

TO: Hon. S. Scott Stephens
Chair, Rules of Judicial Administration Committee

FROM: Hon. Laurel Moore Lee
Chair, Family Law Rules Committee

SUBJECT: Comment regarding Rules of Judicial Administration Committee
proposed amended Rule 2.140(a)(4), (5) and (6)

DATE: September 7, 2016

CC: Krys Godwin, RJAC Liaison; James M. Barclay, Family Law Liaison

Dear Judge Stephens,

The Family Law Rules Committee (“FLRC”) reviewed the proposed changes to the Rules of Judicial Administration 2.140(a)(4), (a)(5), and (a)(6) and respectfully presents the following three comments:

1. The proposed amendments and revisions to Fla. R. Jud. Admin. 2.140 as contained in subdivision (a)(6) should be rejected because they appear to give the Rules of Judicial Administration Committee (“RJAC”) the power to effectively “veto” proposed rule changes made by the standing rules committees, by giving greater weight to the RJAC’s formal comments, and by giving the RJAC the inherent ability to argue against the recommendations of The Florida Bar Board of Governors to the Supreme Court.

The proposed revisions to Rule 2.140 address the insufficiencies in the current rules coordination function of the RJAC, but the FLRC believes the proposed revisions go beyond the intended fix. Specifically, the proposed revisions made to Rule 2.140(a)(6) give the RJAC more control of the entire rule-making process than exists under the current 2.140. Subdivision (a)(5) requires all standing rules committees to follow a detailed procedure to keep all rules committees informed of any rule proposals that are under discussion. However, the proposed subdivision (a)(6) appears to give the RJAC a “gatekeeper” power to assess whether rule proposals address a matter of common or general application without clarity about how and by whom such assessments will be made.

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Further, the proposed amended 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 requires that all standing rules committees “shall include” the RJAC response in their rule proposal. This procedure suggests that a RJAC formal response could potentially have greater weight than the input of the other standing rules committees in the consideration of the rule making process.

Additionally, in its requirement that each standing rule committee attach the RJAC formal comments to its proposed rules, the new rule requires both the standing committees’ comments and the RJAC formal response be submitted to both the Board of Governors and then to the Florida Supreme Court. In effect, even if the Board of Governors approves the proposed rule(s), the standing committee would be required to attach the RJAC comments, even if in opposition, to the submission of the proposed rules to the Florida Supreme Court. Thus, the RJAC will have the ability to argue against the position of the standing committees and Board of Governors without filing actual comments during the published comment time. This effectively permits RJAC to propose rejecting or substantially amending proposed rule(s), even if the Board of Governors approved the rules and did not agree with the RJAC’s underlying recommendation.

2. The FLRC respectfully suggests that the RJAC should either strike the proposed changes to subdivision (a)(6) in their entirety or revise this subdivision to make it clear that RJAC formal comments: (1) do not carry any greater weight than comments made by other standing rules committees; and (2) are limited to advising whether any conflicts exist with other rules of procedure, including those of the RJAC. We suggest that it should not be the responsibility of the RJAC to reconcile competing or inconsistent rules. Rather, that function is more properly the responsibility of each of the standing rules committees and the Board of Governors.
3. The Family Law Rules Committee has no objection to the amendments made to subdivisions (a)(4) and (a)(5). The proposed amendments appear to clarify how the RJAC will administer the rules coordination function. To the extent this clarification gives the RJAC only a

coordinating, and not an oversight, role, we do not object to the proposed revisions to these two sections.

Thank you for your consideration of this comment. If you have any questions or would like any further input or information from the Family Law Rules Committee, please let me know.

Respectfully Submitted,

/s/ Hon. Laurel M. Lee

Hon. Laurel M. Lee

Chair, Family Law Rules Committee