



CIRCUIT COURT
ELEVENTH JUDICIAL CIRCUIT OF FLORIDA

JENNIFER D. BAILEY
CIRCUIT JUDGE

DADE COUNTY COURTHOUSE
73 WEST FLAGLER STREET
MIAMI, FLORIDA 33130

FILED
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CLERK SUPREME COURT

January 28, 2004

Mr. Tom Hall
Clerk of the Florida Supreme Court
500 South Duval Street
Tallahassee, FL 32399-1925

Re: Florida Rule of Judicial Administration 2.071: Use of Telecommunication Equipment
Referral of 7/5/03

Dear Mr. Hall:

On Friday, January 16, 2004, The Florida Bar Civil Procedure Rules Committee considered your referral dated July 5, 2003 regarding the use of communication equipment. We approved the recommendation of our subcommittee that the Florida Rules of Civil Procedure need not be amended to address telecommunication issues, and that the matter is better addressed by the Florida Rules of Judicial Administration. Specifically, our subcommittee stated:

The question before our committee is whether to insert a new, specific provision in the Florida Rules of Civil Procedure to address the issue of telephonic (or video conference) hearing testimony in civil cases, to permit such testimony, even over a party's objection within the trial court's discretion. Our subcommittee recommends *against* any such rule.

Several private lawyer members of the subcommittee have expressed their view that trial courts *should* have the discretion to permit testimony by communication equipment, even over the objection of a party, and one of our county court judges noted that the Conference of County Court Judges just last fall passed a motion in favor of providing such discretion to the courts. Two others of our trial court judges expressed the view that a change in the present rule is unnecessary, because the issue rarely arises except in family cases, and very infrequently there. Our subcommittee was unanimous, however (or at least without expressed dissent) in concluding that it is neither warranted nor advisable to address

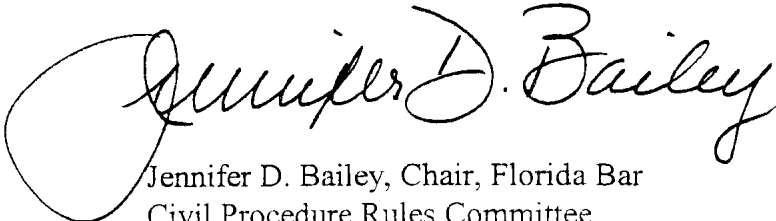
the issue in *the Civil Procedure Rules*.

It is the subcommittee's view that provisions governing communication equipment, whatever the outcome (i.e., whether they require unanimous consent or not), are appropriately dealt with in the Rules of Judicial Administration, as they have been for many years, because these are among the types of provisions that belong in universal administrative provisions applicable in all courts and divisions of court, across the board, absent some particular issue unique to a specific set of rules (and which cannot be accommodated within the court's discretion if such discretion were provided). We see nothing in this particular respect that should require or warrant unique treatment, under the Civil Procedure Rules, differing from that afforded under any of the other of the Criminal Procedure Rules, Worker's Compensation, Probate, Traffic, Small Claims, Juvenile 00 or even Family Court Rules. There is certainly no suggestion whatsoever, in the Supreme Court's opinion rejecting the proposed change in RJA 2.071, that there should be any reason for concern outside of the family law area. We are not aware of any.

Our subcommittee therefore recommends that we take no action, other than to respond to the Court that we have considered its request and concluded that there are no circumstances of which we are aware which would require or warrant specific provision in the Florida Rules of Civil Procedure, independent of the provisions of RJA 2.071 or other rules of court, to expand the potential use of communications equipment in those civil cases which are governed by our rules.

In the quotation above, the emphasis is the subcommittee's. Our committee agreed that the Florida Rules of Civil Procedure should not address this matter, and that it is best addressed in the Florida Rules of Judicial Administration. Please let me know if you have any questions.

Respectfully submitted,



Jennifer D. Bailey, Chair, Florida Bar
Civil Procedure Rules Committee

Cc: Stanford Solomon, Chair, Rules of Judicial Administration
The Honorable Olin W. Shinholser, Chair, Florida Bar Criminal Procedure Rules Committee
Justice Raoul Cantero, Liaison to the Rules of Judicial Administration Committee
Justice Kenneth Bell, Liaison to the Rules of Judicial Administration Committee
Justice Peggy Quince, Liaison to Criminal Procedure Rules Committee
Deborah J. Meyer, Central Staff Director
Madelen Horwich, The Florida Bar Liaison, Civil Procedure Rule Committee
Gerry Rose, Florida bar Liaison, Florida Bar Criminal Procedure Rules Committee
Craig Shaw, Florida Bar Liaison, Florida Bar Rules of Judicial Administration Committee
The Honorable Mark K. Leban, Chair, Appellate Court Rules Committee
Mr. Jeffrey Wasserman, Chair, Family Law Rules Committee
Ms. Jennifer Parker, Chair, Juvenile Court Rules Committee
Ms. Toni F. Conetta, Chair, Probate Rules Committee
Mr. Brian L. Tannebaum, Chair, Traffic Court Rules Committee