orlando, FL 32810-5957

RULE 2.510 FOREIGN ATTORNEYS

Rule 2.510 addresses the eligibility of attorneys not currently licensed in Florida to appear *pro hac vice* in particular cases in Florida courts. Subdivision (a) of the rule (“Eligibility”) sets forth various requirements the attorney must fulfill in order to appear, but the subdivision specifically prohibits unlicensed attorneys who are Florida residents from being authorized to appear *pro hac vice*.

On October 4, 2006, Frank Morreale, an attorney then applying for membership in The Florida Bar, wrote a letter to Supreme Court Clerk Tom Hall, which was subsequently referred to the RJA Committee for consideration. (Copies of the referral letter from the Court and Mr. Morreale’s letter are set forth in Appendix E, pages 4–7.) In his letter, Mr. Morreale pointed out that subdivision (b)(2) of Rule Regulating The Florida Bar 1-3.10 (“Appearances by Non-Florida Lawyers in a Florida Court”) prohibits an attorney who resides in Florida but who is not licensed in Florida from appearing *pro hac vice* in a Florida court under any circumstances, whereas nonresident attorneys who are not licensed in Florida may make up to three appearances in Florida courts within a 365-day period. As noted above, subdivision (a) of *Fla. R. Jud. Admin. 2.510* contains the same prohibition

regarding unlicensed Florida residents.

Rule 1-3.10 creates a membership classification and is not a rule that authorizes practice, whereas Rule 2.510 governs practice before the courts. The focus of Mr. Morreale's inquiry is more properly on the language of Rule 2.510(a).³ After considering this matter, the RJA Committee has unanimously concluded that there is no reason to treat in-state unlicensed attorneys any differently than out-of-state unlicensed attorneys in terms of their eligibility to appear *pro hac vice* in a Florida court, as long as the attorney intends to, and has initiated proceedings to, be admitted to The Florida Bar. The Committee proposes adding the following language to subdivision (a) of Rule 2.510:

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;...

The Committee agrees with the sentiments expressed in Mr. Morreale's letter: that an attorney who moves to Florida, takes the normal steps to become a Florida resident (*e.g.*, by registering to vote, acquiring a Florida driver's license, etc.), accepts a position with a Florida law firm, and submits an application for membership in The Florida Bar, presents "little risk" that he or she "is attempting to abuse the rules prohibiting a lawyer from another state from engaging in general practice" in Florida. The Committee also agrees with Mr. Morreale, however, that the existing prohibition for Florida residents who do not take the steps necessary for admission to The Florida Bar should remain in the rule. As Mr. Morreale points out, such a "distinction is fair because, unlike 'new Florida residents', other Florida residents may not be providing legal services under the close, daily supervision of members of the Florida Bar and have not demonstrated that they are attempting to become members of the Florida Bar."

³The undersigned have been informed by the Unlicensed Practice of Law Department of The Florida Bar that the Board of Governors has voted to amend Rule 1-3.10 to conform to the amendment proposed herein, and that the Bar will file a petition requesting this change in its annual rules package later this year.

Name and address of proponent:

Frank Morreale
Holland & Knight LLP
50 North Laura St., Suite 3900
Jacksonville, FL 32202-3622

RULE 2.545 CASE MANAGEMENT

The RJA Committee proposes a new Committee Note to be appended to this rule, which, in subdivision (c), addresses the issue of priority cases. The Court's attention is directed to the proposed addition set forth above regarding 2.215(g) ("Duty to Expedite Priority Cases"). That proposal is to add challenges involving elections and proposed constitutional amendments to the types of cases to be given priority by trial courts. The RJA Committee feels it would be helpful to practitioners to add a note to rule 2.545 that would read as follows: "The provisions in subdivision (c) of this rule governing priority cases should be read in conjunction with the provisions of rule 2.215(g), governing the duty to expedite priority cases." This addition would reinforce the importance of according priority to the specific types of cases outlined in rule 2.215(g).

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 February 1, 2008.

/s/Robert T. Benton, II
Robert T. Benton, II, Chair
Florida Rules of Judicial
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/s/John F. Harkness, Jr.
John F. Harkness, Jr.
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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* (2007).

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was furnished by United States mail to James C. Hauser 9012 Summit Center, Apt. 102, Orlando, FL 32810-5957 and Frank Morreale, Holland & Knight LLP, 50 North Laura St., Suite 3900, Jacksonville, FL 32202-3622 on February 1, 2008.

/s/J. Craig Shaw

J. Craig Shaw

Bar Staff Liaison, Florida Rules of Judicial Administration Committee
Florida Bar No. 253235