

IN THE SUPREME COURT OF FLORIDA

**IN RE: AMENDMENTS TO THE FLORIDA
RULES OF JUDICIAL ADMINISTRATION
2017 REGULAR-CYCLE**

CASE NO: 17-155

**JOINT COMMENT OF THE FLORIDA FAMILY LAW RULES
COMMITTEE, JUVENILE COURT RULES COMMITTEE AND THE
FLORIDA PROBATE RULES COMMITTEE REGARDING RULE OF
JUDICIAL ADMINISTRATION 2.140(a)(6)**

Honorable Laurel Moore Lee, Chair of the Family Law Rules Committee (FLRC), Michael Travis Hayes and Jon Scuderi, Co-chairs of the Florida Probate Rules Committee (FPRC), Ward L. Metzger, Chair of the Juvenile Court Rules Committee (JCRC) and John F. Harkness, Jr., Executive Director of The Florida Bar, on behalf of the above-named committees file this comment. The comment was approved by the FLRC by a vote of 29-0-0. The comment was approved by the FPRC by a vote of 28-0-0. The comment was approved by the JCRC by a vote of 20-0-1.

When the proposed amendment of Rule 2.140 was first under consideration by the Rules of Judicial Administration Committee (RJAC), the FLRC Chair, Honorable Laurel Moore Lee, provided comments to Honorable S. Scott Stephens, Chair of the RJAC, on September 7, 2016. (See Appendix A). Now that the RJAC has formally approved proposed amendments to Rule 2.140, FPRC and JCRC join the FLRC and respectfully provide the following comments to the new proposal to amend Rule 2.140(a)(6).

The proposed amendments to Florida Rule of Judicial Administration 2.140(a)(6) should be rejected because they give the RJAC the power to effectively “veto” proposed rule changes made by the standing rules committees by giving greater weight to RJAC’s comment than awarded to other commenters, and by giving the RJAC the inherent ability to argue to the Board of Governors and to the Supreme Court against the proposed rule recommendations.

The proposed amendments to Florida Rule of Judicial Administration 2.140 address the insufficiencies in the current rules coordination function of the RJAC, but the proposed amendments in Rule 2.140 go far beyond the intended fix. The proposed amendments in subdivision (a)(5) require all standing rules committees to follow a detailed procedure to keep all rules committees informed of any rule proposals that are under discussion and sufficiently address the RJAC’s

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coordination function. The proposed amendment to 2.140(a)(6) gives the RJAC more control of the entire rule-making process than currently exists. This control is not needed to address RJAC's function as coordinator of rules among the various rules committees. The proposed amendment would give RJAC broad "gatekeeper" power to assess whether rule proposals of one committee address a matter of common or general application therefore requiring that proposal to be rejected. This level of review would not require clarification of whose interests or agendas are being considered or weighed when applying the coordinating process.

Additionally, the proposed subdivision (a)(6) empowers the RJAC to issue a *formal* response to each rule proposal within 30 days after the next scheduled meeting of the RJAC and further requires that all standing rules committees "shall include" the RJAC response in that committee's rule proposal. This procedure suggests that the formal response by RJAC would have greater weight than any other standing rules committees' comment in the rule making process. In addition, the FLRC, FPRC, and JCRC are concerned that the RJAC will become so bogged down with formal responses that it may impede and hinder FLRC, FPRC, JCRC and other rules committees' abilities to expeditiously complete the rule making process.

The requirement that each standing rules committee attach the RJAC formal comment to those committees' reports to both the Board of Governors and the Court presents an impermissible conflict. Even if the Board of Governors approves a proposed rule or rules over the objection of the RJAC, the proposing committee would still be required to attach the RJAC comment to the submission of the proposed rules to the Supreme Court. Thus, the RJAC will have the inherent ability to argue against the position of the Board of Governors to the Supreme Court if, in its review response, the RJAC recommended the Board of Governors reject or substantially amend the proposed rule(s). Effectively, the RJAC would be filing what would appear to be a comment with greater weight prior to the court's invitation for comments.

The FLRC, FPRC, and JCRC recommend that the RJAC should either strike the proposed changes in their entirety or revise subdivision (a)(6) to make it clear that RJAC's response: (i) does not carry any greater weight than comments made by any other standing rules committee; and (ii) is limited to advising whether any conflicts exist with other rules of procedure, including the RJAC. We suggest that it should not be the responsibility of the RJAC to reconcile competing or inconsistent rules. The current role of the RJAC liaison subcommittee is to review approved rules, to act as the "coordinating committee" and to then refer all

proposed rule to those rule committees that might be affected by a proposed change. *Fla. R. Jud. Admin.* 2.140(a)(6). The function to reconcile competing or inconsistent rules is more properly the responsibility of each of the standing rules committees and the Board of Governors. It has been effectively exercised this way for many years.

In addition to the *de facto* veto power discussed above, Florida Rule of Judicial Administration 2.140(a)(6) revisions provide the RJAC with overbroad authority that, combined with the potential for the RJAC to have competing interests with the standing rules committees, could result in rules that do not address the substantive issues intended. Florida Rule of Judicial Administration 2.140(a)(6) could potentially cause more gridlock between the standing committees and the RJAC and—even more importantly—for practitioners statewide.

If the Court feels the last sentence of subdivision (a)(6) should remain in the rule as recommended by the RJAC, the FLRC suggests the following additional double-underlined language at the end of the proposed rule to ensure the concerns of the committee are addressed:

RULE 2.140. AMENDING RULES OF COURT

(a) Amendments Generally. The following procedure shall be followed for consideration of rule amendments generally other than those adopted under subdivisions (d), (e), (f), and (g):

(6) The Rules of Judicial Administration Committee shall also serve as the central rules coordinating committee. ~~Each rules committee shall have at least 1 of its members appointed to the Rules of Judicial Administration Committee to serve as liaison. All committees shall provide a copy of any proposed rules changes to the Rules of Judicial Administration Committee within 30 days of a committee's affirmative vote to recommend the proposed change to the supreme court. The Rules of Judicial Administration Committee shall then refer all proposed rules changes to those rules committees that might be affected by the proposed change.~~ The Rules of Judicial Administration Committee's consideration of the rule proposal shall assess specifically whether the rule proposal addresses a matter of general or common application and shall include recommendations for reconciling competing or inconsistent rules, avoiding conflicts, ensuring consistency, limiting redundancy, and minimizing repetition among rules. The Rules of Judicial Administration Committee shall communicate

regularly and promptly with other affected rules committees regarding the Rules of Judicial Administration Committee's considerations. Each rules committee shall provide a copy of any proposed rules changes to the Rules of Judicial Administration Committee within 30 days of a committee's affirmative vote to recommend the proposed change to the Supreme Court. The Rules of Judicial Administration Committee shall promptly acknowledge each rule proposal approved formally by a rules committee and refer all proposed rules changes to those rules committees that might be affected by the proposed change. The Rules of Judicial Administration Committee may issue a formal response to each rule proposal approved by a rules committee within 30 days after the next regularly-scheduled meeting of the Rules of Judicial Administration Committee for regular-cycle submissions and within 30 days after formal approval by a rules committee for out-of-cycle submissions. Unless a deadline established by the supreme court or by the board of governors does not permit, the Rules of Judicial Administration Committee's response to a rule proposal shall be included and may be addressed in the submission of the rule proposal to the board of governors and to the supreme court. The Rules of Judicial Administration Committee's response to a rule proposal shall be given no greater weight than the rule proposal of the standing rules committees and shall be consistent with the limits imposed by this rule set forth above.

Respectfully submitted on March 31,2017.

/s/ Honorable Laurel Moore Lee
Honorable Laurel Moore Lee
Chair
Family Law Rules Committee
Thirteenth Judicial Circuit
Plant City, FL 33563-3429
813/272-6137
eastcirdivr@fljud13.org
Florida Bar No. 177581

/s/ Michael Travis Hayes
Michael Travis Hayes
Co-Chair
Florida Probate Rules Committee
Grant Fridkin Pearson, P.A.
5551 Ridgewood Drive, Suite 501

/s/ John F. Harkness, Jr.
John F. Harkness, Jr.
Executive Director
The Florida Bar
651 East Jefferson Street
Tallahassee, FL 32399-2300
850/561-5600
jharkness@floridabar.org
Florida Bar No. 123390

/s/ Jon Scuderi
Jon Scuderi
Co-Chair
Florida Probate Rules Committee
Goldman Felcoski & Stone, P.A.
745 12th Avenue, Suite 101

Naples, FL 34108
239/514-1000
thayes@gfpac.com
Florida Bar No. 27883

Naples, FL 34102-7376
239/436-1988
jscuderi@gfsestatelaw.com
Florida Bar No. 108278

/s/ Ward L. Metzger
Ward L. Metzger
Chair
Juvenile Court Rules Committee
Children's Legal Services
921 N. Davis St. Bld. B Ste 360
Jacksonville FL 32209-6905
904/380-2137
ward.metzger@myflfamilies.com
Florida Bar No. 333662

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was furnished by e-mail, via the Florida Courts E-filing Portal, on March 31, 2017, to:

Lori Holcomb, Division Director
Ethics and Consumer Protection
The Florida Bar
651 E. Jefferson Street
Tallahassee, FL 34399
lholcomb@floridabar.org
Florida Bar No. 501018

Alison Verges Walters, Chair
Small Claims Rules Committee
Kelley Kronenberg Attorneys at Law
1511 N. West Shore Blvd, Ste. 400
Tampa, FL 33607
awalters@kelleykronenberg.com
Florida Bar No. 679402

H. Scott Fingerhut, Chair
Criminal Procedure Rules Committee
H. Scott Fingerhut, P.A.
500 S. Dixie Highway, Suite 301
Coral Gables, FL 33146-2768
305/285-0500
hsfpa@aol.com
Florida Bar No. 796727

Heather Savage Telfer
Attorney Liaison
The Florida Bar
651 East Jefferson Street
Tallahassee, FL 32399-2300
850/561-5702
htelfer@floridabar.org
Florida Bar No. 139149

Krys Godwin, Director
Attorney Staff Liaison
The Florida Bar
651 East Jefferson Street
Tallahassee, FL 32399-2300
850/561-5706
kgodwin@floridabar.org
Florida Bar No. 2305

Kristin A. Norse, Chair
Appellate Court Rules Committee
Kynes, Markman & Felman
P.O. Box 3396
Tampa, FL 33601-3396
813/229-1118
knorse@kmf-law.com
Florida Bar No. 965634

CERTIFICATE OF COMPLIANCE

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

/s/ Mikalla Andies Davis
Mikalla Andies Davis,
Attorney Liaison
The Florida Bar
651 East Jefferson Street
Tallahassee, FL 32399-2300
850/561-5663
mdavis@floridabar.org
Florida Bar No. 100529