

IN THE SUPREME COURT OF FLORIDA

**IN RE AMENDMENTS TO THE
FLORIDA RULES OF JUDICIAL
ADMINISTRATION AND THE
FLORIDA RULES OF APPELLATE
PROCEDURE**

Case No.: SC13-1670

**AMENDED RESPONSE OF THE
RULES OF JUDICIAL ADMINISTRATION COMMITTEE AND THE
APPELLATE COURT RULES COMMITTEE**

The Honorable Jon B. Morgan, Chair, Rules of Judicial Administration Committee (“RJA”), Eduardo I. Sanchez, Chair, Appellate Court Rules Committee (“ACRC”), and John F. Harkness, Jr., Executive Director, The Florida Bar, file this response to the “Comments of the Florida Public Defender Association,” filed December 30, 2013, addressing the proposed amendments to Florida Rules of Judicial Administration 2.205(b)(5) and 2.210(b)(4), and Florida Rule of Appellate Procedure 9.340(a). RJA’s Fast-track subcommittee voted 8-0 in favor of this response to comment. ACRC voted 35-2-2 in favor of this response to comment.

The Florida Public Defenders Association (FPDA) expressed concerns in its Comment that the legislation which formed the basis for the amendments in question—Chapter 2013-25, Laws of Florida, codified in Section 43.43, Florida Statutes (2013)—may be procedural in nature, and not substantive. The FPDA also suggests that the Committees should have considered reinstating terms of Court. The Committees believe this determination should be left to the Supreme Court, and not the rules committees. Presenting the Supreme Court with a proposed rule amendment allows the Court to decide whether to adopt the amendment, which would moot the substantive/procedural issue, or reject the amendment, which could permit any affected party to later argue that the legislative provision is unconstitutional. Providing the Supreme Court with the opportunity to address this issue is preferable to leaving litigants who might be affected by Section 43.43 in unnecessary limbo.

The FPDA argues that the 120-day limit for recalling a mandate is arbitrary and that, in some cases, the time period may be too short. Before Section 43.43 repealed terms of Court (subject to Florida Supreme Court reinstatement), the time

period to seek recall of the mandate was the expiration of the term in which the mandate was issued. Now, that time period is 120 days after the mandate is issued. This period is far less arbitrary than the periods tied to the expiration of the term of court, which could be as long as 179 days, if the mandate was issued on the first day of the term, or as short as several hours, if the mandate was issued on the last day of the term. Moreover, unlike the fluctuating time periods tied to the terms of court, the period for recalling a mandate under the proposed amendments would be constant and uniform for all litigants.

Additionally, the FPDA argues that the 120-day limit may lead to injustices in criminal cases. When the prior time-to-recall-mandate issues have created an injustice, such as those presented in the FDPA's Comment, Florida's courts have found a remedy, and that precedent should still control and provide a remedial safety valve if a similar injustice should arise under the proposed amendments. In criminal cases, remedies, such as habeas corpus, remain available if needed to correct an injustice notwithstanding the fact that the applicable mandate cannot be withdrawn, whether as a result of the expiration of the term of Court in the past or as a result of the expiration of the 120-day period currently reflected in Section 43.43 and the proposed amended rules. Although the Committees recognize that some litigants may confront problems as a result of the 120-day limit in the new amendments, the Committees have concluded that litigants should confront fewer such problems under the new amendments than under the preceding rules or under a new scheme where recall of the mandate would be similarly tied to terms of court.

FPDA also contends that the amendments were considered in haste, "without sufficient consideration of either the wisdom of these provisions or how the new rules would interact with the existing rules of appellate procedure." Comment at 1. But in May 2013, the Chair of the Appellate Court Rules Committee appointed an "Ad Hoc" subcommittee to review the newly-enacted legislation and recommend any amendments that might be necessary. As the subject for the subcommittee was legislative in nature, ACRC's Internal Operating Procedures allow for a "fast-track" submission process. ACRC's Ad Hoc Subcommittee reviewed the legislative analysis, case law, the amendments proposed by the Rules of Judicial Administration Committee, as well as the Florida Rules of Appellate Procedure prior to moving forward and recommending an amendment to Florida Rule of Appellate Procedure 9.340(a). The full ACRC considered this amendment at the Committee's meeting in June 2013. When some members expressed concerns—concerns that, for the most part, raised the very issues expressed in the FPDA's Comment, including the substantive/procedural issue and the issue concerning

potential injustices to criminal defendants—the matter was returned to the Ad Hoc Subcommittee. The Ad Hoc Subcommittee thereafter reviewed all of the issues again—including those issues raised at the June ACRC meeting—reported its findings to the full ACRC, and recommended the proposed amendment of Rule 9.340(a). That amendment was subsequently approved through an e-mail vote by a super-majority of the Committee, as required by the ACRC’s Internal Operating Procedures. Two Ad Hoc Subcommittee reports, detailing these efforts, were submitted as “Exhibit E” to the initial report filed with the Supreme Court.

Further, in April 2013, the Chair of the Rules of Judicial Administration Committee also appointed an “Ad Hoc” subcommittee for the purposes of reviewing any enacted legislation and recommending any amendments that might be necessary. RJA’s Ad Hoc Subcommittee reviewed the legislative analysis, case law, and the Florida Rules of Judicial Administration prior to moving forward and recommending amendments to Florida Rules of Judicial Administration 2.205(b)(5) (Issuance of Mandate; Recordation and Notification) and 2.210(b)(4) (Issuance of Mandate; Recordation and Notification). The subcommittee determined, however, that the full RJA should not take any action on the subcommittee’s recommendations without the input and approval of the ACRC. Thus, the proposed amendments to 2.205(b)(5) and 2.210(b)(4) were then forwarded to the ACRC for input and approval. The Ad Hoc subcommittee of the ACRC considered the recommendation and agreed with the proposed revisions to 2.205(b)(5) and 2.210(b)(4). The full RJA thereafter considered these amendments at the Committee’s meeting in June 2013, and the amendments were approved by a super-majority of the Committee, as required by the RJA’s Internal Operating Procedures.

Respectfully submitted on January 17, 2014.

/s/ Jon B. Morgan

The Honorable Jon B. Morgan, Chair
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was furnished by e-mail, on January 17, 2014, to:

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CERTIFICATION OF COMPLIANCE

I certify that this report was prepared in compliance with the font requirements of Florida Rule. Appellate Procedure 9.210(a)(2).

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