

ORIGINAL

IN THE SUPREME COURT OF FLORIDA

PUBLIC ACCESS TO)
SMALL CLAIMS COURT RECORDS)

CASE NO. SC11-1714

FILED
THOMAS D. HALL
2011 AUG 31 PM 3:08
CLERK SUPREME COURT
BY

OUT-OF-CYCLE REPORT

Judson L. Cohen, Chair of the Small Claims Rules Committee (the “Committee”), and John F. Harkness, Jr., Executive Director of The Florida Bar, file this out-of-cycle report in response to the Court’s direction, under *Fla. R. Jud. Admin.* 2.140(f), reporting a rule change to implement the access to court records concerns raised in case number SC08-2442.¹ (Pertinent pages attached as Appendix A.) The proposed amendment has been reviewed by the Board of Governors of The Florida Bar through its Executive Committee and passed by a vote of 11-0 following the committee’s approval by a vote of 19-0.

Because of the deadline set by the Court for this report, the proposal has not been published for comment.

The text of the amendment is attached to this report in both full-page format (Appendix B) and two-column format (Appendix C).

The proposed amendment was recognized as necessary when, at the direction of the Court, the Committee reviewed the Rules of Small Claims Court to determine whether any rule amendments were necessary, in addition to those originally submitted by the Committee in case number SC08-2443. After thorough review and discussion, it was determined that rule 7.040(a)(2), Clerical and Administrative Duties of Clerk, did need to be amended to include a cross-reference to Florida Rule of Judicial Administration 2.425.

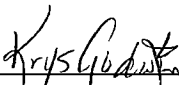
The analysis of the Florida Small Claims Rules found several rules in which


¹ *In re Implementation of Committee on Privacy and Court Records Recommendations—Amendments to the Florida Rules of Civil Procedure; the Florida Rules of Judicial Administration; the Florida Rules of Criminal Procedure; the Florida Probate Rules; the Florida Small Claims Rules; the Florida Rules of Appellate Procedure; and the Florida Family Law Rules of Procedure*, --- So. 3d ---, 36 Fla. L. Weekly S331 (Fla. 2011).

personal information, specifically telephone numbers, are included in the title or content of the pleadings. The committee's discussion of this information revealed that this information is necessary, and useful, in court proceedings, so the proposed amendment was not adopted. (See Appendix D.)

The Committee respectfully requests that the court amend the Florida Small Claims Rules as outlined in this report.

Respectfully submitted this 31st day of August, 2011.

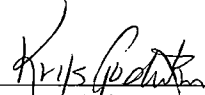

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CERTIFICATION OF COMPLIANCE

I certify that these rules were read against *West's Florida Rules of Court – State* (2011).

I certify that this report was prepared in compliance with the font requirements of *Fla. R. App. P. 9.210(a)(2)*.


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Supreme Court of Florida

No. SC08-2443

IN RE: IMPLEMENTATION OF COMMITTEE ON PRIVACY AND COURT RECORDS RECOMMENDATIONS—AMENDMENTS TO THE FLORIDA RULES OF CIVIL PROCEDURE; THE FLORIDA RULES OF JUDICIAL ADMINISTRATION; THE FLORIDA RULES OF CRIMINAL PROCEDURE; THE FLORIDA PROBATE RULES; THE FLORIDA SMALL CLAIMS RULES; THE FLORIDA RULES OF APPELLATE PROCEDURE; AND THE FLORIDA FAMILY LAW RULES OF PROCEDURE.

[June 30, 2011]

CORRECTED OPINION

PER CURIAM.

We have for consideration proposed amendments to the Florida rules of court and forms intended to minimize the amount of unnecessary personal information included in documents filed with the courts.¹ Reducing the amount of extraneous personal information in court records is another necessary step in the Court's ongoing effort to provide the public with electronic access to

1. We have jurisdiction. See art. V, § 2(a), Fla. Const.; Fla. R. Jud. Admin. 2.140(d), (f).

Finally, subdivision (c) (Remedies) provides remedies and sanctions for violations of the rule. And subdivisions (d) (Motions Not Restricted) and (e) (Application) clarify the new rule's interplay with rule 2.420 (Public Access to Judicial Branch Records) and explain that the new rule does not affect the application of constitutional provisions, statutes, or rules of court governing confidential information or access to public records.

Other rules of procedure and forms are amended to conform to or reference new rule 2.425.²³ For example, new Rule of Appellate Procedure 9.050

23. The Small Claims Rules Committee declined to offer conforming amendments to the Small Claims Rules. Rather, that committee asks the Court to postpone amending the Small Claims Rules until the committee has an opportunity to consider the version of rule 2.425 the Court adopts. Therefore, we defer adoption of pending amendments to the Small Claim Rules that are impacted by the adoption of rule 2.425 and direct the Small Claims Rules Committee to use its fast-track procedures to file a report with conforming rule amendments by September 1, 2011. However, we adopt other pending amendments to the Small Claims Rules that will limit the filing of unnecessary personal information but are not directly affected by the adoption of new rule 2.425. They are new rule 7.140(e)(3), which requires the judge to assist an unrepresented party in the handling of private information, and forms 7.340 (Final Judgment) and 7.373 (Fact Information Sheet), which are amended to instruct that the Fact Information Sheet should not be filed with the Court.

We ask that in the future, when the Court seeks proposed rule amendments to address a given topic from a number of rules committees, each committee comply with the Court's request and individual committees not decline to act until proposals from other committees are acted upon. See, e.g., In re Amends. to Fla. Rules of Jud. Admin., Fla. Rules of Civil Pro., Fla. Rules of Crim. Pro., Fla. Rules of Civil Pro. for Involuntary Commitment of Sexually Violent Predators, Fla. Probate Rules, Fla. Rules of Traffic Court, Fla. Rules of Juv. Pro., Fla. Rules of App. Pro., & Fla. Family Law Rules of Pro.—Computation of Time, No. SC10-2299 (Fla. Petition filed Dec. 13, 2010) (Small Claims Rules Committee declining

(Maintaining Privacy of Personal Data) requires all briefs, petitions, replies, appendices, motions, notices, stipulations, and responses filed with the court comply with rule 2.425. Family Law Rules 12.130(c) (Protection of Account and Personal Identifying Numbers), 12.440(a) (Setting for Trial), 12.540 (Relief from Judgment, Decrees, or Orders), and 12.620 (Receivers) are amended to require compliance with rule 2.425. Amendments to the civil and family law discovery rules also incorporate the requirements of rule 2.425. See Appendix, infra, pp. 23-26, 55-63 (amending Fla. R. Civil P. 1.280; 1.310; 1.340; 1.350; Fla. Fam. L. R. P. 12.280; 12.285; 12.340; 12.370; 12.410; 12.560).

To further implement Privacy Committee Recommendation Seven (Revision of Rules and Forms Leading to Extraneous Personal Information), the various civil judgment forms are amended to require that only the last four digits of the judgment debtor's social security number be included in the judgment. Probate Rules 5.200 (Petition for Administration), 5.210 (Probate of Wills without Administration), and 5.530 (Summary Administration) are likewise amended to require that only the last four digits of the decedent's social security number be

to propose amendments to Small Claims Rules until proposed Rule of Judicial Administration governing computation of time is adopted by the Court). Addressing all related proposals at the same time ensures consistency and conserves valuable judicial resources.

RULE 7.040. CLERICAL AND ADMINISTRATIVE DUTIES OF CLERK

(a) Generally. The clerk of the circuit court or the clerk of the county court in those counties where such a clerk is provided (hereinafter referred to as the clerk) shall:

(1) maintain a trial calendar. The placing of any action thereon with the date and time of trial is notice to all concerned of the order in which they may expect such action to be called;

(2) maintain a docket book and a judgment book (which may be the same book) in which accurate entries of all actions brought before the court and notations of the proceedings shall comply with Florida Rule of Judicial Administration 2.425 and shall be made including the date of filing; the date of issuance, service, and return of process; the appearance of such parties as may appear; the fact of trial, whether by court or jury; the issuance of execution and to whom issued and the date thereof and return thereon and, when satisfied, a marginal entry of the date thereof; the issuance of a certified copy; a memorandum of the items of costs including witness fees; and the record of the verdict of the jury or finding of the judge, and the judgment, including damages and costs, which judgments may be kept in a separate judgment book; and

(3) maintain an alphabetical index by parties' names with reference to action and case number.

(b) Minute Book. It shall not be necessary for the clerk to maintain a minute book for small claims.

Court Commentary

1972 Amendment. See also rule 7.050(c).

Proposed rule	Reason for change
<p>RULE 7.040. CLERICAL AND ADMINISTRATIVE DUTIES OF CLERK</p> <p>(a) Generally. The clerk of the circuit court or the clerk of the county court in those counties where such a clerk is provided (hereinafter referred to as the clerk) shall:</p> <p>(1) [No change]</p> <p>(2) maintain a docket book and a judgment book (which may be the same book) in which accurate entries of all actions brought before the court and notations of the proceedings <u>shall comply with Florida Rule of Judicial Administration 2.425 and shall be made including the date of filing; the date of issuance, service, and return of process; the appearance of such parties as may appear; the fact of trial, whether by court or jury; the issuance of execution and to whom issued and the date thereof and return thereon and, when satisfied, a marginal entry of the date thereof; the issuance of a certified copy; a memorandum of the items of costs including witness fees; and the record of the verdict of the jury or finding of the judge, and the judgment, including damages and costs, which judgments may be kept in a separate judgment book; and</u></p> <p>(3) [No change]</p> <p>(b) [No change]</p> <p>Court Commentary</p> <p>[No change]</p>	<p>Amended subdivision (a)(2) to include a reference to <i>Fla. R. Jud. Admin. 2.425</i>.</p>

Minutes
Small Claims Rules Committee
July 29, 2011 Conference Call

The meeting was called to order by Chair Judson Cohen at approximately 12:06 p.m. Chair Cohen gave a brief synopsis on the purpose of the meeting. Within the court's opinion of case SC08-2443, *In re: Implementation of Committee on Privacy and Court Records Recommendations*, the committee was instructed to "propose conforming amendments to recently adopted Florida Rule of Judicial Administration 2.425 (Minimization of the Filing of Sensitive Information). The court gave the committee until September 1 to review the rules and determine if any other amendments need to be proposed, besides those which were published within the opinion.

Michele Cavallaro explained to the committee that some rule amendments, specifically 7.140, 7.340 and 7.343 were submitted and have been accepted by the court. Judge Hessinger responded that there are concerns outstanding somewhere since the court said so.

Nicole explained that the subcommittee is recommending the three amendments which have been approved by the court, but there are a few amendments which the subcommittee is proposing. Specifically, the removal of the telephone numbers from the forms, in compliance with the published privacy rule.

From this several members, specifically the judicial members, expressed their concern about not including the phone numbers in the title or in the content of the pleadings. Given that a large percentage of small claims participants are pro se, requiring a phone number be listed is crucial to keeping the case moving.

A suggestion was made to address each rule individually. The amendment to rule 7.040(a)(2) was raised for vote. This amendment, which included a reference to the rule 2.425, Rules of Judicial Administration, passed unanimously by a vote of 19-0.

Then the discussion was opened to proposed rule 7.050 amendments. This included the removal of telephone numbers. The discussion again turned to a reiteration of the need for this information by the courts and the parties in the Small Claims Courts. Judge Lee read the new rule 2.425 which expressed that the rule is in effect, except if certain chapters have exceptions to the provisions. The committee felt that the telephone number requests within the rule should be maintained as an exception to rule 2.425.

Judge Hessinger made a motion that the telephone numbers remain in the rules and that no conforming amendment is necessary. Mr. Martinez seconded this motion. The vote was taken and the motion passed 22-0.

Chair Cohen instructed Krys Godwin to begin creation of the necessary documents for this action and to submit the amendment to rule 7.040 to the Board of Governors for their vote. He thanked all the members for their time and actions and adjourned the meeting at 12:39 p.m.