

**RULES OF JUDICIAL ADMINISTRATION COMMITTEE
THURSDAY, FEBRUARY 21, 2013
TAMPA, FLORIDA
MINUTES**

I. CALL TO ORDER

A. Chair Alexandra V. Rieman called the meeting to order at 2:08 p.m.

B. Introduction of Secretary

i. The Chair appointed Nicole D. Young as secretary for the meeting.

C. Attendance and Introduction of Guests

i. MEMBERS

Alexandra V. Rieman, Chair
Honorable Jon Berkley Morgan, Vice Chair
Andrew Blaise Sasso, Board Liaison
Jodi Jennings, Committee Liaison
John Richard Caskey
Donald Edward Christopher
Judson Lee Cohen
Robert Michale Eschenfelder
Craig Anthony Gibbs
Marynelle Hardee
Corrine Cotton Hodak
Honorable Joseph Lewis, Jr.
Keith H. Park
Darrell Winston Payne
Honorable Debra Roberts
Mark Romance
Stanford R. Solomon

Paul R. Regensdorf
Samuel Joseph Salaris, Jr.
Amanda Arnold Sansone
Michael Pasquale Sasso
Steven Scott Stephens
Roberto Mario Vargas
William C. Vose
Richard M. White, Jr.
Nicole D. Young

ii. MEMBERS IN ATTENDANCE BY TELEPHONE

Honorable Maria D. Ortiz
Amy Singer Borman
Joel Silvershein
Honorable Manuel Menendez, Jr.
Michael Scott Sharrit

iii. GUESTS

Honorable Thomas D. Hall
Krys Godwin

iv. GUESTS IN ATTENDANCE BY TELEPHONE – None.

D. Approval of September 20, 2012 Minutes

- i. Motion made and seconded to approve the minutes from the September 20, 2012 meeting. The motion carried.

II. REPORTS

CHAIR'S REMARKS

A. Pending Cases to Amend Rules of Judicial Administration

The Chair provided an update with regard to the Florida Supreme Court's recently issued opinions, as well as rules petitions that are pending before the Court.

- SC10-2101 – Email Service – October 18, 2012, the Supreme Court issued the final opinion/rule. SC11-399 – E-filing – June 21, 2012 – October 18, 2012, the Supreme Court issued the final opinion/rule. On February 18, 2013 an Administrative Order was entered as to appellate courts e-filing SC11-2466 – Rule 2.420 – Oral Argument was September 6, 2012 – SC12-619 – Rule 2.140 – Opinion issued 2/7/13.
- SC12-764 – Rule 2.451 – Electronic Devices of Jurors – Submitted to court without oral argument 2/22/13.
- SC12-2030 – Rule 2.560 – Case Management – Amended petition may be filed by the Family Court Steering Committee.
- SC 12-73 Rule 2.516 – Petition pertaining to email service was filed.

I recommend deleting this as it is just an informational item in the agenda. If it is not deleted, it should just list the approved amendments because not all were approved at the same meeting.

B. Board of Governor's Liaison Report - Liaison Andy Sasso

The amendments to rules 2.515 & 2.516 were presented to the Board of Governors meeting – all amendments passed. Mr. Sasso also advised that the advertising rules were re-written, become effective May 1, 2013, and applies to ALL forms of communications. All advertisements must be submitted 20 days in advance for approval.

C. Guest Report – Tom Hall

The portal, which is owned and operated by the Portal Authority Board, is operating in 56 counties, but all counties will be mandatory on April 1st, 2013. Mr. Hall indicated that all but one county will be on the portal (or will keep their local system until October 2013). Mr. Hall further indicated that the biggest problem is that people are not used to using the system. Furthermore, there are two videos devoted exclusively to appellate attorneys, which all attorneys filing with the supreme court should watch. Mr. Hall indicated that RJA rules require revision. Specifically, there is an RJA rule that states that the clerks have to take paper filings. Orders could be issued mandating that filings be electronic, but the rule needs to be revised.

All rules committees need to review their rules and remove any references to paper, originals, etc. – essentially, any references to the paper world. These proposed changes will need to move out of cycle because with the portal and e-filing in place, these changes cannot wait for the three-year cycle. Additionally, all petitions to change rules must be thorough, and need to justify to the court why the change is required.

III. UNFINISHED BUSINESS

SUBCOMMITTEE REPORTS NOT REQUIRING VOTE

A. Liaison Subcommittee – Joel Silvershein, Chair

Joel Silvershein advised that the liaison subcommittee met to discuss whether rules passed by the various committees at the September 2012 meetings were in conflict with any other rules. After review, the subcommittee did not detect any matters that required referral to any committee.

Keith Park commented on Rule 1.020, and whether the word “papers” could be changed to “documents” by the Rules of Civil Procedure Committee.

B. Ad hoc(should be small “h” throughout) Committee on e-filing by nonparty governmental of public agencies – Stanford Solomon, Chair – Report due July 1, 2013

Stanford Solomon advised that the Ad Hoc Committee has met. Materials were submitted in the agenda, pages 19-31. The Ad Hoc Committee advised that it might be seeking an extension, if needed (*i.e.*, if rules are required to be changed). They are waiting for e-filing to commence on April 1, 2013, to determine what changes are actually needed. The subcommittee chair indicated that while many people are anticipating problems related to e-filing’s implementation, the subcommittee wants to wait until after e-filing is fully implemented to see what problems actually occur, instead of attempting to find solutions to anticipated problems that may not actually occur.

C. Ad hoc Committee on waiver of mandatory e-filing – Nicole D. Young, Chair

Nicole D. Young advised that the ad hoc committee reviewed Rule 2.516, along with the Supreme Court’s opinion in SC11-399, and determined that the waiver procedures for clerks as set forth by the Supreme Court are sufficient. The committee does not recommend any further waiver procedures for attorneys or clerks.

D. Rule 2.516 – Cori Hodak, Chair and Keith Park, Vice Chair

The subcommittee will be meeting to discuss the two comments they received, and they will update the committee at the next meeting.

E. Rule 2.526 – Judge Morgan, Chair

The subcommittee determined that the court record contained within the official court file must be ADA accessible. However, the copy emailed to the parties does not have to be ADA accessible. Issue resolved, no need to take further action.

MATTERS PENDING FOR VOTE IN CONCEPT

A. Rule 2.530

Subcommittee C – Robert Eschenfelder, Chair

Subcommittee's proposed language to amend Rule 2.530(d)(2) is underlined below.

Rule 2.530(d)(2)

(2) Procedure. Any party desiring to present testimony through communication equipment shall, prior to the hearing or trial at which the testimony is to be presented, contact all parties to determine whether each party consents to this form of testimony. The party seeking to present the testimony shall move for permission to present testimony through communication equipment, which motion shall set forth good cause as to why the testimony should be allowed in this form. The motion shall not be granted, even if good cause is otherwise shown, unless the filing attorney or pro se party certifies therein that all parties have been contacted and have not objected.

After extensive discussion, the subcommittee chair agreed to table this matter for now, and the liaison subcommittee will join subcommittee C for further discussion. The full committee discussed that different rule bodies have different provisions, which in large part was the intention behind the exception created in RJA Rule 2.530(d)(1). The committee discussed what types of changes should be done to have one telephonic rule that applies to all areas, and whether this is a good direction to move towards in light of technological advancements and the logistics of the confrontation clause.

The liaison subcommittee members are to return to their respective committees and find out what the rules currently state and what each rule committee wants as far as video testimony. New revised language will be presented to the full committee at the June meeting.

B. Review of Internal Operating Procedures

Subcommittee E – Judge Morgan, Chair

Subcommittee E considered all of the rules committee's Internal Operating Procedures (IOP's). Subcommittee preferred the format of appellate and civil procedure committees' IOP's. Draft of proposed RJA IOP's was included in the materials. The subcommittee accepted the majority of the friendly amendments made during the last meeting.

Upon motion made to pass in concept and seconded by a vote of 18 - 3, motion to approve Exhibit 1 passed.

C. 2.505(e) COVERAGE ATTORNEYS

Subcommittee A – Murray Silverstein, Chair

The issue is whether a rule is needed that states that a covering attorney has to file a notice of appearance to cover.

The Subcommittee decided that the rule as presently written does not require a rule amendment. However, attorneys are not following this rule, especially in traffic, foreclosure and credit card cases. And it is unclear whether the client's consent is required for a coverage attorney's appearance.

The issue was referred to the Board of Governors Bar Liaison, Andy Sasso, as to whether this is an educational issue rather than a rules issue.

Subcommittee A will liaise with the ethics committee to report back in June about whether this is an ethical issue or a rules issue. The liaison subcommittee will also speak to the various rules committees about how each set of rules deals with limited appearance and coverage attorneys.

D. Rule 2.510

Subcommittee D – Craig Gibbs, Chair

1st Subcommittee Issue

The subcommittee proposed the following change to Rule 2.510(b)(1), as set forth in the meeting materials on page 79:

Rule 2.501(b)(1)

(1) a statement identifying all jurisdictions in which the attorney is an active member in good standing and currently eligible to practice law including all assigned bar numbers and attorney numbers; and for which a certificate of good standing is not required;

Motion to approve the above underlined language in concept was made and seconded, and passed by a vote of 22-1.

Motion to approve to waive the rules so that the amendment can be filed with the triennial report made and seconded, and passed by a vote of 26-0.

Motion to approve the above underlined language was made and seconded, and passed by a vote of 28-0.

2nd Subcommittee Issue

The subcommittee proposed the following change to the form that accompanies Rule 2.510:

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing motion was served ~~on (insert the name or names and addresses used for service)~~ by (e-mail) (delivery) (by mail) (fax) to: PHV Admissions, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2333 accompanied by payment of the \$250.00 filing fee made payable to The Florida Bar, and by (email) (delivery) (mail) (fax) to (name of attorney for party or party if not represented)

~~Name and Address of All Counsel of Record and of Parties Not Represented by Counsel~~

this _____ day of _____, 20____.

MOVANT

Motion to approve the above language in concept was made and seconded, and passed by a vote of 23-0.

Motion to approve to waive the rules so that the amendment can be filed with the triennial report made and seconded by a vote of 23-0, passed.

Motion to approve the above language was made and seconded, and passed by a vote of 23-0.

FINAL VOTE REQUIRED

A. Rule 2.525

Subcommittee B – Cori Hodak, Chair and Keith Park, Vice Chair

Proposed amendment set forth at page 81 in the meeting agenda provides the web address for e-filing. Committee discussed that the e-filing portal address as provided in rule may not be the only acceptable address for e-filing ultimately, and proposing the rule at this point might be premature. Amendment to 2.525(b) was not voted on, and will be passed until the next committee meeting.

B. Rule 2.515

Subcommittee A – Murray Silverstein, Chair

Subcommittee proposed the following language to amend Rule 2.515(a) –

RULE 2.515. SIGNATURE OF ATTORNEYS AND PARTIES

(a) Attorney Signature. Every pleading and other document ~~paper~~ of a party represented by an attorney shall be signed by at least 1 attorney of record in that attorney's individual name whose current record Florida Bar address, telephone number, including area code, primary e-mail address and secondary e-mail addresses, if any, and Florida Bar number shall be stated, and who shall be duly licensed to practice law in Florida or who shall have received permission to appear in the particular case as provided in rule 2.510. The attorney may be required by the court to give the address of, and to vouch for the attorney's authority to represent, the party. Except when otherwise specifically provided by an applicable rule or statute, pleadings need not be verified or accompanied by affidavit. The signature of an attorney shall constitute a certificate by the attorney that the attorney has read the pleading or other document ~~paper~~; that to the best of the attorney's knowledge, information, and belief there is good ground to support it and that it is not interposed for delay; that the filing contains no confidential or sensitive information, or that any such confidential or sensitive information has been properly protected by complying with the provisions of rules 2.420 and 2.425, Florida Rules of Judicial Administration. If a pleading or other document is not signed or is signed with intent to defeat the purpose of this rule, it may be stricken and the action may proceed as though the pleading or other paper had not been served.

Motion to approve proposed amendment made and seconded, passed by a vote of 16-7.

Rule 2.515(a) will be sent with the 2014 cycle to Supreme Court.

COMMENTS

No pending comments to be considered.

IV. NEW BUSINESS

A. Changes to email or E-filing rules in Jimmy Ryce cases

- i. **Report due 4/1/2013**
- ii. Joint assignment with Criminal Court Steering Committee – Robert Strain and William Vose reported that no changes to RJA rules were required. Changes were made to the Jimmy Ryce rules, as set forth in pages 87-92 of the meeting agenda. Criminal Court Steering Committee will report back and make proposals to Supreme Court. No further action required from RJA.

B. Changes to email or E-filing rules in Baker Act cases

- i. **Report due 4/1/2013**
- ii. Changes to rules to accommodate email E-filing in Baker Act cases – Civil proceeding – PD and state attorney are the parties in interest – PD doesn't believe there needs to be any changes – State attorney hasn't responded regarding request. No need to change the rules for Baker Act cases.

C. Changes regarding Professional Responsibility in Criminal Cases

- i. **Report due 3/9/2013**
- ii. No rules changes required.

D. Rule 2.560

- i. The committee unanimously approved the executive committee's recommendation, set forth on page 125 of the meeting agenda.

E. Rule 2.545 – Comment filed by the Family Law Rules Committee

- i. RJA committee determined that no action would be taken on this matter.

F. Rule 2.520 – Rule to Address Filing Restrictions – Tom Hall

- i. Mr. Hall requested that RJA propose a rule mandating that all filings be typed, legible, one-sided on 8.5x11 white paper, with standard margin sizes, so that all documents can be scanned and put into the system. He further indicated that the trial clerks meet, so he will try to provide comprehensive information about what problems the clerks are facing. He will also forward recommendations from the appellate courts. Ultimately, the FCTC will develop a standard for the white space that will have to be left at the top of the page for the date stamp, so the rule will need to include that information as well.

G. Rule 2.525 – Paper Back-up Filings

- i. Paul Regensdorf advised that though a paper backup was indicated initially to ensure the reliability of E-filing systems, reliability is no longer an issue, so a paper back-up filing is not necessary.

H. 9th Judicial Circuit – Proposed local rule change

- i. RJA members can comment, or leave it to the local rules advisory committee to comment. Any response would be due March 15, 2013.

I. 6th Judicial Circuit – Proposal to rescind local jury rules

- i. RJA members can comment, or leave it to the local rules advisory committee to comment. Any response would be due March 15, 2013.
- ii. The committee discussed rule 2.215(e) and whether the rule should be amended to create a different procedure for review. The Chair will be assigning the local rules issue to a subcommittee.

V. ANNOUNCEMENTS AND ADJOURNMENTS

- A. The next regularly schedule RJA meeting is the Annual Meeting on Thursday afternoon, June 27, 2013, in Boca Raton, Florida.
- B. The meeting adjourned at 5:19 p.m.